



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center – Suite 801**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

**CLEAN ENERGY**

IN THE MATTER OF FUNDING IN THE  
AMOUNT OF \$20.6 MILLION FROM THE  
STATE ENERGY PROGRAM OF THE  
AMERICAN RECOVERY AND REINVESTMENT  
ACT FOR COMPETITIVE GRANTS INVOLVING  
INNOVATIVE ENERGY EFFICIENCY AND  
RENEWABLE ENERGY PROJECTS BY STATE  
ENTITIES - AMENDED AWARDS

ORDER

DOCKET NO. EO09060470

James E. McGuire, Deputy Attorney General, Division of Law, Dept. of Law & Public Safety, 124 Halsey St., P.O. Box 45029, Newark, NJ 07101 on behalf of the New Jersey Board of Public Utilities (BPU)

John J. Duffy, Vice President, Engineering, Construction & Regulatory Affairs, New Jersey Sports and Exposition Authority (NJSEA) / Meadowlands Sports Complex, 50 State Route 120, East Rutherford, NJ 07073

Dave Gillespie, Director, Energy and Sustainability, New Jersey Transit, One Penn Plaza East, 8th Floor, Newark, NJ 07105-2246

BY THE BOARD:

**BACKGROUND**

At its September 16, 2010 Agenda meeting, the Board of Public Utilities ("Board") approved the awarding of grants under the "Innovation in Energy Efficiency and Renewable Energy – Public Entities"<sup>1</sup> grant program ("Grant Program" or "Program"), as authorized under N.J.S.A. 26:2C-37 et seq., 26:2C-435 et seq., and the New Jersey Appropriations Act for fiscal year 2010, L. 2009. The Board approved the awarding of these grants according to the revised and corrected scoring and evaluation of the Grant Evaluation Committee ("Committee"), as set forth in the Board's October 5, 2010 Order in this docket ("October 5 Order"). Under this revised and corrected scoring, the Board accepted the recommendation of the Committee and approved the

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<sup>1</sup> The Caption for this program as submitted to the USDOE is: "Grants for State Sponsored Renewable Energy and Efficiency Projects."

award of a grant to the NJ Sport & Exposition Authority ("NJSEA") in the amount of \$3,166,721 for the installation of a solar project at the Monmouth Park Racetrack.<sup>2</sup>

The Board had originally approved funding awards to state entities under the Program at its August 19, 2009 Agenda meeting, as memorialized in its October 26, 2009 Order in this docket ("October 26 Order"). Thus more than a year elapsed between the original approval of awards and the award to NJSEA. The Program awards are funded by monies provided through the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 ("ARRA") and these monies must be utilized prior to April 30, 2012 or revert to the federal government. Given the lapse of time before the award to NJSEA, the Board had concerns relative to NJSEA's ability to utilize the funding within the time frames set forth in the Solicitation, as well as concerns about its ability to comply with other Solicitation requirements, including the requirement that the benefits of the project flow to the State and to the taxpayers. The Board sought and received assurances on these counts prior to voting to approve the recommendation, as detailed in the October 5 Order. The Board considered this issue carefully at its agenda meetings on June 6, 2010, August 18, 2010 and September 16, 2010.

In an effort to address its concerns, the Board placed the following conditions on the NJSEA grant:

NJSEA issue a Request for Proposals for its Updated NJSEA Project within 45 days from the Board's approval and execution of a Grant Agreement;

The Updated NJSEA Project continues to be operated, with the net benefits, as set forth hereinabove, flowing to NJSEA as the State Entity, for the intended life of the Updated NJSEA Project based on a simple payback of the total project costs. In the event that the Updated NJSEA Project is terminated prior to the end of the life of the Updated Project, or if the net benefits from the Updated NJSEA Project no longer flow to NJSEA, that NJSEA shall refund the grant amount and other such economic benefits to which the state may be entitled and as may further be required pursuant to ARRA.

October 5 Order at p 8.

At its December 22, 2010 meeting, the Board of the NJSEA determined not to proceed with the project to be funded by the Program. NJSEA staff so notified the Board's staff ("Staff") that day, stating that the decision was based in part on the NJSEA's desire to explore the possible sale or long term lease of Monmouth Park Racetrack and the BPU's determination that the benefits received from the project could not be transferred. In addition, NJSEA staff stated that the NJSEA will not be in a position to proceed at this time. NJSEA staff also noted that its board's action was subject to approval by the Governor of the NJSEA minutes. The minutes of the NJSEA's December 22, 2010 meeting were submitted to the Governor's office on the 22nd and were deemed approved as of January 7, 2011. On January 18, 2011, the Governor's office confirmed that the minutes of the NJSEA's December 22, 2010 meeting were approved.

