

## Environmental Law

### The Future of Government Energy Aggregation

An effective tool to control energy costs

By Steven L. Humphreys

**B**y all objective measures, government energy aggregation (GEA), under which one or more counties or municipalities use their collective buying power to purchase low-cost energy for governmental buildings and residential customers, should have been a cornerstone of New Jersey's energy policy by now. Widely supported by officials in state and local governments, as well as power suppliers, GEA was given the state's formal blessing and active encouragement in the Government Energy Aggregation Act of 2003 (GEAA<sup>1</sup>), P.L. 2003, C.24. However, in somewhat anticlimactic fashion, despite its initial fanfare and the lofty aspirations for GEAA's innovative approach to energy procurement, not to mention a successful track record in other states, GEA has gotten off to a slow start in New Jersey.

Nonetheless, even though no municipalities or counties have implemented a GEA program to date, there are growing indications of renewed interest in the concept, not only as a means of alleviating soaring energy prices for residential customers and municipalities, but also as a tool to help spur energy conservation efforts and the construction of renewable energy facilities. With the increased availability of financial incentives at the state and federal levels for energy conservation initiatives and renewable energy facility construction, a number of municipalities recently have begun to take another look at GEA as a useful component in a range of strategies to control spiraling energy costs.

When the GEAA was enacted in 2003, it was modeled after similar laws in four other states — Ohio, Massachusetts, Rhode Island and California. Of these programs, the most successful has been in northeast Ohio under

a public authority known as the Northeast Ohio Public Energy Council, which now operates and oversees the program on behalf of approximately one-half million residential and governmental customers. The impetus for a similar approach in New Jersey grew initially as a response to the deregulation of electrical power supply and distribution. Although deregulation in New Jersey exempted the production of energy from certain regulatory controls, it was accompanied by the formal separation of generation and distribution, prohibiting companies that generate energy from distributing it in the state. The goal, ultimately unrealized, was to allow several energy suppliers to enter the market, which previously was monopolized by the generation branch of the various utilities, and reduce electricity prices. Under the GEAA, communities are given incentives to "aggregate" demand from among their residential customers, governmental buildings and some business customers. They are then allowed to enter into power purchase agreements for both electricity and gas on behalf of their customers, and deliver it via existing distribution systems owned by the utilities. In addition to facilitating price competition in areas serviced by single Investor Owned Utilities (IOUs), the GEAA was intended to foster price stability through the procurement of multi-year supply contracts with a guaranteed price structure over the length of the contract.

The key elements of the GEAA are as follows: (1) municipalities or counties are allowed to act as aggregators for the energy needs of their constituents and sign supply

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contracts on their behalf with prices equivalent to or lower than market prices, except as otherwise agreed by the customers; (2) once enabling legislation is adopted by the municipalities participating in the program and an energy supply contract is signed, individual residents are automatically included in the program, subject to their right to withdraw through an “opt out” provision, while businesses have to “opt in” to be included; (3) the utilities serving the area covered by the GEA program are obliged to collaborate with the municipalities or counties by providing them with information on their customers and amount of energy used by them; and (4) the utilities continue to service customers and charge them the customary energy distribution fees.

As originally envisioned, the goal of a GEA under the 2003 law was limited to realizing economic benefits for the participants — ranging between 2 to 8 percent in energy cost reductions in GEA programs in other states. More recently, with the intervening enactment of New Jersey’s 2007 Global Warming Response Act (“GWRA”), and subsequent release of the state’s Energy Master Plan (EMP) setting out goals for achieving the greenhouse gas (GHG) reductions called for in the GWRA, the GEA framework has become the focus of renewed interest as a cost-effective mechanism to assist with the development of locally-based renewable energy infrastructure and energy conservation initiatives. As contemplated under the EMP, meeting the GWRA’s goals for reducing GHG emissions will require a 20 percent decrease in statewide energy use by 2020, while 30 percent of the state’s electricity needs will have to come from Class 1 renewable energy sources.

Local renewable energy production can provide significant advantages over traditional Publicly Owned Utility (POU) and Investor Owned Utility (IOU) development approaches in achieving the ambitious goals of the GWRA and EMP. Among other benefits, local renewable power generation provides their surrounding communities with a means of exerting greater control over the cost of electricity and gas for governmental, residential and nonresidential accounts, providing an important hedge against commodity-based pricing structures available on the general

market. In terms of GHG reduction mandated under the GWRA, local government participation in GEA programs can also yield savings on energy costs that can be used as seed money to identify energy conservation measures needed to reduce overall energy demand, as well as for planning for the development of locally based renewable energy generation and innovative energy infrastructure like mini-grids and demand management programs, with the actual implementation paid through public financing tools and private investments.

Combined with other financial and legal incentives for local renewable energy facility construction and energy conservation measures, the prospects for GEA adoption in New Jersey are improving and are arguably stronger now than ever before. Using money allocated to New Jersey’s State Energy Program through the American Recovery and Reinvestment Act (ARRA), grants and low-interest loans are now available for both public and private innovative energy efficiency and renewable energy projects. 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 2008, the Legislature also enacted the Energy Savings Improvement Program (Public Law 2008, Ch. 83), which amended the state’s public contracting law, N.J.S.18A:18A-42, to remove legal barriers to innovative funding approaches for renewable energy facility construction. The new law authorizes municipalities and counties to enter into power purchase agreements (PPAs) 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 in public buildings. 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 (RGGI).

The actual process for setting up a GEA is relatively straightforward, as most of the legal and administrative work can be relegated to third-party providers whose fees can be paid out of the cost savings generated through

the program. The key steps for a participating municipality or county are as follows:

1. Pass a resolution by the city council to set up a GEA to reduce energy supply costs and/or expand the content of renewable energy in the present mix. Any final supply contract with a third party supplier will have to be approved by the local government(s) and signed by its legally authorized representative.

2. Inform the present IOU of the intention to set up a GEA program and request reliable estimates of the energy requirements in the area covered by the program. The GEAA requires that these figures are supplied by the local IOU within 30 days.

3. Send out a Request For Quotation to reliable third-party suppliers with clearly defined terms and conditions that will be required in a final contract. At a minimum, the contract should include detailed financial and legal disclosure requirements to ensure that the supplier will be able to meet its obligations under the contract.

4. Choose a bid winner and negotiate the final contract language.

5. Approve and execute the contract by participating local governments and suppliers.

6. Notify residential customers and any “opt in” commercial accounts of GEA initiation.

After the start-up process is completed, some resources will have to be dedicated to the monitoring of the power purchase contract’s implementation and ongoing interactions with energy suppliers to ensure favorable terms in subsequent contracts.

In addition to offering municipalities and counties an opportunity to reduce energy procurement costs for government buildings, residential customers and certain nonresidential customers, GEA provides an initial framework for innovative programs aimed at improving energy efficiency and development of distributed and renewable energy assets.

Combined with newly available state and federal financial incentives for energy conservation and renewable energy facility construction, GEA could become an integral part of the state’s continuing efforts to control GHG emissions while providing local governments with an effective tool to controlling energy costs. ■