



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE CLEAN ENERGY PROGRAM)
AUTHORIZATION OF REBATES EXCEEDING)
\$300,000 AND REQUEST FOR AN EXTENSION OF)
TIME TO COMPLETE PROJECT – BAYSHORE)
REGIONAL SEWERAGE AUTHORITY)

ORDER

DOCKET NO. EG12020162V

Parties of Record:

Robert Fischer, Bayshore Regional Sewerage Authority

BY THE BOARD:

By this Order, the Board considers and renders its decision regarding a recommendation that it approve a procedurally irregular rebate application in excess of \$300,000 which was not submitted to the Board for review and approval prior to the Renewable Energy Market Manager ("Market Manager"), Honeywell International, Inc. approval of the application. The Board also renders its decision on whether a third extension of time to complete the project and its final paperwork should be granted.

BACKGROUND

Pursuant to policies and procedures developed by the Board in consultation with the Division of Law and Treasury, and concurred in by Treasury, the Market Manager must review the files of any rebate over \$100,000 to ensure that neither the Market Manager nor its affiliates or sub-contractors had participated in the project as applicant, contractor, or rebate recipient. See I/M/O the Clean Energy Program Authorization of Customer On-site Renewable Energy Rebates Exceeding \$100,000, Dkt. No. EO09010009, (February 25, 2009). In an order dated September 29, 2009, Docket No. EO07030203 ("September 29 Order"), the Board modified its policies regarding rebate approval to require Board approval for any rebate that exceeds \$300,000. These additional levels of review were not applied to Petitioner's application prior to the Market Manager's September 30, 2009 letter of approval.

On September 30, 2009, the Market Manager issued a letter of approval to Bayshore Regional Sewerage Authority ("Petitioner") for a rebate in the amount of \$418,200 for a 1,500 kilowatt ("kW") wind energy project ("the Project"). This approval did not conform to the procedures adopted by the Board the September 29 Order.

On October 14, 2010, Petitioner requested a twelve-month extension, which was granted by the Market Manager. On September 30, 2011, Petitioner requested a second twelve-month extension; consistent with program policy, Petitioner received a six-month extension, which expires on March 30, 2012. As justification for the second extension, Petitioner referenced the extensive and time-consuming permitting requirements of the county and municipal authorities.

On January 17, 2012, Honeywell informed Board Staff that two projects with rebates greater than \$300,000, including Petitioner's, had not received the requisite Board approval. The Market Manager also advised that it had since performed the required review, verifying that no affiliate or subcontractor was involved in any aspect of the project, and that it would submit affidavits confirming this. The Market Manager recommended that Board Staff present the matter to the Board for review at the next regularly scheduled agenda meeting.

Board Staff has reviewed this matter and concluded that, notwithstanding the Market Manager's premature approval, Staff would have recommended approval at the time. Therefore, Board Staff recommends that the Board find the Market Manager's procedural oversight to be harmless and approve Petitioner's application for rebate.

Moreover, the Market Manager has made the following changes to ensure that similar mistakes do not occur:

- All Market Manager staff have been advised of the additional review requirements for projects seeking rebates exceeding \$100,000;
- A comprehensive review of all program flow charts has been undertaken, and these charts will be reviewed with all members of the team at least quarterly;
- A project flag has been coded into the data processing system to ensure that any project with a rebate over \$100,000 is prevented from moving forward without the necessary approvals;
- The Program Manager in charge of Renewable Energy Incentive Program ("REIP") will maintain a history of Board orders related to the renewable energy program and insure that they are incorporated into future program processes.

By letter dated March 7, 2012, Petitioner requests a third extension of its completion deadline. The REIP Guidelines only provides for two extensions and prohibits further extensions. Renewable Energy Incentive Program Guidebook, January 2009, at 28-30 ("REIP Guidelines"). See also I/M/O Customer On-site Renewable Energy ("CORE") Program and REIP – Modification to Compliance Filing Regarding Second Extension of Completion Timeframe for Existing Commitments and Adjusting Capacity Blocks, Dkt. No. EO07030203, (October 19, 2009) (modifying CORE program and REIP Guidelines by, among other things, granting the Market Manager the authority to approve second extensions of up to twelve months for public projects greater than 10 kW). However, the Board has waived the prohibition on additional extensions and granted a third extension to applicants under REIP's predecessor rebate

program, the CORE program, pursuant to N.J.A.C. 14:1-1.2(b)(1).¹ See I/M/O the Clean Energy Program Customer On-site Renewable Energy (CORE) – Request for Extension of Completion Timeframe for Existing Commitment – New Jersey Meadowlands Commission, Dkt. No. EO09070573 (April 21, 2011) at 7-8 ("April 21 Order").

