



Agenda Date: 6/18/10 - Agenda Item: 8B
Agenda Date: 8/18/10 - Agenda Item: 8E
Agenda Date: 9/16/10 - Agenda Item: LSA

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center – Suite 801
Newark, NJ 07102
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)

AMENDED ORDER

DOCKET NO. EO09060470

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes action by the Board of Public Utilities ("Board") at its June 18, 2010, August 18, 2010 and September 16, 2010 agenda meetings to revise awards previously approved by Order dated October 26, 2009 in this docket.

BACKGROUND

The "Innovation in Energy Efficiency and Renewable Energy – Public Entities"¹ 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, c. 68, is designed to provide grants from funding through the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 ("ARRA"). President Obama signed the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115, on February 17, 2009. ARRA is intended to stimulate the economy and to create as well as retain jobs by, among other things, investing in certain energy initiatives. To that end, section 410 of ARRA appropriates funding to the United States Department of Energy ("USDOE") for the approval of additional formula-based grants through the State Energy Program ("SEP"), above and beyond the grants traditionally provided to the States through the SEP. The SEP is a joint state-federal initiative intended to promote the conservation of energy, reduce the rate of growth of energy demand, and reduce dependence on imported oil. 42 U.S.C. § 6321. These goals are attained through the development and implementation of comprehensive state programs that are financially supported by the USDOE. Federal laws and regulations establish set criteria for

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

participation and define, in general terms, how funds may and may not be used. 42 U.S.C. § 6321 et seq.; 10 C.F.R. § 420 et seq. States must comply with the USDOE rules governing these financial awards. For ease of reference, the additional support for the State Energy Program through the ARRA shall be collectively referred to as SEP-ARRA.

The Grant 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.

On July 1, 2009, the Board approved a Public Notice of Grant Availability ("Solicitation"), which sought proposals requesting funding for energy projects that would clearly further the goals of the Grant Program. This Solicitation, which was issued by the Board on July 6, 2009, reflects direction and input from the Governor's Task Force on ARRA.

The Solicitation states the eligibility qualifications that applicants would have to meet to be considered for a grant under the program. The basic eligibility requirements were:

1. Projects must be able to commence expeditiously upon receipt of Notice of Award Letter and execution of Grant Agreement and must be able to begin construction within 12 months.
2. Projects must use an innovative technology or an innovative application of technology that further the goals of the SEP.
3. Projects must have the ability to create jobs and reduce greenhouse gas emissions.

In addition, applicants were required to certify that ARRA grant funds will be used to supplement (add to) existing funds and will not supplant (replace) funds that have been locally allocated for the same purpose. Moreover, The Grant Agreement for these BPU Administered ARRA State Entity Projects requires that: "The ARRA funds provided will be in addition to and supplement any incentives provided through the NJCEP's programs."

A Grant Evaluation Committee ("Committee"), consisting of representatives from: the Board, New Jersey Economic Development Authority, the Governor's Office of Economic Growth, the Commission on Science and Technology, and the Treasury Office of Energy Savings, was designated to review the proposals and rank them based on the criteria contained in the Solicitation.

On August 19, 2009, the Board approved the recommendations of the Committee and authorized the grant funding in the following amounts as set forth in its Order dated October 26, 2009 which is incorporated by reference herein.

- New Jersey Meadowlands Commission (NJMC) – Landfill Solar Project - \$8,500,000.00;
- New Jersey Institute of Technology (NJIT) – Residence Hall Energy Efficiency/Renewable Energy Upgrade Project - \$1,675,084.00;
- William Paterson University (WPU) – Smart Buildings/Energy Management System Project – \$1,120,000.00;
- Richard Stockton College (Stockton) – Solar Thermal/Solar PV and Demand Side Management Project – \$3,464,599.00;
- Rutgers Office of Research & Sponsored Programs (RORSP) – Eco Complex – Gas Boiler Retrofit Project – \$63,100.00;
- New Jersey Transit (NJT) – Solar PV Kearny Project –\$4,320,217.00;
- Atlantic City Convention & Visitors Authority – Wind Turbine Generator - 1,500,000.00.

On February 23, 2010, the Governor's Office, the State Auditor's Office and the Board received notification from the Environment, Technology, Corporate, and Financial Audits Division of the Office of Inspector General, U.S. Department of Energy, (the "Auditors") confirming that an audit of the ARRA State Energy Program would be initiated. The purpose of the audit was to ensure

the goals of the SEP and ARRA were accomplished effectively and efficiently. Subsequently, on April 12, 2010, the Inspector General's Office began its audit. Board Staff provided all documents and explanations requested by the audit. As of the date of this Order, the Auditors continue their audit analysis; a report is expected to be issued later this year.

