



Agenda Date: 1/20/10
Agenda Item: 8A

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 APPLICATION OF	)	ORDER ADOPTING INITIAL DECISION
MICHAEL STRIZKI FOR A CUSTOMER ONSITE	)	SETTLEMENT
RENEWABLE ENERGY (CORE) PROGRAM	)	
REBATE	)	
	)	
	)	BPU DOCKET NO. EO09040315
	)	OAL DOCKET NO. PUC02771-09
	)	

R. William Potter, Esq., Princeton, New Jersey, on behalf of Michael Strizki

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

BY THE BOARD:

On or about November 13, 2007, Michael Strizki ("Applicant") filed a Customer Onsite Renewable Energy Program Pre-Installation Application ("CORE Rebate Application") with the Board of Public Utilities' ("Board's") New Jersey Clean Energy Program ("NJCEP"). The CORE Rebate Application stated July 25, 2006 as the anticipated start date for the construction of Applicant's 5 kW fuel cell and the estimated completion date was January 1, 2008. Board Staff took the position that the 5 kW fuel cell was fully installed and operational over a year before the anticipated start date for construction and more than two years before the submittal of the CORE Rebate Application. In a letter dated December 3, 2008, the CORE Program Manager for the NJCEP informed Applicant that the "terms and conditions for receipt of a CORE program rebate require the submission of the application and issuance of the rebate commitment letter prior to installation of the equipment reference in the application" and sought additional information and/or explanation regarding the installation of Applicant's fuel cell. Applicant contended that the CORE Rebate Application was properly completed and that the 5 kW fuel cell was qualified for a CORE Rebate in the amount of \$25,000.

On April 23, 2009, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. This matter was assigned to Administrative Law Judge ("ALJ") Gail M. Cookson. ALJ Cookson convened telephone conferences as the parties progressed toward an amicable resolution of the matter without the expense of litigation.

With the assistance of ALJ Cookson, the parties entered into a written Stipulation of Settlement ("Stipulation") that was submitted the OAL on December 11, 2009. The parties agreed to a CORE Rebate in the amount of \$25,000 for Applicant subject to further necessary approvals. By Initial Decision filed with the Board on December 18, 2009, ALJ Cookson found that the terms of the written Stipulation, attached to the Initial Decision and made a part thereof, were voluntary and fully disposed of all issues in controversy. Accordingly, ALJ Cookson concluded that the Stipulation satisfied the requirements of N.J.A.C. 1:1-19.1 and dismissed the matter with prejudice.

Upon review of the Initial Decision and the Stipulation, which are attached and made a part of this Order, the Board HEREBY FINDS that the parties have resolved all outstanding contested issues in this case. The Board HEREBY ADOPTS the Initial Decision and the Stipulation executed by the parties in their entirety. The Board notes that its adoption of the Initial Decision and the Stipulation shall not be construed as an admission by any party. The Board further notes that the parties agreed to the settlement in the public interest to avoid the expense of litigation. Therefore, the Board's decision is limited to the instant matter and shall have no precedential value in future proceedings involving these 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

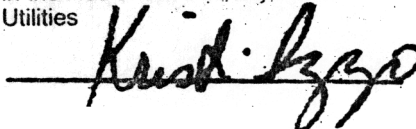

JOSEPH L. FIORDALISO
COMMISSIONER


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



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CMS

BESLOW

RPA

CAMPBELL, J

MILLER-HOLLAND

BOYLAN, R

CLEAN ENERGY (2)



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. PUC 02771-09

AGENCY DKT. NO. EO09040315

IN THE MATTER OF THE APPLICATION
OF MICHAEL STRIZKI FOR A CUSTOMER
ONSITE RENEWABLE ENERGY (CORE)
PROGRAM REBATE.

R, William Potter, Esq., for petitioner Michael Strizki (Potter & Dickson, attorneys)

Jessica L. Campbell, Deputy Attorney General, for the Staff of the Board of Public
Utilities (Anne Milgram, Attorney General)

Record Closed: December 15, 2009

Decided: December 15, 2009

BEFORE GAIL M. COOKSON, ALJ:

On April 23, 2009, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to- 13, relating to the denial of a Customer Onsite Renewable Energy Program Pre-Installation Application (CORE) of Michael Strizki. It was to the Honorable Gail M. Cookson, A.L.J. The undersigned convened telephonic conferences and other status communications with the parties and was advised that significant progress toward an amicable resolution was being achieved.