Granting waiver under N.J.A.C. 14:1-1.2(b)(1) requires the Board to engage in a two-pronged analysis. First, the Board must consider whether Petitioner's request is in accordance with the general purpose and intent of the Guidelines. Ibid. Second, the Board must consider whether full compliance with the Guidelines "would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public." See N.J.A.C. 14:1-1.2(b)(1); see also April 21 Order, supra, at 7.

DISCUSSION AND FINDINGS

To determine the general purpose of the Guidelines, the Board first looks to its policy on initial extensions. See April 21 Order, supra, at 7. Under the REIP Guidelines, the Market Manager may grant extensions where significant progress has been made toward completion of the project and where the delay was unavoidable and unforeseeable at the time of the upfront incentive application. REIP Guidelines, supra, at 29. In determining whether significant progress has been made, the Market Manager looks at a number of specific factors: whether physical construction has started at the customer's site; whether irrevocable orders have been placed with manufacturers of the major items of equipment; whether construction permits have been approved; whether engineering and design work has started and progressed to a significant degree; and whether material has been received from the manufacturer (either on-site or in storage). Ibid. In support of its request for a third extension, Petitioner represents that the Project site work is complete, with the foundation, electrical conduit and wiring, and electrical substation in place. Petitioner further represents that the turbine components have been delivered to an interim storage facility in state and will be delivered to the site upon issuance of a Special Use Permit by Monmouth County. These facts, as stated by Petitioner, constitute significant progress under the above criteria.

According to Petitioner, the delays in completion of the Project stem from the local permitting process. Specifically, Petitioner points to Monmouth County's requirement that Petitioner obtain authorization from each of the five municipalities through which the component parts will travel before issuing a Special Use Permit. Petitioner has submitted letters indicating its ongoing attempts to satisfy the individual permitting requirements of each municipality. This documentation indicates that, despite diligent efforts by Petitioner, two of the five municipalities have not granted authorization. Moreover, Petitioner states there may be land-use litigation involving a third municipality. Documented evidence of contracting or litigation delays is "strongly considered" in extension approvals for public sector projects. REIP Guidelines, supra,

¹The CORE program and REIP have substantially similar guidelines regarding completion deadlines and extensions. Compare REIP Guidelines, supra, at 29-30 with Correction to Customer On-site Renewable Energy (CORE) Program Policy Update Originally Distributed, November 7, 2005, Guidelines for Completion of Deadlines and Extensions ("CORE Program Update"), (November 14, 2005) in CORE Program Changes Chronology at 13-14 (August 17, 2006) (available at <http://www.njcleanenergy.com/files/file/COREProgramUpdate081706.pdf>).

at 30. Based on this strong consideration and the unavoidable permitting requirements associated with transporting the project components to the Petitioner's site, these delays may be considered to have been unforeseeable and unavoidable at the time of the application.

The Board **FINDS** that Petitioner's representations, as set forth above, are reasonably in accordance with the general purpose and intent of the Guidelines and, therefore, satisfy the first prong of the Board's waiver test.

Waiver of the Guidelines also requires the Board to consider whether full compliance with the Guidelines "would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public." The purpose REIP incentives is to improve the financial returns of renewable energy investments by offsetting the cost of system installation and/or providing ongoing benefits in the form of renewable energy credits from the generation of renewable energy. Petitioner represents that commitment of these funds will result in direct savings to the residents of Union Beach, Hazlet, Holmdel, Keyport, Keansburg, Aberdeen, Matawan, and Marlboro. Conversely, Petitioner has indicated that the ratepayers would be adversely affected by additional delays, loss of funding, or termination of the Project. Petitioner would likely seek reimbursement of incurred costs through an increase of its rates and direct savings to the community may be diminished or go unrealized. Further, consistent with the New Jersey Energy Master Plan, it is recognized that the addition of renewable energy resources can help New Jersey flourish while protecting the environment; in the absence of incentives such as those provided through REIP, consumers, such as Petitioner, may lack the economic rationale to pursue renewable energy generation.

Therefore, the Board **HEREBY FINDS** that full compliance with the prohibition against third extensions would adversely affect Petitioner's ratepayers and the public in general.

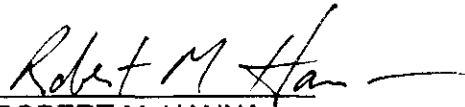
Given the history of delay, Board Staff recommends that the progress of the Project be tightly monitored through the creation of interim benchmarks, provided by Petitioner, which attempt to account for the above mentioned unavoidable and unforeseeable delays but are consistent with Petitioner's representation that it anticipates completing the Project before the expiration of this extension. The Board **FINDS** that the creation of such benchmarks will tend to assure timely completion of the Project. Accordingly, the Board **HEREBY DIRECTS** Staff to develop, with input from Petitioner, project milestones which shall result in completion of the project within six months of the resolution of the aforementioned permitting and litigation delays.

