From: Ward, Lisa UTPWR [mailto:LISA.WARD@UTCPower.com]
Sent: Wednesday, May 09, 2012 11:12 AM
To: mambrosio@appliedenergygroup.com
Cc: Winka, M; Rozanova, Valentina (Woodbridge,NJ-US)
Subject: Lease Language Request - Example Programs

Hi Mike,

Pertinent to our discussion at yesterday's EE meeting, I have researched other state programs where our company has received grants or funding for our 400kW fuel cell product.

These programs are located in New York (NYSERDA) and California (SGIP).

NYSERDA has a minimum warranty requirement of 3 years, which equates to the payout schedule of their performance based incentive. Despite this short warranty term, most of the equipment lease agreements provided to NY end users by UTC Power have terms of 10 years due to our cell stack design life and typical 10 year warranty length.

- http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities/~/media/Files/FO/Current%20Funding%20Opportunities/PON%202157/2157pon1.ashx
- PDF page 8 (Section IV)

SGIP has a minimum warranty requirement of 10 years.

- http://www.pge.com/includes/docs/pdfs/shared/newgenerator/selfgeneration/SGIP_Handbook_2012.pdf
- PDF page 77 (Section 12)
- The equipment warranty requirement essentially determines the lease term for the project; if the warranty on the equipment is 10 years, a 10 year lease term for the equipment would make sense as well

Per the above state incentive programs, the maximum equipment lease or warranty term is 10 years, allowing for more opportunities to develop fuel cell projects within the given state. As I stated in the meeting yesterday and in my initial request, a shorter lease term can help all fuel cell OEMs. The fewer cell stack replacements required during the term of the lease, the less expensive the project – which could lead to more project development in New Jersey if this shorter lease term is adopted.

I would be happy to answer any follow up questions you may have.

Thank you,

Lisa

Lisa C. Ward
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

May 22, 2012

Via Overnight Delivery and Electronic Mail
Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: **In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2009-2012 Clean Energy Programs: 2012 Programs and Budgets: Compliance Filings BPU Docket Nos. EO07030203 and E010110865 Small Scale CHP/Fuel Cell Program – Lease Term Language Proposal**

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the New Jersey Division of Rate Counsel in connection with the above-captioned matter. Copies of the comments are being provided to all parties by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

Tel: (973) 648-2690 • Fax: (973) 624-1047 • Fax: (973) 648-2193
http://www.state.nj.us/publicadvocate/utility E-Mail: njratepayer@rpa.state.nj.us

Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By: ______________________
Kurt S. Lewandowski, Esq.
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KSL/sm

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Small CHP/Fuel Cell Program Lease Term Modification
Comments on the Development of a Request for Proposals

Initial Comments of the New Jersey
Division of Rate Counsel

May 22, 2012

The Division of Rate Counsel ("Rate Counsel") would like to thank the Office of Clean Energy ("OCE") for the opportunity to provide our comments on UTC Power's ("UTC") proposal ("UTC Proposal") regarding modifications to the lease term language for OCE's Small Scale CHP/Fuel Cell program, circulated to stakeholders by the Applied Energy Group ("AEG") on behalf of OCE in an e-mail notice issued May 9, 2012.

The UTC Proposal applies to OCE's Small Scale CHP/Fuel Cell program up to 1 MW. As discussed below, UTC has proposed two changes to the lease term language in sub-section 7 (under "Important Terms and Conditions") of the 2012 Fuel Cell Application Package document ("Application").[1]

First, UTC proposes to replace the following language regarding the transfer of ownership with new language regarding a binding or lease agreement:

> "...The agreement should state that the equipment could be transferred to new owners should the property be sold or otherwise have a buyout provision so the equipment remains on site and stays operational so the projected energy savings can accrue." (Application, page 3)

The proposed new language reads as follows:

[1] The document is available at http://www.njcleanenergy.com/files/file/CHP%20-%20FC%202012%20Applications%20and%20Forms/ESIP%20Changes/2012%20Fuel%20Cell%20Application%20Package%20-%203-21-12.pdf

"...In order to ensure the Fuel Cell remains fully operational during the energy savings accrual period, the agreement shall include a clause to allow assignment or buyout of the agreement, should the recipient of the incentive sell the property where the Fuel Cell is installed."

Rate Counsel has no objections to this proposed modification regarding buy-outs and transfers.

Second, UTC proposes to reduce the lease term to 10 years from 15 years for fuel cell projects that will be leased to customers or owned by third parties. See Application, page 3. Based on an email from Ms. Lisa Ward of UTC to Ms. Linda Wetzel of Applied Energy Group on May 4 ("May 4th email") which was circulated to the CEP-EE listserve, Rate Counsel understands that UTC believes that reducing the lease term to 10 years is necessary in order to reduce market barriers surrounding the fuel cell lease market because the fuel cell stack life is about 10 years for UTC's fuel cell. In addition, Rate Counsel understands that UTC needs to overhaul fuel cell systems and replace fuel cell stacks after ten years, based on the projected life expectancy of the fuel cell stacks. Rate Counsel has the following concerns regarding the lease term modification proposed by UTC:

- This proposed modification would only ensure power production from leased fuel cell projects for a minimum of 10 years, instead of 15 years. Rate Counsel is concerned that there is a risk that in the aggregate five years' worth of energy production (or benefits to the State) would not accrue as a result of this modification.

- This proposed modification could also mean that effective incentive levels paid to leased units would be higher on a per kWh energy produced basis than for purchased units because customers who have leased units have little or no stake in operating the units more than 10 years, while customers who purchased and invested in fuel cell units have an interest in operating the units for as long as their useful product life of 20 years.

- In her "May 4th email," Ms. Lisa Ward of UTC stated that the entire product life for UTC fuel cell is 20 years, while the fuel cell stack life is 10 years. Given that the incentives are paid for the entire system, not just for fuel cell stacks, Rate Counsel would like to ensure that the UTC fuel cells operate for their full product life.

Due to these concerns, Rate Counsel proposes the following modifications of UTC's proposal:

- Incentives for leased fuel cells with a lease term of less than 15 years but more than 10 years should be reduced to reflect the risk of leased units operating less than the current lower limit of 15 years.

- OCE could allow fuel cell companies or lessors to receive the current incentive levels if a lease agreement is entered into for at least 15 years of fuel cell operation.

- OCE's benefit cost analysis for this fuel cell program should address the aforementioned risk by reducing energy production level of leased units down to 10 years.

Linda Wetzel

From:	William Amann <wamann@meengineers.com>
Sent:	Wednesday, May 09, 2012 6:45 PM
To:	publiccomments@njcleanenergy.com
Subject:	Small CHP Fuel Cell

The UTC proposed changes seem quite reasonable and in my opinion do not detract from the intent of the program requirements.

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