



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE CUSTOMER ON-SITE)
RENEWABLE ENERGY (CORE) PROGRAM)
REBATE – ACFD DEVELOPMENT LLC –)
REQUEST FOR SECOND EXTENSION OF)
COMPLETION TIMEFRAME FOR EXISTING)
COMMITMENT)

ORDER

DOCKET NO. EO09070550

R. William Potter, Esq., Potter and Dickson, 194 Nassau St., Princeton, NJ for Petitioner

Cynthia L. Holland, DAG, Division of Law, Newark, New Jersey, on behalf of the Staff of the Board of Public Utilities

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") considers and renders its decision regarding a request from ACFD Development L.L.C. ("ACFD") for a second extension of the Customer On-Site Renewable Energy ("CORE") program rebate commitment deadline.

Background

This matter relates to a rebate commitment made under the CORE program, which was designed to support the sustained and orderly development of markets for distributed renewable electric generation in New Jersey. The program offers financial incentives to New Jersey public utility customers investing in eligible, on-site renewable electricity generation using photovoltaic, wind, biomass, and fuel cell systems. The CORE program Guidelines state that all private projects over 10 kW in size will be given twelve calendar months, starting from the date on the rebate commitment letter, for project completion, which is defined as the date when the Program Manager receives the final rebate application. Customer On-site Renewable Energy (CORE) Program Update, 13 (Aug. 17, 2006). If the customer/contactor cannot complete the project within the initial twelve month period, that customer/contractor may apply for an extension. Ibid.

Extension applications “must include detailed documentation regarding the reasons for delay.” Ibid. The Guidelines state that the Program Manager will grant extensions when the applicant can document significant progress toward completion of the project and the delay was unavoidable and unforeseeable at the time of the rebate application. Id. at 13-14. In determining whether significant progress has been made, the Program 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. If granted, the extension would be for six calendar months for private projects. Ibid.

By letter dated June 27, 2008, ACFD received a CORE program rebate approval letter for a 650.624 kW solar system located in Pleasantville New Jersey. ACFD was informed that its project, application number BPU-3178, would receive an estimated rebate of \$245,000 if it complied with CORE program requirements before its commitment deadline. ACFD’s estimated rebate was based on a cap approved by the Board that limited rebates to the first 100 kW of installed capacity, or \$245,000. By letter dated June 30, 2009, ACFD received an extension of its rebate commitment deadline to December 27, 2009.

ACFD contested the application of the \$245,000 rebate cap to its project. Pursuant to the New Jersey Clean Energy Program’s dispute resolution procedures, ACFD raised its concerns and held discussions with both the Renewable Energy (“RE”) Market Manager and the Program Coordinator in an effort to resolve its issues with the application of the rebate cap. Both the Market Manager and the Program Coordinator informed the project that they believed the \$245,000 cap was properly applied.

On July 20, 2009, Counsel for ACFD filed a petition with the Board disputing the Board’s policy of limiting incentives for solar rebate applicants with projects of 100 kW or more. The petition concerned both the ACFD Pleasantville project as well as a second solar project being developed by ACFD in English Creek, New Jersey. By Order dated December 1, 2009, Docket Nos. EO09070550 and EO09070551, the Board denied ACFD’s request for un-capped CORE rebates. However, the Board noted that the Petitioner had received rebate commitment letters that reflect accurate rebates of \$245,000 and that the Petitioner’s projects had received extensions of the CORE rebate commitments. Notwithstanding the denial of the Petitioner’s request, if the projects complied with the conditions necessary for rebate payment, the Board directed the Market Manager to process rebates for payment in accord with the commitment letters ACFD has received.

Request for a Second Extension

By email dated December 28, 2009, Counsel for ACFD, filed a dispute with the Program Coordinator seeking a second, six-month extension of the CORE rebate commitment deadline for its project, application number BPU-3178, in Pleasantville, NJ. Counsel represented that final decisions regarding the Pleasantville project were held pending decision by the Board on ACFD’s petition. Subsequent to the issuance of the Board’s December 1st Order, Counsel claimed that ACFD proceeded re-engineer its project and reduce the size of its project to 100 kW. Counsel informed the Program Coordinator that ACFD had been working at a hurried pace to try to complete the project before December 27, 2009. However, some of the equipment did

not arrive until after Christmas. ACFD expressed concerns it would miss the deadline by a matter of weeks or two, which prompted the request for a second extension. ACFD indicated that it should only take 4 to 5 weeks to complete the project, which it believed would be finished by January 15, 2010.

