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TO: Green Jobs – Green New York Advisory Council

FROM: Karen Villeneuve, Director

DATE: November 10, 2010

SUBJECT: Resolution of Standards and Aggregation for Green Jobs – Green New York

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As you know, the Green Jobs – Green New York (GJGNY) Advisory Council, NYSERDA staff and others have spent a tremendous amount of time and effort proposing, discussing and commenting on contractor standards for the program, and how they might be applied. On behalf of Frank Murray, Chair of the GJGNY Advisory Council, and NYSERDA, thank you for your participation and input over these many months. This has been a very beneficial process and a great learning experience for all. The purpose of this memo is to inform you of the approach NYSERDA will be taking to implement contractor standards for the one-to-four family sector and customer aggregation initiatives.

#### Background

The GJGNY Act indicates that there is a role for

“contractors that have signed enforceable agreements to meet standards set by the authority including standards for local hiring and pre-apprenticeship and apprenticeship and other labor-management training program participation....”

This issue is primarily focused on the one-to-four family sector, which will be served through NYSERDA’s Home Performance with ENERGY STAR program.

Discussions on this topic took place in the One-to-Four Family Sector Working Group, Workforce Development Working Group, and Outreach and Marketing Working Group; during the presentation of the One-to-Four Family Sector Draft Operating Plan to the Advisory Council; during conference calls with a subset of the Advisory Council members discussing customer aggregation; during presentations of the proposed “Aggregation Model” to the Advisory Council; and finally, at a special meeting of the Advisory Council to discuss standards on August 11, 2010. Many members of the public also provided comments at the August 11 meeting.

In addition, NYSERDA received a written “Common agreements on Green Jobs-Green NY contracting and job standards” document from the Center for Working Families (CWF), co-signed by a number of community-based organizations, contractors, labor and others, which formed the basis of the August 11 discussion, as well as numerous written comments from contractors and other organizations in response to that document. Written comments regarding

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standards were also received from many parties commenting on the Draft One-to-Four Family Sector Operating Plan. Comments and discussions are documented in the GJGNY meeting notes which are posted on the public GJGNY web site, along with video recordings of the Advisory Council meetings and the documents and e-mails received from all parties.

The nature of the input varied widely, but with concurrence among essentially all parties that there is a desire to ensure that the following objectives are achieved:

- High quality work is done through the program,
- Workers are paid fair wages,
- Communities and populations targeted by the legislation benefit from program participation and job creation, and
- Targeted workers have the opportunity to grow on the job through career ladders.

However, there was not consensus on how to best achieve those objectives. Suggested approaches ranged from using very prescriptive standards for workforce development, wages and benefits, to not requiring any new standards beyond what NYSERDA already requires in the Home Performance with ENERGY STAR program, and instead use voluntary marketplace mechanisms. Many parties made very passionate appeals for their preferred approach based on their beliefs regarding potential success of the program, potential impacts on communities, and potential impacts on contractor businesses. Some parties appeared to lack a full understanding of the standards already in place for Home Performance with ENERGY STAR that relate to quality workmanship and business practices; current business practices of home performance contractors regarding wages and hiring from the community; and current status of targeted communities and small businesses regarding their access to or ability to participate in the existing programs. Regardless of whether consensus was reached on the issues, NYSERDA believes the process and discussions that took place were very positive and helpful, and that many parties developed a better understanding of the "full picture."

In addition, NYSERDA met with New York State Department of Labor (NYSDOL) staff to better understand the existing opportunities provided by NYSDOL programs and One Stop Career Centers to contractors and (potential) workers; and with New York State Department of Public Service staff to discuss the possible implications of any new standards on programs enabled by Public Service Commission Orders.

#### Previous NYSERDA Proposal

In its draft Operating Plans, NYSERDA proposed the following:

- Standards for quality workmanship and business practices (including those for contractor accreditation and worker certification) currently in place for Home Performance with ENERGY STAR will stay in place.

- Community development standards (specifics to be determined) will be established for contractors who sign enforceable agreements to participate in the Aggregation Model, which will be piloted in two or three communities. Some of the standards will be specified and some will be proposed by the constituency based organization submitting the proposal. CBOs will have to show that at least one contractor is willing to sign an enforceable standards agreement with NYSERDA.
- “Voluntary” standards will be established by NYSERDA for contractors when they are serving individual households (as opposed to an aggregation.) The standards will be established in enforceable agreements signed by the contractor and NYSERDA. The fact that certain contractors have signed the Voluntary Agreements will be made public on NYSERDA’s list of participating contractors, enabling homeowners to select contractors on that basis if desired.
- Contractors will be provided incentives for training their workforce, and training organizations will be eligible to propose training programs, including “pathways out of poverty” and career ladders, that serve the targeted populations.