Following receipt of NJSEA staff's email advising that NJSEA would not be proceeding with its project, Staff contacted New Jersey Transit ("NJ Transit"), the state entity ranked after NJSEA under the revised and corrected scoring and evaluation of the Grant Evaluation Committee. NJ Transit had been previously approved for a grant to fund a Solar Photovoltaic Project in Kearny, in the amount of \$4,320,217, prior to the revision and correction of the evaluation. Staff sought assurances that New Jersey Transit would be capable of performing by the April 30,

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<sup>2</sup> The revised and corrected scoring affected the relative ranking of only the applications of NJSEA and New Jersey Transit. October 5 Order, citing the Committee's Amended Evaluation Report.

2010 ARRA deadline. NJ Transit represented that it would be able to complete the project by that date. It also stated that in light of the reduced amount of funding now available relative to the awards offered when the Solicitation issued, NJ Transit may have to reduce the scope of the project.<sup>3</sup>

## **DISCUSSION AND FINDINGS**

The Program is intended to provide grants to support the energy projects of State departments, agencies, authorities, colleges and universities (collectively "State Entities") that utilize innovative renewable or energy efficiency technologies or innovative applications for renewable energy applications and energy efficiency projects. By limiting eligibility to state entities, the Board sought to reduce energy costs for State entities and to save taxpayers money.

As noted above, the Board was concerned about the continued ownership and operation of the racetracks by NJSEA as the State entity and sought assurances from the NJSEA that the ARRA funded solar project would continue to be operational by the facility owner/operator. In this way the net benefits would flow to the NJSEA as the State entity, as intended in the Solicitation. After careful consideration of this issue at its agenda meetings on June 6, 2010, August 18, 2010 and September 16, 2010 did the Board made an award of \$3.167 million to NJSEA. This award was conditioned upon the NJSEA operating the project with the net benefits flowing to NJSEA as the State entity for the intended life of the project. See October 5 Order at pp. 6-8.

Having reviewed the record in this matter and the previous Orders in this docket, incorporated by reference, the Board **FINDS** that the New Jersey Sports and Exposition Authority has voted not to pursue the project for which it was awarded \$3,166,721 in the October 5 Order. The Board **FINDS** that the NJSEA based this decision in part upon its desire to pursue involving the sale or long term lease of the Monmouth Park Racetrack facility that would not have resulted in the net benefits of the project flowing to the NJSEA as the State entity. The Board hereby **ACCEPTS** NJSEA's decision not to proceed with its proposed project. The Board **HEREBY RESCINDS** the grant award to NJSEA effective upon the date of this Order.

The Board **FINDS** that NJ Transit was the next ranked project by the Evaluation Committee in its Amended Evaluation Report. This Board has previously considered the application of NJ Transit and found that it meets the requirements of the Solicitation and furthers the goal of utilizing innovative applications for renewable energy applications. October 26 Order at 5-6. NJ Transit has now represented that it remains able to perform by April 30, 2012, as required for this ARRA-funded grant. The Board **FINDS** that NJ Transit is eligible to receive the \$3.166 million which will become available upon NJSEA decision not to proceed with its proposed project. NJ Transit further represents that it may need to reduce the size of its project to conform to the amount of funding now available. The Board **HEREBY APPROVES** the award of a grant, which is subject to reduction by the amount of incentives received from the Clean Energy Program, and is further subject to the conditions set forth below.

NJ Transit Project in the amount of \$3,166,721, provided that:

NJ Transit provided an updated project proposal within 15 days of the execution of this Order;

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<sup>3</sup> NJ Transit's original application sought \$4,320,217.00. At the present time, after awards have been made to the six highest ranked projects and as noted above, \$3,166,721 is available for award.

NJ Transit execute a Grant Agreement consistent with the terms of this Order, applicable ARRA and NJ Department of Treasury requirements, and its updated project proposal within 30 days of this Order;

NJ Transit issue a Request for Proposals for its Updated NJ Transit Project within 30 days from the Board's approval and execution of a Grant Agreement.

Finally, the Board **DIRECTS** Staff to prepare and negotiate a Grant Agreement, with New Jersey Transit. Such Grant Agreement shall be consistent with applicable Treasury requirements as well as the requirements for SEP-ARRA programs. The Board **HEREBY AUTHORIZES** President Solomon to execute a Grant Agreement consistent with this Order and with federal and state requirements for such grant agreement.

DATED: 1/25/11

BOARD OF PUBLIC UTILITIES  
BY:

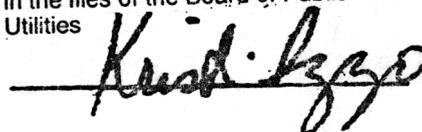


LEE A. SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER  
JOSEPH L. FIORDALISO  
COMMISSIONER  
NICHOLAS ASSELTA  
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 Funding In the Amount of \$20.6 Million From the State Energy Program of the American Recovery and Reinvestment Act for Competitive Grants Involving Innovative Energy Efficiency and Renewable Energy Projects by State Entities – Amended Awards

DOCKET NO. EO09060470

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