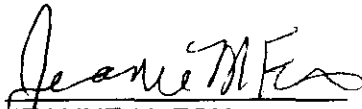
Upon review, the Board **HEREBY FINDS** that Petitioner's application fully conforms to all relevant requirements for the REIP program. The Board **FINDS** that the required affidavits have been submitted by Honeywell. The Board **HEREBY APPROVES** the aforementioned rebate application in the amount requested and **AUTHORIZES** Board Staff to direct the Market Manager to proceed with processing the rebate application. The Board **FURTHER FINDS** that Petitioner has represented that site work is complete and that all turbine components are stored in New Jersey. The Board also **FINDS** that Petitioner has submitted documentation of delay related to local permitting requirements and a pending litigation. The Board **APPROVES** a third extension to complete the project and meet all program requirements, contingent upon

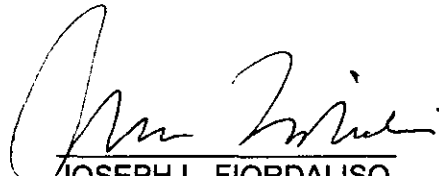
Petitioner's submittal of documentation on each item of the program's Final As-Built checklist and of substantiation of the pending litigation.

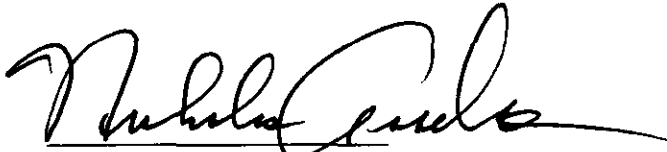
DATED: 3/12/2012

BOARD OF PUBLIC UTILITIES
BY:

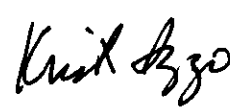

ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

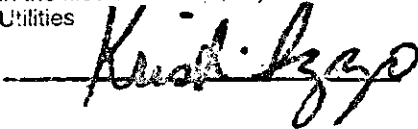

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF THE CLEAN ENERGY PROGRAM AUTHORIZATION OF REBATES
EXCEEDING \$300,000 AND REQUEST FOR AN EXTENSION OF TIME TO COMPLETE
PROJECT – BAYSHORE REGIONAL SEWERAGE AUTHORITY
DOCKET NO. EG12020162V

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I/M/O CONTRACT MARKET MANAGER)	AFFIDAVIT IN SUPPORT
PROCESSED RENEWABLE ENERGY)	OF CONTRACT MARKET
INCENTIVE PROGRAM ("REIP") REBATE)	MANAGER PROCESSED
APPLICATIONS)	APPLICATIONS
STATE OF New Jersey)	SS.
COUNTY OF Passaic)	

I, **Charles Garrison** (print name), being first duly sworn, depose and say:

1. I hold the position of **Renewable Market Manager** (position held) with Honeywell International, Inc., which provides Management Consulting: Program Management Services for the New Jersey Clean Energy Program pursuant to Contract Number 67052 and Notice of Award T-2334 ("Contract Market Manager").

Company Name:	Honeywell International
Street Address:	145 Route 46 East
City:	Wayne State: NJ Zip:07470
Telephone Number(s):	(973) 890-9500 extension 3070
E-Mail Address:	charlie.garrison@honeywell.com

2. I am the authorized representative of the Contract Market Manager that is responsible for its overall operation and performance pursuant to the above referenced contract and I am authorized to make and submit this affidavit on behalf of the Contract Market Manager.
3. The information within this affidavit relates specifically to the applications referenced in Attachment A, which is appended hereto.
4. I have personally examined and I am familiar with the Renewable Energy Incentive Program ("REIP") applications referenced in this affidavit and all attached documents.
5. Honeywell, the Contract Market Manager, its affiliates, its subcontractors, and/or the affiliates of subcontractors are not:
 - a. the applicant for a REIP rebate listed in Attachment A to this Affidavit;
 - b. the recipient of a REIP rebate listed in Attachment A to this Affidavit; and
 - c. the entity performing the installation of the systems related to the applications listed in Attachment A to this Affidavit.

6. The Contract Market Manager affirms that Honeywell, the Contract Market Manager, its affiliates, its subcontractors, and/or the affiliates of subcontractors will not submit a bid for any of the projects listed on Attachment A in the Public School K-12 and Public Non-School categories nor will any of the above entities submit a bid for any of the Public School K-12 and Public Non-School projects for which an application has been received and placed in the respective public sector queue by the Contract Market Manager.

7. The Contract Market Manager acknowledges that it has a continuing affirmative duty to immediately notify the Program Coordinator and Board Staff of any change with respect to 5a-c herein above.

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I further certify that the foregoing statements are true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for making false, inaccurate, or incomplete statements.