#### Revised Approach Based on Input

After participating in the numerous discussions, and reviewing the input provided through the many forums described above, NYSERDA has determined that the following approach with respect to contractor standards and aggregation rules will be implemented as the “starting point” for the GJGNY program:

- Standards for quality workmanship and business practices (including, for example, those for contractor accreditation and worker certification, contractor liability insurance and customer dispute resolution) currently in place for Home Performance with ENERGY STAR will stay in place. As always, NYSERDA will monitor the standards development processes at the Building Performance Institute and elsewhere to ensure quality performance standards are added and maintained at the highest level, and will continue to implement an aggressive quality assurance program that samples both business and technical performance of participating contractors.
- “Mandatory Standards for Aggregation Contractors” will be proposed (through RFP 2038, “Green Jobs – Green New York Outreach Program”) **by local constituency-based organizations (CBOs) for contractors participating in local customer aggregation initiatives (as opposed to some standards being established by NYSERDA.)** Only contractors signing enforceable Aggregation Participation Agreements with NYSERDA will be able to participate in the customer aggregation initiative. Examples of standards may be those for local hiring of contractor employees, training and credentials for new employees, entry-level and minimum wages and benefits for trained workers, etc. Standards and rules may vary from region to region. NYSERDA reserves the right to negotiate final language for the standards and rules to ensure they are enforceable and are not inconsistent with any other applicable standards or laws.

- Aggregation will be piloted for at least six months, and will allow for changes to improve program success, with the goal of establishing long-term aggregation initiatives based on proven approaches. However, ***NYSERDA will not limit the number of pilots to two or three, as originally proposed. Any CBO proposing an aggregation pilot through RFP 2038 will have to include letters of intent from at least three (as opposed to one) local contractors who agree to abide by the standards and rules in their proposal.*** The need for three commitments from contractors is based on CBOs having much more flexibility in establishing standards and aggregation rules, and the need to ensure there is expected to be adequate contractor participation in the region. As aggregation will be considered optional in RFP 2038, it is expected that additional aggregation initiatives may be added over time in regions where they are not initially deployed.
- As opposed to establishing required hiring and training standards (beyond those currently required under Home Performance with ENERGY STAR), ***NYSERDA will require all participating contractors sign up with their One-Stop career system Regional Business Representative, to enable support to the contractor in hiring and training their employees.*** NYSERDA will inform all participating contractors of state and federal hiring and on-the-job training incentives available to support employment-related community benefit objectives (for example, HIRE Act, NYSERDA, NYSDOL and NYSOTDA.) ***The One-Stop Regional Business Representative provides a range of services that can be voluntarily accessed by contractors, largely facilitating activities proposed by the CWF as “standards.”*** It is believed that by taking advantage of these programs, which offer information on training resources, and which provide training, certification, and wage incentives, as well as certain training at no cost, contractors will be able to continue the development of their staff, maintain quality services for their customers, and grow their businesses in a manner that benefits their communities, thereby achieving the goals of the GJGNY Act. ***CBOs and local training organizations using the One Stop Career Centers as a resource will “close the loop” on the training and hiring process within their own communities. The data systems offered by the One Stop Career Centers will provide information that will enable meaningful evaluation of the training and hiring track record for the GJGNY program.***
- “Voluntary Contractor Standards” will be established by NYSERDA for contractors when they are serving households that are not part of an aggregation. These standards, if agreed to by a contractor, will be reflected in enforceable agreements signed by the contractor and NYSERDA. The fact that certain contractors have signed the voluntary agreement will be made public on NYSERDA’s list of participating contractors, enabling homeowners to select contractors on that basis, if desired.

NYSERDA believes this approach reflects a meaningful step forward in delivery of energy efficiency services to households in New York State, will allow CBOs to pursue the range of standards they believe will most benefit the program and their community, while also enabling contractors who are concerned about the impact of such standards on their

business to use business practices and additional standards they believe will prove most effective at this time. Contractors who are not ready to sign up to additional standards will forego aggregation projects developed by the CBOs and continue to serve households in accordance with the quality and business standards of NYSERDA's Home Performance with ENERGY STAR program. NYSERDA will monitor the impact of this strategy on program participation rates and community development, will inform and consult with the GJGNY Advisory Council on status and progress, and as is standard practice for NYSERDA, make adjustments as needed over time to improve program performance.

Once again, thank you for your participation and input on this process. We now look forward to roll-out of the program and will keep you informed of its progress. We anticipate that RFP 2038 will be released the week of November 15<sup>th</sup>.

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