



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE COMPREHENSIVE ENERGY) ORDER
EFFICIENCY AND RENEWABLE ENERGY)
RESOURCE ANALYSIS FOR 2009-2012 FINAL)
PROGRAMS AND BUDGETS - RENEWABLE ENERGY)
GRID CONNECTED PROGRAM 2009 SOLICITATION)
AWARD CANCELLATION RECOMMENDATION) DOCKET NO. EO07030203

Party of Record:

Christopher R. Zeppie, Sr., Director, Port Authority of New York and New Jersey

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") considers the Office of Clean Energy's (hereinafter, "Staff") recommendation to rescind the Renewable Energy Grid Connected Program Grant awarded to the Port Authority of New York and New Jersey ("Port Authority").

BACKGROUND

On January 8, 2009, the Board directed Staff to develop a new program for the 2009 New Jersey Clean Energy Program ("NJCEP") funded through the NJCEP trust. See In re Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2009-2012 Programs and Budgets: 2009 Programs and Budgets: Compliance Filings, Docket No. EO07030203 (Jan. 8, 2009). The Board set the budget for this program at \$6,038,605.

On July 29, 2009, the Board approved Staff's "Solicitation for Proposals in the Renewable Energy Grid Connected Program in New Jersey's Clean Energy Program." On September 10, 2009, the Staff announced a public competitive solicitation ("Solicitation") grant program to encourage the development of renewable electricity generation projects serving the electricity distribution system in New Jersey. The Solicitation sought proposals facilitating the installation of onshore wind or biomass renewable electricity generating technologies at the economic terms and environmental performance most advantageous to the New Jersey ratepayer and taxpayer.¹

¹ The Solicitation stated that "Applicants of Projects which are approved for Grants shall be required to comply with NJ Treasury Circular Letter 07-05 OMB . . . and to enter into a grant agreement with the BPU." Solicitation at 8.

In considering proposals, the Board examined the contribution the proposed project would make to support the electric power grid with renewable energy. Eligible projects were expected to demonstrate the superior ability of the proposed project team to construct an onshore wind or biopower project and the need for grant funds to document feasibility, secure permits, process feedstocks, demonstrate innovative financing, supplement revenue streams, or overcome other barriers to private investment in renewable electricity generation. Winning proposals were ultimately expected to diversify the State's Class I renewable energy technologies, to accelerate the deployment of large-scale renewable power plants, and demonstrate the development of onshore wind and biomass powered electricity technologies.

Port Authority requested \$6,000,000 in grant program funds to construct five 1.5 megawatt ("MW") turbines ("the project") with an aggregate capacity of 7.5 MW and rated gross production of 19,200 megawatt-hours ("MWh") per year. The project was designed to supply the grid as a merchant power generator with only 60% of the electricity produced from the project. The remaining 40% would offset onsite electric load. The Board found only the portion of the project used to supply the grid to be consistent with the Solicitation.

On May 25, 2010, the Board awarded Port Authority \$3,600,000² in grant funds for the project and directed Staff to develop a funding agreement consistent with the Solicitation, the proposals submitted, and the terms of the Board order awarding the grant. In re Renewable Energy Grid Connected Program 2009 Solicitation Award Recommendations, Docket No. EO07030203 (May 25, 2010). The Board also authorized "the Board President to sign the Grant Funding Agreements that are consistent with Department of Treasury requirements, program guidelines, and the terms of this Order." *Id.* at *4.

On December 23, 2010, Staff transmitted the initial funding agreement ("Agreement") to Port Authority. Following negotiations, Staff sent a revised draft of the funding agreement to Port Authority on August 2, 2011. On September 6, 2011, Port Authority proposed further changes to the Agreement. On February 22, 2012, Staff provided another revised draft of the Agreement incorporating changes proposed by Port Authority. During negotiations on March 7, 2012, Port Authority suggested additional changes and, for the first time, claimed the terms of the Agreement subjected it to "single-state legislation." On April 25, 2012, Staff circulated another revised Agreement draft that included some of the additional changes suggested by Port Authority. Staff also requested that Port Authority provide suggestions on acceptable references to what it considered to be "single-state legislation."