As a result of negotiations amongst the parties, the parties submitted under cover of December 11, 2009, a fully-executed Stipulation of Settlement which is attached hereto and made part hereof. It resolves this CORE Rebate application to the full satisfaction of the parties. Accordingly, and on that basis, have reviewed the record and terms of the Stipulation and **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties or their representatives.
2. The settlement fully disposes of all issues in controversy and is consistent with law.

I **CONCLUDE** that the Stipulation of Settlement meets the requirements of N.J.A.C. 1:1-19.1 and therefore, it is **ORDERED** that the matter be deemed dismissed with prejudice and that these proceedings be and are hereby concluded.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

December 15, 2009
DATE


GAIL M. COOKSON, ALJ

Date Received at Agency: *Falk, 12/28/09*

December 18, 2009

Date Mailed to Parties: DEC 18 2009
id


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**IN THE MATTER OF THE APPLICATION)
OF MICHAEL STRIZKI FOR A CUSTOMER) BPU DOCKET NO. EO09040315
ONSITE RENEWABLE ENERGY (CORE))
PROGRAM REBATE) OAL DOCKET NO. PUC 2771-09
)**

STIPULATION OF SETTLEMENT

APPEARANCES:

R. William Potter, Potter & Dickson, for Michael Strizki

Jessica L. Campbell, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Anne Milgram, Attorney General of New Jersey)

WHEREAS, on or about November 13, 2007, a Customer Onsite Renewable Energy Program Pre-Installation Application ("CORE Rebate Application") was filed with the New Jersey Board of Public Utilities ("Board") by Michael Strizki ("Applicant");

WHEREAS, the CORE Rebate Application indicated that the anticipated construction start date for the 5kW fuel cell for which the CORE rebate was requested was July 25, 2006 with an estimated completion date of January 1, 2008;

WHEREAS, it is the position of the Staff of the Board of Public Utilities ("Board Staff") that the 5kW fuel cell was installed and operational over a year before the anticipated construction start date listed on the CORE Rebate Application and two and a half years prior to the submission of the CORE Rebate Application;

WHEREAS, in a letter dated December 3, 2008, Mr. Larry Barth, CORE Program Manager of New Jersey's Clean Energy Program, informed the Applicant that the "terms and conditions for receipt of a CORE program rebate require the submission

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of the application and issuance of the rebate commitment letter prior to installation of the equipment referenced in the application" and requested that Applicant submit further information and/or an explanation regarding the installation of the 5kW fuel cell;

WHEREAS, Applicant contends that the CORE Rebate Application was properly completed and that the 5kW fuel cell qualifies for a CORE Rebate in the amount of \$25,000;

WHEREAS, on April 23, 2009, the CORE Rebate Application was transmitted to the Office of Administrative Law ("OAL") for adjudication and ALJ Gail Cookson was assigned to the matter;

NOW THEREFORE, in order to amicably resolve this matter without the necessity and expense of further litigation and in consideration of the promises and mutual obligations herein set forth, Board Staff and Applicant (collectively, the "Parties") hereby agree as follows:

1. The Parties agree that the 5kW fuel cell that is the subject of Applicant's CORE Rebate Application is the type of project that is qualified to receive a CORE Rebate.
2. The Parties further agree that a grant of Applicant's request for a CORE Rebate in the amount of \$25,000 for a 5kW fuel cell is a reasonable resolution to this matter.
3. Consent to this Stipulation of Settlement is not and shall not operate as an admission by Applicant.
4. This Stipulation represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation

is not accepted and approved in its entirety by the OAL or the Board, any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the OAL or the Board in any applicable Order(s), then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

5. It is the intent of the Parties that the provisions hereof be approved by the OAL and the Board as being in the public interest. The Parties further agree that they consider the Stipulation to be binding on them for all purposes herein.

6. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of this CORE Rebate Application. This Stipulation is executed by the Parties without prejudice to the positions asserted by each in this case and without prejudice to the positions which the parties may choose and assert in future proceedings, including any pending or future rebate application filed by this Applicant, except where the Parties have specifically incorporated terms herein, which shall be binding in this case. Except as so noted, this Stipulation is not in any way intended to restrict or bind any party hereto with respect to positions that party may choose to assert in any pending or future proceeding in this or any other forum. The Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the New Jersey
Board of Public Utilities

By:  By:
Jessica L. Campbell
Deputy Attorney General
Dated:

Michael Strizki


R. William Potter
Dated: 11-30-09