DISCUSSION

During the course of the audit, the Auditors identified possible errors in scoring the Grant Program awards and, on May 17, 2010, noted the following issues regarding the scoring and award of the ARRA Innovation in Energy Efficiency and Renewable Energy Program for Public Entities: 1) possible inconsistent scoring; 2) scoring errors where a zero was scored instead of a one even though one was the lowest possible score; 3) formatting errors; 4) computational errors; and 5) Missing data. These issues necessitated a reexamination of the scoring process by the Evaluation Committee.

Staff, in consultation with the Division of Law, developed and implemented an action plan to address the issues identified by the Auditor as set forth below.

1. Possible Inconsistent Individual scoring - The Audit Team noted a number of possible inconsistent individual scores but also recognized that individual inconsistent rating would be difficult to ascertain.

The Evaluation Committee ("EC") reconvened on 6/4/10 and reviewed possible inconsistent individual scores and will provide an explanation for projects that were awarded grants, projects that may be awarded grants based on corrected scores, and projects where the Audit Team noted the possible inconsistent scoring might have made a difference in the outcome.

In response to this issue the Chair of the Evaluation Committee reviewed the possible inconsistent individual scores identified by the Audit Team and prepared a response which is included in the revised Evaluation Committee Report. The Chair concluded that: "The possible inconsistent individual scores identified by the Audit Team did not directly impact on any of the seven (7) projects that were recommended by the EC, either in the original scoring or the corrected scoring." Nor did they indirectly impact on the scoring and rankings of projects based on the analysis by the Chair of the EC. In support of these conclusions the Chair noted that the EC members were a diverse group of state employees with a broad range of knowledge in the fields of: clean energy technology, project development and technology development. The evaluation process, while objective and quantitative, also has qualitative and subjective aspects. Some raters ranked proposals consistently high and some consistently low. Some raters have greater knowledge about an individual technology or system than other raters while some raters place more or less weight on individual factors. Therefore, based on the expertise and experience of the individual raters, the evaluation process provided for discussion of each project against the evaluation criteria set forth in the Solicitation in an effort to arrive at a consensus recommendation. Moreover, the Chair performed a statistical analysis of the possible inconsistent individual scores identified by the Audit Team which demonstrated that such scores were within 1 to 2 standard deviations around the mean and within normal distribution and therefore not statistically inconsistent. The possible inconsistent individual scores did not change the rankings of the projects.

2. Scoring Errors- The "not rated" comment appears 9 times where the same rater used straight zeros for all 5 evaluation criteria. The Evaluation Committee will confirm with the evaluator if they intended to provide a score of zero and it

was not a "no rating" but a rating of the lowest score. Any errors will be corrected with new totals based on the corrected rating totals. It was confirmed that the zero was intended to be the lowest score, and was replaced with a score of one (1) since the rating scale was from a low of one (1) to a high of twenty (20) and the rating totals were corrected. This correction would not change the ranking of the projects.

3,4&5.Formatting Errors, Computational Errors and Missing Data - The "missing rating" comment is made 4 times and appears to be a data entry/column shift where one of the columns is blank and the 5 ratings get pushed to the right such that the number in column 6 is a rating and not a total. The Evaluation Committee reviewed, verified and corrected any errors with new totals based on the corrected rating totals. These corrections will change the averages and may change the ranking.

The original staff to the Evaluation Committee² reviewed the individual score sheets, prepared a revised spreadsheet and forwarded to the Evaluation Committee for review. The Evaluation Committee reconvened on Friday June 4, 2010 to implement the Action Plan described above in order to address the issues raised by the Auditors and to make necessary corrections. As a result, some projects with corrected scores ranked higher in the list and could now be eligible for grant funding resulting in others moving lower on the list and becoming ineligible. The Evaluation Committee confirmed that the scoring and recommendation would be determined by the average score of the individual projects. In addition, the Evaluation Committee Chair would confirm that these newly scored projects were still available for consideration and determine if they are in a position to perform by 4/30/2012. If not, the project may be bypassed. The revised average score for the projects whose rankings were affected by these changes were Rutgers University, Facilities Net Zero Energy Building at 74.6, Montclair State University, Solar Farm Project at 72, NJ Sport & Exposition Authority Project at 71.8, New Jersey Transit – Solar Photovoltaic Project in Kearny at 70.6, and Atlantic City Convention Center and Visitor's Authority – Wind Turbine Generator at 70. The Committee would issue a corrected evaluation report in time for the Board's consideration at the next scheduled agenda meeting on 6/18/10.