On May 8, 2012, Port Authority submitted a draft proposal wholly transferring responsibility for compliance with the terms of the Agreement to an unnamed subcontractor. On June 6, 2012, following additional negotiations, Port Authority agreed to submit another draft Agreement containing more revisions. On July 25, 2012, for the first time, Port Authority suggested that the Agreement be split into two parts, with an immediate disbursement for pre-construction funds followed by a second agreement for performance-based incentives. Staff rejected Port Authority's proposal and requested Port Authority submit the draft Agreement discussed on June 6, 2012. On August 13, 2012, Port Authority submitted a revised draft further limiting Port Authority's warranties against conflicts of interest. On October 5, 2012, Staff sent Port Authority another draft of the Agreement, which adopted many of Port Authority's suggested changes. On October 11, 2012, Port Authority raised more issues for the first time, including a refusal to represent that it would waive the option to invoke rights which could render terms of the

² The Board reduced Port Authority's grant award to \$3,600,000 to reflect the portion of the project that would be grid-connected.

Agreement unenforceable. At that time, Staff declined to further dilute the safeguards and warranties contained in the terms of the most recent draft Agreement.

On October 16, 2012, Staff requested that Port Authority advise whether it would agree to the terms of the Agreement as last negotiated on October 5, 2012. After Port Authority failed to respond, Staff informed Port Authority³ that it would recommend rescission of Port Authority's grant award absent written notice by January 7, 2013, that Port Authority agrees with the terms as last negotiated.⁴

DISCUSSION AND FINDINGS

The Renewable Energy Grid Connected Program was created as competitive grant program designed to encourage the development of renewable electricity generation projects serving the electricity distribution system in New Jersey. Moreover, the winning proposals were expected to diversify the portfolio of Class I renewable energy technologies used to provide power and environmental benefits to New Jersey and, among other things, to accelerate the deployment of large-scale renewable power plants.

The protracted negotiations between Staff and Port Authority have frozen \$3,600,000 in NJCEP funds and stymied the goals of the Renewable Energy Grid Connected Program. For over two years, Staff has patiently and in good faith attempted to arrive at mutually agreeable terms. However, Staff's numerous attempts to negotiate with Port Authority have not yielded an agreement that Staff believes is in the public interest of the ratepayers or is consistent with the public agency contracting requirements of the Department of Treasury and State law.⁵ Therefore, Staff recommends the Board rescind the grant award offered to Port Authority and reallocate the funds to other New Jersey Clean Energy Programs with applicants ready and willing to timely move forward in a manner consistent with policies and procedures of the State and the NJCEP.

Based on the lack of progress on the project since the Board awarded the grant on May 25, 2010, and the overall increased demand for NJCEP funds, the Board **FINDS** Staff's recommendation to rescind the grant award reasonable and prudent under the specific circumstances affecting this matter.

³ Via electronic and regular mail.

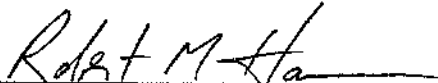
⁴ On January 7, 2013, Port Authority requested an extension of time to sign the contract. Staff rejected the request.

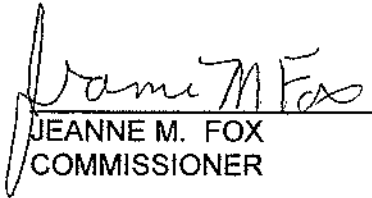
⁵ See, e.g., N.J.S.A. 10:2-1; The New Jersey Office of Management and Budget Circular 07-05-OMB (Sept. 7, 2006).

The Board **HEREBY RESCINDS** the \$3,600,000 grant award to Port Authority and **ORDERS** Staff to reallocate the funding to other New Jersey Clean Energy Programs, subject to Board approval.

DATED: 2/20/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

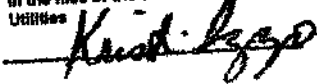

JOSEPH L. FIORDALISO
COMMISSIONER


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



I/M/O THE COMPREHENSIVE ENERGY EFFICIENCY AND RENEWABLE ENERGY
RESOURCE ANALYSIS FOR 2009-2012 FINAL PROGRAMS AND BUDGETS - RENEWABLE
ENERGY GRID CONNECTED PROGRAM 2009 SOLICITATION AWARD CANCELLATION
RECOMMENDATION

Docket Numbers EO07030203

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