Ch J Davison
 Name

Date: 2/24/12

Sworn to and subscribed before me on this 24 day of Feb., 20 12

[Signature]
 Name

Dated: 2/24/2012.

**Aurora de la Carrera
 Notary Public
 State of New Jersey
 ID No. 2243208
 My Commission Expires
 March 1, 2015**

ATTACHMENT A

AFFIDAVIT IN SUPPORT OF CONTRACT MARKET MANAGER PROCESSED APPLICATIONS

Clean Energy Program Authorization of Renewable Energy Incentive Program Rebates Exceeding \$300,000

Agenda Date: 3/13/2012

<u>BPU ID#</u>	<u>Company</u>	<u>Cus Name</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Mailing Address</u>	<u>City</u>	<u>Zip</u>	<u>Size</u>	<u>Rebate</u>	<u>Install Cost</u>	<u>Installer</u>	<u>Rebate Recipient</u>
REIPR-05282	Bayshore Regional Sewerage Authority	Robert Fischer	100 Oak Street	Union Beach	07735	100 Oak Street	Union Beach	07735	1,500 00	\$ 418,200.00	\$ 4,500,000	To Be Determined	Bayshore Regional Sewerage Authority

I/M/O CONTRACT MARKET MANAGER) AFFIDAVIT IN SUPPORT
PROCESSED RENEWABLE ENERGY) OF CONTRACT MARKET
INCENTIVE PROGRAM (REIP) REBATE) MANAGER PROCESSED
APPLICATIONS) APPLICATIONS

STATE OF _____ New Jersey _____) SS.
COUNTY OF _____ Burlington _____)

I, **Kevin McDonough** (print name), being first duly sworn, depose and say:

1. I am a responsible official and I hold the position of General Manager _____ (president; secretary; treasurer; general manager or vice-president, who is in charge of a principal business function) with the following corporation:

Company Name: Honeywell International Inc.
Street Address: 199 Rosewood Drive, Suite 300
City: Danvers State: MA Zip: 01923
Telephone Number(s): 978-774-3007
E-Mail Address: kevin.mcdonough@honeywell.com

2. I am authorized to make and submit this affidavit as a representative of Honeywell International Inc. (Company Name).
3. I am familiar with the Renewable Energy Incentive Program (REIP) applications referenced in Attachment A to this affidavit and I have made an inquiry of those individuals immediately responsible for obtaining the information contained therein.
4. The Renewable Energy Contract Market Manager has affirmed that the Renewable Energy Contract Market Manager, its affiliates, its subcontractors, and/or the affiliates of subcontractors are prohibited from being and are not acting as:
 - a. the applicant for a REIP rebate listed in Attachment A to this Affidavit;
 - b. the recipient of a REIP rebate listed in Attachment A to this Affidavit; and
 - c. the entity performing the installation of the systems related to the applications listed in Attachment A to this Affidavit.
5. The Renewable Energy Contract Market Manager has affirmed that the Renewable Energy Contract Market Manager, its affiliates, its subcontractors, and/or the affiliates of subcontractors will not submit a bid for any of the projects listed on Attachment A in the Public School K-12 and Public Non-School categories.
6. The Renewable Energy Contract Market Manager has affirmed that the Renewable Energy Contract Market Manager, its affiliates, its subcontractors, and/or the affiliates of subcontractors will not submit a bid for any of the Public School K-12 and Public Non-School projects for which an application has been received and placed in the respective public sector queue by the Renewable Energy Contract Market Manager.

7. I acknowledge that the Renewable Energy Contract Market Manager has a continuing affirmative duty to immediately notify the Program Coordinator and Board Staff of any change with respect to paragraphs 4-6 herein above.

I certify under penalty of law that I am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I further certify that the foregoing statements and the information contained in the affirmances referenced in paragraphs 4-6 are true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for making false, inaccurate, or incomplete statements.

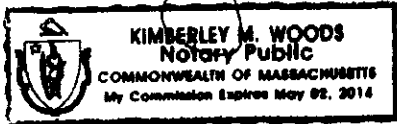
K. M. Woods
Name

Date: 2/28/2012

Sworn to and subscribed before me on this 28 day of February, 2012.

Kimberly M. Woods
Name

Dated: 2/28/12



ATTACHMENT A

AFFIDAVIT IN SUPPORT OF CONTRACT MARKET MANAGER PROCESSED APPLICATIONS

Clean Energy Program Authorization of Renewable Energy Incentive Program Rebates Exceeding \$300,000
Agenda Date: 3/13/2012

<u>BPU ID#</u>	<u>Company</u>	<u>Cus Name</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Mailing Address</u>	<u>City</u>	<u>Zip</u>	<u>Size</u>	<u>Rebate</u>	<u>Install Cost</u>	<u>Installer</u>	<u>Rebate Recipient</u>
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