ACFD's initial request for a second extension was rejected by the RE Market Manager, which does not have the authority to grant second extensions to private projects. Upon review of ACFD's dispute, the Program Coordinator referred the matter to Board Staff for presentation to and final disposition by the Board. Board Staff has considered the request and recommends Board approval at this time.

Discussion and Findings

ACFD submitted an application for a 650.624 kW solar project and received a rebate approval letter for an estimated rebate of \$245,000 for this project. By letter dated June 30, 2009, the rebate commitment deadline for this project was extended to December 27, 2009. ACFD believed it was entitled to a rebate of over \$2 million for this project based on the rebate levels in place prior to the Board's approval of the \$245,000 cap on rebates that was applicable to this project. To that end, ACFD filed its petition for an un-capped rebate on July 20, 2009. The Board fully considered Petitioner's request and issued its final decision on December 1, 2009 denying ACFD's request. As of that date, only 26 days of the six month extension remained for ACFD to complete its project. ACFD represents that it delayed final decisions regarding project design until issuance of the Board's December 1 Order. This delay, of approximately 4 months, was unavoidable and unforeseeable at the time of the rebate application. However, upon issuance of that Order, ACFD represents that it immediately took action. ACFD has made progress toward completion, having ordered equipment and has indicated that it believes it can complete the project in only a matter of weeks.

The Board **HEREBY FINDS** that ACFD has made considerable progress toward project completion and that the project delay unavoidable. Although ACFD has decided to re-engineer its project, the Board **FURTHER FINDS** that the 100 kW of solar energy to be generated by this project will contribute to the Renewable Portfolio Standard, will advance the goals of the Energy Master Plan, and will provide environmental benefits to the State by contributing to the reduction of fossil fuel emissions. In light of the foregoing, the Board **HEREBY APPROVES** ACFD's request for a second extension of the CORE program rebate commitment deadline.

Based on ACFD's representations and with reference to the policy in support of CORE rebate deadlines, the Board **HEREBY AUTHORIZES** the RE Market Manager to issue a second extension letter with a new rebate commitment deadline of 120 days, or four months, from the date of the letter. The Board believes this limited second extension should provide more than sufficient time for ACFD to complete construction and submit a final application. Because of the

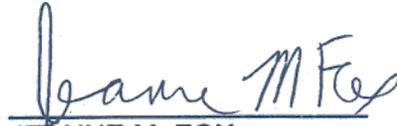
unique nature of this request for a second extension, the Board's decision is limited to the instant matter and shall have no precedential value in future proceedings involving this or any other party.

DATED: 1/21/10

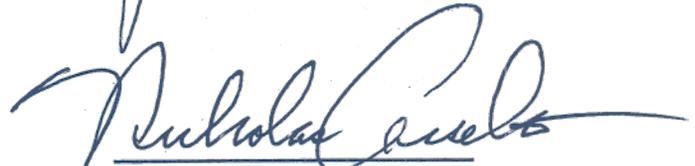
BOARD OF PUBLIC UTILITIES
BY:


ELIZABETH RANDALL
ACTING PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JEANNE M. FOX
COMMISSIONER

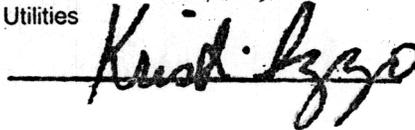

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:


CARMEN DIAZ
ACTING SECRETARY

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



SERVICE LIST

R. William Potter, Esq.
Potter & Dickson
194 Nassau Street, Suite 32
Princeton, NJ 08542-7003

Michael Winka, Director
Office of Clean Energy
NJ Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Benjamin Scott Hunter, RSI
Office of Clean Energy
NJ Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Allison E. Mitchell, AAI
Office of Clean Energy
NJ Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Rachel Boylan, Legal Specialist
Office of Chief Counsel
NJ Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Cynthia Holland, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101