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STATE CAPITOL REPORT

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TDHCA Board Adopts New “Green, Solar” Rules for the 2009 Federal Housing Tax Credit Program

Support from Sierra Club and Housing Advocates

The Texas Department of Housing and Community Affairs (TDHCA) has adopted new rules for 2009 for a variety of low-income housing programs. In the process the agency paved the way for greener, more energy efficient affordable housing. The new rules are known officially as the 2009 Housing Tax Credit Program Qualified Allocation Plan (QAP) and Rules.

While the new rules do not force housing developers to increase energy efficiency and on-site solar significantly, they provide developers with the ability to earn extra points in their applications for federal tax credits if they meet certain criteria. Thus, housing developers can choose to earn up to six additional “points” in either their selection or threshold criteria on amenities related to on-site renewable and efficiency measures. In an added boost for on-site solar, the QAP allows developers to qualify for an *additional* 30 percent increase in their eligible basis if the housing development intends to utilize federal energy tax credits based

on the use of on-site renewable energy.

By approving these new rules, the TDHCA Board has taken an important step to encourage more energy efficient homes and promote on-site solar. This action also should help Texas reduce emissions of global warming gases and other air pollutants, while giving those least able to afford high utility bills some relief.

Key Measures

Among the key measures that developers can earn “points” for under the new rules are the following:

- Photovoltaic panels (1 to 3 points depending on size);
- Solar water heaters (up to 2 points);
- Water-conserving appliances (up to 2 points);
- Energy efficient homes (up to 4 points for an HERS score of 85);
- Sub-metered utility meters (up to 2

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points); and

- Evaporative coolers (1 point)

In addition, the QAP rules and similar rules for multi-family housing do impose some minimum requirements for energy efficient appliances and green-building designs that improve upon previous rules.

Widespread Support

The Lone Star Chapter of the Sierra Club joined national low-income green-building advocate Global Green USA as well as Austin non-profit affordable housing developer Foundation Communities in submitting written and oral testimony supporting the expansion of the green-building measures. The groups also supported other measures related to locating developments near major bus and rail transfer stations to encourage “in-fill.”

“TDHCA has an important role to play in pushing and encouraging the development community to make more affordable, livable, and sustainable communities, while helping weatherize existing homes,” said Lone Star Chapter Conservation Director Cyrus Reed. “The agency has done its part. Now it’s up to the developers to come up with creative applications. Moreover, it’s up to the Legislature to enact additional incentives and requirements to create a market for on-site solar and energy efficient homes. At the same time the Legislature must spend the accumulated System Benefit Fund money to weatherize existing

homes for low-income utility customers in order to bring energy costs down.” The Texas Department of Housing and Community Affairs (TDHCA) adopted new rules for 2009 on a variety of low-income housing programs earlier this month, in the process paving the way for greener, more energy-efficient affordable housing.

While the new rules – officially known as the 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules – do not force housing developers to significantly increase energy efficiency and on-site solar, they provide developers with the ability to earn extra points in their applications for federal tax credits if they meet certain criteria. Thus, housing developers can choose to earn up to six additional “points” in either their selection or threshold criteria on amenities related to on-site renewable and efficiency measures.

And in an added boost for on-site solar, the QAP allows developers to qualify for an additional 30 percent increase in their eligible basis if the development plans to utilize federal energy tax credits because of the use of on-site renewable energy.

By approving these new rules, the TDHCA Board has taken an important step to encourage more energy efficient homes and promoting on-site solar, steps that should also help Texas reduce global warming and other air pollutants, while giving those least able to afford high utility bills some relief.

Senate Business and Commerce Committee Discusses Global Warming, Texas Energy Future

In an all-day marathon session on November 18, the Texas Senate Committee on Business and Commerce discussed and heard invited and public testimony from a wide variety of sources on energy and climate change issues. The Committee meeting served as a forum for a robust debate on whether the state needed to take more proactive steps on global warming emissions and regulations.

Early in the meeting, the Committee chair – Senator Troy Fraser – announced that both he and Senator Kip Averitt had recently returned from England, where they had attended a summit to discuss climate change efforts. He said that leaders from other countries were interested and impressed by Texas’ efforts in implementing a renewable energy portfolio standard and CREZ (Competitive Renewable Energy Zones) transmission line zones.

