



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 RENEWAL ENERGY BUSINESS) ORDER TO SHOW CAUSE
VENTURE ASSISTANCE PROGRAM: RECOVERABLE)
GRANT AWARD TO EPV SOLAR, INC. (EPV) TO BE ISSUED)
THROUGH THE NEW JERSEY ECONOMIC DEVELOPMENT)
AUTHORITY) DOCKET NO. EO08100010

EPV Solar, Inc

James E. McGuire, Deputy Attorney General for the Board of Public Utilities

BY THE BOARD:

WHEREAS, the Board of Public Utilities ("Board" or "BPU") is directed to establish funding levels and programs that promote and advance energy efficiency and Class I renewable energy programs as set forth at N.J.S.A. 48:3-49 et seq., the Electric Discount and Energy Competition Act (the "EDECA" or the "Act"); and

WHEREAS, the Comprehensive Resource Analysis (now called the New Jersey Clean Energy Program) Order dated March 9, 2001 and subsequent Clean Energy Program Orders have directed the BPU staff and specifically the Office of Clean Energy ("OCE" or "Staff") to establish programs to encourage the development of renewable electric generation and enhance energy efficiency technologies; and

WHEREAS, the New Jersey Economic Development Authority ("EDA") is authorized to provide financial assistance to encourage construction and improvement projects that create jobs and benefit the public; and

WHEREAS, the BPU and the EDA entered into a Memorandum of Understanding ("MOU") dated October 22, 2003 and subsequently amended outlining their respective duties regarding OCE's energy efficiency and renewable energy programs; and

WHEREAS, the EDA upon the request of BPU as set forth in the MOU has agreed to review, recommend and administer BPU loans, guarantees, grants and financing assistance through the transfer of Clean Energy Funds to the EDA for this purpose; and

WHEREAS, the BPU Renewable Energy Business Venture Assistance Program ("REBVAP"), designed to serve as a vehicle for the advancement of near-term commercially viable, Class I Renewable Energy technologies and services offered by participants in the New Jersey Clean Energy Marketplace; and

WHEREAS, the award of recoverable grants to these projects is designed to promote the commercialization of Class I Renewable Energy technology of services with an intention of grant repayment from each project's anticipated revenue stream; and

WHEREAS, the Board approved issuance of a Solicitation for the REBVAP, at its October 12, 2005 Agenda meeting and the Solicitation was subsequently released on October 21, 2005; and

WHEREAS, EPV Solar, Inc. ("EPV") responded to the Solicitation and applied for a recoverable grant of \$499,795 under the REBVAP program to accomplish development and manufacturing tasks to lower the cost, improve performance and enhance commercial application of thin-film BIPV and other related products.; and

WHEREAS, OCE evaluated applications in partnership with the New Jersey Economic Development Authority ("EDA") and a team of independent evaluators and recommended the EPV proposal for funding subject to a business/financial review by the EDA; and

WHEREAS, by Order dated February 5, 2008, the Board authorized a \$499,795 recoverable grant award for EPV through the BPU REBVAP administered jointly with the EDA in, BPU Docket No. EO08010010. The funding was for EPV's project to further develop and enhance a silicon-based thin film photovoltaic technology; and

WHEREAS, on January 8, 2009, OCE received a request from EPV to approve an Amended and Restated Statement of Work and to approve a modification to the approved budget of \$140,580 originally budgeted for Equipment to other lines items including \$138,867 to the line items for Personnel Salary and Fringe Benefits; and

WHEREAS, the EDA, after review of the proposed modifications and the relevant supporting financial documentation, issued a recommendation dated February 27, 2009, which recommended approval of the modification to the Scope of Work as requested by EPV and that all other terms and conditions of the Funding Agreement remain unchanged; and

WHEREAS, on March 12, 2009, the Board approved the requested modification of the terms and conditions approved in the Board's Orders of February 5, 2008 and October 23, 2008 and that all other terms and conditions of the Funding Agreement remain unchanged and further approved incorporating the modified terms into the Funding Agreement. The Board also authorized the President of the Board to sign the Funding Agreement consistent with the terms of its Order. Thereafter, an Agreement for Recoverable Grant Award between the N.J. Board of Public Utilities and EPV Solar, Inc., Award Number P20249 was executed by the Board; and

WHEREAS, EPV stated in its October 31, 2007 application, that the intended use of the grant funds was for commercialization Research and Development of EPV's technology products, that it would create 279 full time jobs in 24 months and that it would maintain its primary place of business and principal operations in New Jersey during the funding period; and

WHEREAS, section I. B. of the Funding Agreement provides: "Award Recipient agrees that it will maintain its primary place of business and principal operations in New Jersey during the funding period until all obligations under this Agreement have been satisfied, unless otherwise agreed by [the] BPU. Violation of this provision without express written approval of [the] BPU constitutes default under this Agreement and may result in penalties pursuant to section I.K." ; and

