



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF OCEAN GATE'S RENEWABLE)
ENERGY INCENTIVE PROGRAM (REIP) EXTENSION)
)
) DOCKET NO. EO12030250V

Parties of Record:

Paul J. Kennedy, Mayor, Borough of Ocean Gate

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board") renders its decision on whether to consider the application for a third extension by Borough of Ocean Gate ("Petitioner") to have been filed as within time. The Board also considers and renders its decision on whether to grant a third extension of time to Petitioner to complete a fifty kilowatt wind energy project and its final paperwork.

BACKGROUND

On June 10, 2008, the Board's Renewable Energy Market Manager, Honeywell International Inc. ("Market Manager") approved the application submitted by Petitioner for a rebate in the amount of \$96,852 for a fifty kilowatt ("kW") wind energy project ("the Project"), commitment MM05969.

The Market Manager granted the Project a first extension on July 23, 2009, with an expiration date of June 10, 2010. Based on the review of the specific circumstances of the project as well as the demonstrated progress the petitioner had made, and consistent with program policy, a second extension was granted on October 1, 2010, with an expiration date of June 10, 2011.

Petitioner states it also sought federal funding through the American Recovery & Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 ("ARRA"), and the New Jersey Environmental Infrastructure Trust ("NJEIT"), who provided a low interest loan of \$429,880, as well as being the administrator for the project. After receiving the second extension of its REIP rebate, Petitioner was informed that NJEIT and the federal administrators of the ARRA required

certifications that all of the materials used were in compliance with the "Buy American" clauses of the ARRA funding guidelines. Petitioner further represents that soon after the Petitioner had complied with the NJEIT's requirements, it was informed by the Board's Office of Clean Energy ("OCE"), that because of safety-related incidents at other wind installations, the OCE was placing a temporary hold on processing rebates for wind projects.

In a letter to the Market Manager dated August 19, 2011, and received by the Board on December 8, 2011, the Petitioner requested a third extension of its completion deadline to June 30, 2012. Petitioner represented that the third extension was necessitated by the temporary hold put on processing approved REIP wind projects and also the time required to comply with the NJEIT and ARRA requirements.

The REIP Guidelines require that extension applications be received before five p.m. on the expiration date of the of the initial acceptance letter. Renewable Energy Incentive Program Guidebook, January 2009, at 30 ("REIP Guidelines"). Further, the REIP Guidelines only provide for two extensions. Id. at 28-30; 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, (Oct. 19, 2009) ("October 19 Order") (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). If a project is not completed by the end of the second extension, the applicant must "reapply for acceptance." See REIP Guidelines at 30. However, the Board may waive the prohibition on additional extensions and grant a third extension to applicants under REIP and CORE programs, pursuant to N.J.A.C. 14:1-1.2(b)(1).¹ See I/M/O the Clean Energy Program Authorization of Rebates Exceeding \$300,000 and Request for an Extension of Time to Complete Project – Bayshore Regional Sewerage Authority, Dkt. No. EG12020162V at 7-8 (Mar. 12, 2012) ("March 12 Order").

In support of its request for a third extension, Petitioner represents that the project site work is complete and awaiting inspection.

DISCUSSION AND FINDINGS

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 March 12 Order, supra, at 3.

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.nicleanenergy.com/files/file/COREProgramUpdate081706.pdf>).

To determine the general purpose of the Guidelines, the Board first looks to its policy on initial extensions. See March 12 Order, supra, at 3. The policy on extensions, under the REIP Guidelines, was intended to prevent reservation of funding on projects unlikely to be completed as planned but also intended to recognize implementation realities and the need for commercial contracting confidence. See REIP Guidelines at 28. The Board has previously recognized that public projects typically require more time for completion than private projects. See October 19 Order, supra, at 3. Moreover, public projects may have unique requirements or construction timeframes which affect the projects' abilities to timely complete. Ibid. In this case, since the wind turbine has already been installed, the likelihood of completion is high and no other compelling reason to prevent the reservation of funding exists. Therefore, the Board **FINDS** treatment of Petitioner's application for a third extension as within time is consistent with the general purpose and intent of the REIP Guidelines on extensions, which satisfies the first prong of the Board's waiver test.

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's wind turbine is installed and awaiting inspection. Full installation of the wind turbine pending inspection constitutes significant progress toward completion of the project under the above criteria.

According to Petitioner, the delays in completion of the Project stem in part from delays in receipt of the wind turbine equipment from the manufacturer; compliance with additional regulations and waiver petitions resulting from the receipt of ARRA funds; and the hold put on all wind projects in the state by the Board, following safety-related incidents at other wind installations. The Board **FINDS** that these delays were unavoidable and unforeseeable. The Board **FINDS** that the Petitioner's representations, as set forth above, are reasonably in accordance with the general purpose and intent of the REIP Guidelines and, therefore, satisfy the first prong of the Board's waiver test.

Waiver of the REIP Guidelines also requires the Board to consider whether full compliance with the REIP 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 of 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. 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. Moreover, revocation of the incentive commitment at this stage of

completion would undermine the Petitioner's commercial contracting confidence and unduly burden its budget.

Therefore, the Board **HEREBY FINDS** that full compliance with the deadline on extension applications and prohibition against third extensions would adversely affect the public in general, especially the residents of the Borough of Ocean Gate.

Upon review, the Board **HEREBY FINDS** that Petitioner's application fully conforms to all relevant requirements for the REIP. The Board **HEREBY AUTHORIZES** Petitioner's third extension application to be considered as within time. The Board **HEREBY 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.

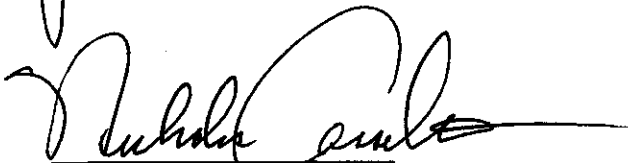
DATED: 5/1/12

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JOSEPH L. FIORDALISO
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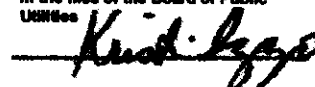

NICHOLAS ASSELTA
COMMISSIONER


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 OCEAN GATE'S RENEWABLE ENERGY INCENTIVE
PROGRAM (REIP) EXTENSION

DOCKET NO. EO12030150V

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