Federal Climate Change Action Prospects

At the Committee meeting Senators Fraser, Averitt, Kirk Watson, and Leticia Van de Putte engaged in a discussion with Public Utility Commission (PUC) Chairman Barry Smitherman about the prospects for federal climate change legislation and what, if any, steps Texas should take on climate change. Fraser pointed out the leadership position Texas had taken on wind energy and said that Texas needed to educate Washington about

our state’s unique role as an energy and petrochemical producer

Both Averitt and Watson said Texas also needed to be actively engaged in the discussions about federal climate change legislation – not, as Senator Watson stated, “covering our eyes.” Smitherman said now was the time to comment on the different options for a federal system. He said that the basic questions revolved around the transition time; whether or not the allocation of carbon emissions would be free, traded, or taxed; and to what extent US actions will be tied to actions by other nations. Both Averitt and Watson advocated being prepared for the discussion and looking at some basic strategies to take in Texas now before the federal government tells us what to do.

Wind Energy and Nuclear Power

Smitherman stated that there would be 8,000 MWs of wind power in Texas by the end of this year – and 18,500 MWs when the transmission lines are built out – but that the price of electricity is largely set by the price of natural gas. Nevertheless, he said, further development of wind, other renewable energy sources, and nuclear power plants – as well as efficiency --could bring prices down by

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reducing the need for natural gas plants. There was a lengthy discussion about nuclear power and the up to eight proposed new nuclear power plant units in Texas. Smitherman pointed out, however, that even if approved, actual construction of new nuclear power units could take eight to 10 years.

The Senators were generally favorable in their opinion of the need for additional nuclear plants, while expressing concern about the impacts of the attempted take-over of NRG by Exelon – both of which have competing nuclear plant proposals – and whether the PUC would be reviewing such a proposed merger. Smitherman said the PUC would do only what the law allows in that regard. Senator Kevin Eltife expressed concern about having any one company control too much of the electric power market.

ERCOT CEO Testimony

After also discussing potential gains in advanced meters, power storage, and solar technology, Bob Kahn, CEO of ERCOT (the Electric Reliability Council of Texas), explained how *growth in ERCOT load use has declined, and Texas should have no trouble for several years in meeting its reserve margin requirements for electric power.* [ERCOT oversees the electric power grid for 80% of the state's electric power market.]

Kahn was then subject to considerable anger

and concern from Senators Chris Harris, Fraser, and Van de Putte over the completion of a cost-benefit analysis for the expected transition from a zonal to a nodal market. In the market structure used today, ERCOT creates wholesale electricity prices within five broadly defined geographic zones (a zonal market). In a nodal market, wholesale electricity prices are calculated for specific delivery points (called nodes) based on the demand, generation and transmission available to serve the local area.

Kahn said the initial cost of \$125 million for the cost-benefit study had risen to \$319 million, and the study was costing about \$12 million per month in various contracts with software and other vendors. While he stated the overall benefits of a nodal market in cutting down congestion and transmission costs and avoiding market manipulation still outweighed the initial costs, he did say it was possible that a cost-benefit study would find that Texas was not ready.

Consumer Groups Panel

A variety of panels followed, including retail electric providers, transmission, and distribution utilities, utilities operating within Texas but outside of the ERCOT grid, and a consumers groups panel, which included Tom “Smitty” Smith of Public Citizen, Carol Biedrzycki of Texas ROSE, Tim Morstad with AARP, and Cyrus Reed, with the Lone Star Chapter of the Sierra Club.

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Mexican-American Caucus, Rep. Lucio III hold Public Meeting on the Texas Border Wall

Sierra Club, Local Mayors Call for Alternatives

State Rep. Eddie Lucio III, along with Reps. Kino Flores and Veronica Gonzalez, held hearings at the State Capitol earlier this month on behalf of the Texas Mexican American Legislative Caucus on the progress – and problems – of the border “wall” being built in various locations along the Texas-Mexico border as a result of federal congressional action.

Following opening remarks by Rep Lucio, who noted his sadness at seeing a wall go up where he had once played as a child, a panel of local officials, which included Eagle Pass mayor and Texas Border Coalition Chairman Chad Foster, expressed their outrage at the process and product in the building of the border walls and fences. Laredo Mayor Raul Salinas noted that even Department of Homeland Security Secretary Michael Chertoff admitted that the Border Fence “won’t work,” as fences built in California and Arizona have already been breached with blow torches, ladders or simply scaled from the roof of a pick-up truck.

El Paso County Attorney Jose Rodriguez pointed out that apprehensions of people crossing illegally have gone down along the Mexico-Texas border by more than 50 percent between 2005 and 2008 even while apprehensions in areas like San Diego – where fences are in place – have increased, meaning the fences are not effective in deterring illegal

crossings. Yet putting fences for over 50 miles in West Texas will impact the El Paso County’s ability to develop eco-tourism and a river walk and will impact the Rio Bosque natural area that has been heavily promoted by the city and county. Rodriguez also pointed out that because Chertoff utilized provisions in the “Real ID Act” to abolish federal, state, and local laws, the cement batch plants being used to mix cement to construct the border wall in El Paso are not even required to follow basic TCEQ permitting rules.