WHEREAS, section II. H. of the Funding Agreement provides that the Award Recipient is required to continually monitor the performance of the Project and is further required to inform the BPU of specific conditions which affect the Project as soon as they become known including: "1. problems, delays or adverse conditions which materially impair the ability to complete the Project, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods, accompanied by a statement of the action taken, or contemplated;" and

WHEREAS, section I. K. of the Funding Agreement provides that "if any such statements, representations, or warranties [made by EPV in its application and proposal package] . . . are breached during the term hereof, [the] BPU may, in its sole discretion, consider any such . . . breach an event of default[;]" and

WHEREAS, section I. K. of the Funding Agreement states that "[i]f the Award Recipient materially fails to comply with any terms of this Agreement . . . , [the] BPU may, in its sole discretion, consider any such . . . breach an event of default[;]", and

WHEREAS, section I. K. of the Funding Agreement provides that upon an Event of Default, "[the] BPU may take one or more of the following actions, as appropriate in the circumstances:" "1. . . suspend the Award, withhold further funding and prohibit Award Recipient from incurring additional obligations[;]" "2. . . terminate the Award in whole or in part[;]" "3. . . disallow any costs[;]" "4. . . demand immediate return of some or all funds already disbursed[;]" or "5. . . pursue other remedies at law or in equity. . ."

Therefore, the BPU hereby alleges as follows:

1. EPV stated in a February 24, 2010 Certification in Support of Debtor's Petition, U.S. Bankruptcy Court, District of N.J. ("Certification"), that in mid-2009 "[its] sales continued to decline and it was unable to continue to meet its operating costs." Certification at paragraph 13.
2. EPV also stated in its Certification that "[i]n November 2009, [it] entered into a senior secured term loan . . . with Patriarch Partners Agency Services, LLC ('Patriarch') as a bridge financing to allow . . . sufficient time to market its business and assets for sale[;]" that it was unable to repay the remainder of its approximately \$3.6 million debt to Patriarch; that on February 18, 2010, Patriarch served EPV with a notice of an Event of Default; and that on February 22, 2010, Patriarch provided EPV with a notice of

Disposition of Collateral with an auction scheduled for March 5, 2010. Certification at paragraph 14.

3. EPV further stated in its Certification that, beginning in November 2008 and continuing through May 2009, it terminated approximately 350 of its employees and that in mid-2009 it completely ceased its manufacturing operations. Certification at paragraph 13.
4. Additionally, EPV stated in its Certification that “[s]ince EPV ceased manufacturing operations, it has focused on selling its remaining inventory and preserving the value of the enterprise for a sale.” Certification at paragraph 15.
5. Termination of approximately 350 employees, closing its manufacturing operations, and focusing on selling its remaining inventory and business violate section I. B. of the Funding Agreement by breaching EPV’s representation in its application that it would create full-time jobs in New Jersey and its statement in its application and the Funding Agreement that it would maintain its primary place of business and principal operations in New Jersey. These breaches separately constitute an Events of Default.
6. In violation of section II. H. of the Funding Agreement, EPV failed to notify the EDA or BPU regarding its deteriorating financial condition, cessation of manufacturing operations, termination of its employees in New Jersey, or its intent to sell the remainder of its business. Such violation constitutes an Event of Default.
7. Consistent with section I. K. of the Funding Agreement, continuation of this Project will not produce benefits commensurate with the further expenditure of funds as EPV is in a precarious financial condition, has significantly reduced its workforce, has closed its manufacturing operations, and is now focused on selling the remainder of its business.

Based on the circumstances set forth here and above, the Board HEREBY DECLARES: Events of Default; Suspension of the Award effective April 14, 2010; Withholding of further funding; and Disallowance of costs incurred by EPV during the Suspension.

Therefore, the Board HEREBY ORDERS EPV Solar, Inc. to SHOW CAUSE before this Board why the Board should not:

1. Terminate the Funding Agreement;
2. Disallow payment of pending invoices submitted by EPV; and
3. Demand repayment of all Award monies disbursed to date under the Funding Agreement.

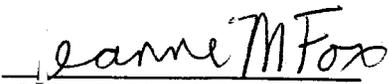
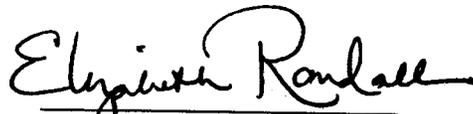
EPV is HEREBY ORDERED to file an answer to this Order to Show Cause within thirty (30) days of the date of issuance, by serving the same upon both the Secretary of the Board, Two Gateway Center, 8th Floor, Newark, New Jersey 07102 and Deputy Attorney General James E. McGuire, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07101.

DATED: 5/3/10

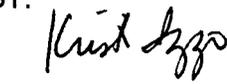
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KRISTI IZZO
SECRETARY

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

