



Agenda Date: 9/16/2010  
Agenda Item: 8B

**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 CUSTOMER ON-SITE	)	ORDER
RENEWABLE ENERGY (CORE) PROGRAM	)	
REBATE APPEAL:	)	
VIRTUA HEALTH	)	DOCKET NO. EO07100830

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers an appeal by Virtua Health (Virtua) from a rejection of its application for a rebate under the Customer Onsite Renewable Energy (CORE) program.

**BACKGROUND**

The Board's Office of Clean Energy (OCE) administers various programs to encourage and promote the generation and use of renewable energy. One of OCE's first programs was the Customer Onsite Renewable Energy (CORE) program. The CORE program provided financial incentives (rebates) to customers that installed certain types of class I renewable energy systems at the end-user's location. The Board closed the CORE program to new applications in 2007.

Before it closed in 2007, the CORE program experienced exponential growth and overwhelmingly high participation rates, which resulted in some sectors experiencing applications in excess of available funding. Based on the substantial increase in the number of applications in 2005 and early 2006, the Board took several steps to continue the program within the four year renewable energy funding levels set by the Board. For example, the Board directed the OCE to evaluate and review the rebate levels to ensure that program objectives were met within the funding level. The Board approved a reduction in CORE rebate levels effective February 1, 2006 in an Order dated December 21, 2005, in Docket No. E004121550. The terms of the Order reduced the per watt rebate for projects like Virtua's from \$3.20 per watt to \$3.05 per watt, effective for applications deemed complete on or after February 1, 2006. On January 31, 2006, the last day before the rebate decrease, Virtua submitted an application for a CORE rebate for a 698.8 kW solar energy generation system to be mounted on a Virtua facility located in Mount Holly, New Jersey.

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On February 8, 2006, the OCE rejected Virtua's application for incompleteness. Specifically, the application did not include a signed contract with the installer of the solar energy system, nor did it include certain required information on historic electricity usage in the facility upon which the system would be placed. Because the application was deemed incomplete, Virtua was deemed ineligible for the higher rebate levels that applied prior to the deadline.

On February 27, 2006, Virtua requested reinstatement of its application, stating that the CORE program application requirements had been unclear, and stating that it had knowledge of another applicant that had been allowed to cure application deficiencies after the fact. Virtua did not dispute OCE's statement that the installer contract and historic usage data had been missing from the application, nor did Virtua include the missing information in its submittal requesting reinstatement.

OCE denied Virtua's request for reinstatement on March 9, 2006, and on April 21, 2006 Virtua appealed to the OCE appeals committee. The appeals committee also denied the appeal on October 31, 2006. Virtua then filed a petition with the Board on January 10, 2007. In October 2007, the Board Secretary notified Virtua that its appeal had been deemed a contested case and would be assigned to one or more of the BPU Commissioners for hearing. The Secretary's letter also provided contact information for any questions pertaining to procedure or scheduling.

After the issuance of the October 2007 Secretary's letter, no word was received from Virtua for two and a half years. In March 2010, Staff telephoned Virtua's attorney to enquire after the case. Shortly thereafter, a Virtua representative telephoned Staff and indicated that the project had not been started, but that Virtua would be interested in pursuing the appeal. Staff advised the Virtua representative to contact OCE to determine possible next steps. Six months have now elapsed since that call, without any contact or communication to the Board from Virtua.

## **DISCUSSION**

Staff has recommended that this Petition be denied without prejudice for failure to pursue the appeal. While it is true that Virtua diligently pursued its appeal at first, it dropped all interaction with the Board after the grant of contested case status in October 2007. Two and a half years passed during which Virtua made no move to contact the Board or otherwise pursue the case. When Virtua did finally act, it was only in response to Staff's reaching out to Virtua's attorney, and its efforts at that time were limited to one phone call. After that call, Virtua again lapsed into silence and has not been heard from for six more months, since March of this year.

Virtua's actions also cast doubt on whether it ever sincerely intended to pursue the solar project covered by the application. As of March of 2010, when Staff contacted Virtua to determine the status of the case, Virtua had made no move to begin the solar project. When Virtua's application was originally rejected, Virtua bestirred itself to submit an appeal, but not to submit the information needed to complete the application. Had Virtua submitted the missing information at the time it submitted its appeal, the CORE application would have been complete and Virtua could have obtained a rebate at the rebate level then in effect. This level was only moderately lower than the rebate that would have applied if the Board had granted the reinstatement request – it would have been \$3.05 per watt instead of \$3.20 per watt.


In Staff's view, Virtua's failure to stay in contact with the Board after October 2007 constitutes a clear failure to pursue its appeal. Furthermore, during the four and a half years from the project application to the present, Virtua has made no move to pursue its solar project. Therefore, Staff has recommended that the Board dismiss this petition, without prejudice, on the basis of failure to pursue the appeal.

### FINDINGS

The Board has reviewed the record and Staff's recommendation, and the Board FINDS that Virtua Health failed to communicate with the Board in a timely or consistent manner regarding Virtua's CORE appeal. The Board HEREBY CONCLUDES that Virtua's actions constitute a failure to pursue its petition. THEREFORE, the Board APPROVES Staff's recommendation and HEREBY DENIES without prejudice Virtua's Petition for reinstatement of its CORE application.

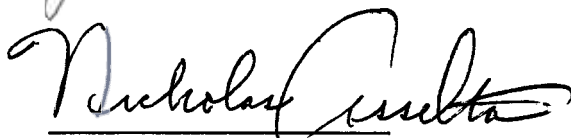
DATED: 9/16/10

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

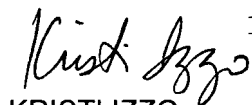
  
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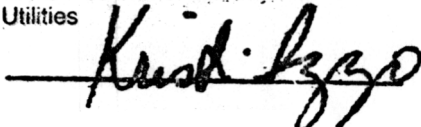
  
NICHOLAS ASSELTA  
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COMMISSIONER

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



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REBATE APPEAL: VIRTUA HEALTH

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