President and CEO of the Texas Produce Association John McClung pointed out that while his members do want laws to be followed and the border to be secured, they want it to be done “in an intelligent and cost effective” manner. He said the border fences and levee walls being built in the Lower Rio Grande Valley create impediments and barriers to access to agricultural lands and irrigation water, and may even create “no man’s land” along the border. Finally, Brownsville Mayor Pat Ahumada called on the Texas legislature to send a strong message to the new Administration to “tear down this wall!”

More Perspectives

Several individuals, organizations and local

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business leaders added their views. Sierra Club member and co-founder of the No Wall – Big Bend Coalition, Adrienne Evans, called on the Mexican American Legislative Caucus to hold hearings on the wall in Brownsville and El Paso. Frontera Audubon Society's Wayne Bartholomew spoke of the devastating impact of the wall on local flora and fauna and upon their key preserve, the Sabal Palm Sanctuary, as well as the ability of the federal government to treat the border as a lawless area where federal laws don't apply.

Sierra Club View

Representing the Sierra Club, Lone Star Chapter Conservation Director Cyrus Reed spoke of how Sierra Club as an organization had become involved in lawsuits, public meetings and hearings, and supporting different political solutions on the border wall, even though the Club had no official position on immigration policy. Reed said the Club's involvement stems in part from the work of local regional groups

and their knowledge of the devastating negative effects of the wall.

Another reason for the Club's involvement, however, is the unprecedented process i.e. a faulty environmental impact study was prepared, then ignored. Homeland Security Secretary Michael Chertoff used the power given to him by the Real ID Act to do away with over 30 major environmental and other laws to build the border wall.

Reed suggested that the Legislature pass a resolution for the federal government to put a hold on further construction of the wall and consider other opportunities and approaches. He proposed various state agencies be directed to develop their own alternative plans and that the Governor's Office could play a vital role in coordinating efforts to achieve border security without violating environmental laws or destroying the natural and economic base of local communities.

Reed said, however, that the most important step was to contact federal legislators and the new administration to urge repeal of portions of the Real ID Act that allow a single individual to abrogate and evade federal, local and state environmental and cultural laws. He also urged support for federal legislation like Congressman Raul Grijalva's Borderlands Conservation and Security Act of 2007, which calls for a much more balanced approach to border security.



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In contrast to the kind words for nuclear plants by previous presenters, Carol Biedrzycki reminded the Senators of the previous nuclear plants and the cost over-runs and stranded costs that consumers are still paying. She advocated more consumer protections against electricity cut-offs. She also expressed concern that all of the costs were being born by consumers for advanced meters, transmission grids, and efficiency programs, but consumers were not guaranteed any of the benefits. She called for full funding of the System Benefit Fund, including weatherization programs and an actual kilowatt hour goal for energy efficiency, with direct rebates to consumers.

Sierra Club “12-Step Plan”

Building on the themes of high energy prices, Cyrus Reed laid out the Sierra Club’s “12-Step Plan” to meet energy demand while cutting global warming emissions, prices and creating jobs. Reed said Senator Fraser was correct in saying that Texas had made giant steps to reduce global warming emissions through the CREZ process, wind generation, and the Energy Efficiency Incentive Program requirements.

Reed said Texas needs to create a Climate Action Plan (as most other states have done), require greenhouse gas emissions reporting, and give direction to the TCEQ to put carbon dioxide emission limits and off-set agreements into permits. He

said the Bonanza decision by the EPA’s Environmental Appeals Board means carbon dioxide regulation is sooner rather than later.

Reed said the solutions to electricity demand and high prices are to cut energy use with energy efficiency, better building codes, fully funding low-income weatherization, expanding the LoanSTAR program for more energy efficient public buildings, and creating new on-site renewable energy transmission and distribution utilities. Finally, Reed said Texas needs an energy storage and solar energy portfolio standard that uses multiple on-site and off-site technologies.

Other Views

Tom “Smitty” Smith of Public Citizen also discussed the opportunities in the upcoming regulation of carbon dioxide for Texas to be a leader on solar energy, demand side management, energy efficiency, and energy storage. He also said that market rules should be changed to allow cities and others to buy in bulk, much as industrial customers do

Karen Hadden, Sustainable Energy Economic Development (SEED) Coalition, spoke about the problems and cost overruns with new nuclear plants and the need to instead concentrate on energy efficiency. Luke Metzger, with Environment Texas, spoke about the need for a robust Texas solar program.



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