This approach was discussed with the Auditors on June 9, 2010 before finalizing the Evaluation Committee's recommendations. The Evaluation Committee reconvened on June 10th and 11th to discuss the modified scoring based on the corrected scores. As a result three projects with corrected scores rank higher than the previous sixth and seventh ranked projects. Therefore based on the corrected scoring sheets and the average corrected scores the Evaluation Committee amended its Evaluation Report to the Board. The following summarizes the Amended Evaluation Report with respect to the projects that may be affected:

1. New Jersey Meadowlands Commission (NJMC) – Landfill Solar Project, in the amount of \$8,500,000. This is the same initial recommendation; with a score of 82.8;
2. New Jersey Institute of Technology (NJIT) – Residence Hall Energy Efficiency/Renewable Energy Upgrade Project, in the amount of \$1,675,084. This is the same initial recommendation with a score of 81.8;
3. William Paterson University (WPU) – Smart Buildings/Energy Management System Project, in the amount of \$1,120,000. This is the same initial recommendation with a score of 77;

² Original Evaluation Committee Member from Office of Economic Growth was unable to participate because the member is no longer employed by the State.

4. Richard Stockton College (Stockton) – Solar Thermal/Solar Photovoltaic and Demand Side Management Project, in the amount of \$3,464,599. This is the same initial recommendation with a score of 75.2;
5. Rutgers Office of Research & Sponsored Programs (RORSP) – Eco Complex – Gas boiler Retrofit Project, in the amount of \$63,100. This is the same initial recommendation with a score of 72.8;
6. Rutgers University, Facilities Net Zero Energy Building, in the amount of \$2,700,000. This is a newly scored project with a corrected score of 74.6. This project has already been constructed and it was determined that Rutgers could not substitute the same equipment in another new building;
7. Montclair State University, Solar Farm Project, in the amount of \$2,653,496. This is a newly scored project with a corrected score of 72.0. Montclair has indicated that it is still interested in pursuing this project;
8. NJ Sport & Exposition Authority Project in the amount of \$11,500,000. This is a newly scored project with a corrected score of 71.8. However, projects 1 through 7 without project 6 total \$17,476,279. Only \$3,166,721 would be available for this project. NJSEA has indicated they are still interested even at the reduced level;
9. New Jersey Transit (NJT) – Solar Photovoltaic Project in Kearny, in the amount of \$4,320,217. While this project was initially recommended with a score of 70.6 and approved for an award there is not further funding available. However, this project could proceed under the PSE&G loan program with the increase size; and
10. Atlantic City Convention Center and Visitor's Authority (ACCVA) – Wind Turbine Generator, in the amount of \$1,500,000. While this project was initially recommended with a score of 70.0 and approved for an award there is no further funding available. However this project could apply for a REIP wind rebate.

It was determined that Project Number 6, above, was already constructed and it was further determined that the applicant may not substitute another building with the same equipment since the proposal was specific to the now completed building. Therefore, the Evaluation Committee recommended the following projects. Projects 1-5 remain unchanged and are described in the Board's October 26, 2009 Order. The descriptions for the two corrected recommendations (projects 6 and 7) are set forth below.

1. New Jersey Meadowlands Commission (NJMC) – Landfill Solar Project, in the amount of \$8,500,000;
2. New Jersey Institute of Technology (NJIT) – Residence Hall Energy Efficiency/Renewable Energy Upgrade Project, in the amount of \$1,675,084;
3. William Paterson University (WPU) – Smart Buildings/Energy Management System Project, in the amount of \$1,120,000;
4. Richard Stockton College (Stockton) – Solar Thermal/Solar Photovoltaic and Demand Side Management Project, in the amount of \$3,464,599;
5. Rutgers Office of Research & Sponsored Programs (RORSP) – Eco Complex – Gas boiler Retrofit Project, in the amount of \$63,100;

6. Montclair State University, Solar Farm Project, in the amount of \$2,653,496; and
7. NJ Sport & Exposition Authority Project in the amount of \$3,166,721.

Staff has determined that the actions taken by the Evaluation Committee are consistent with the action plan to address the issues identified by the Auditor as set herein above.

Summary of Additional Proposals Recommended for Funding

6. Montclair State University (MSU), New Jersey School of Conservation Project: Solar Farm

The proposed Solar Farm is based on the installation of 1400-200 watt modules (280 kw). The solar arrays will feed into a bank of 24 Solelectric inverters installed either adjacent to the solar arrays, or within a service area. An additional kilowatt-hour electrical meter is included with the system to monitor the system's net AC electricity production. This system will save approximately 360,000 kWh of electricity and save approximately \$62,130 annually. The innovativeness of the design is the connection to the Montclair University – School of Conservation in Stokes Forrest and links land and open space conservation with clean renewable energy. The Solar Farm will create 15 jobs. This project will take 2 months to begin and 6 months to complete. The project's total cost is \$2,786,171 and MSU is requesting \$2,653,496 from the Board.

7. NJ Sports & Exposition Authority Project: Meadowlands Sports Complex Solar Project in East Rutherford & Monmouth Park Racetrack Solar Project in Oceanport

As proposed, the New Jersey Sports and Exposition Authority (NJSEA) requested \$11.5 million for a project with a total cost of \$14M. The applicant proposed using thin-film membrane system solar technology and polycrystalline solar technology at the Meadowlands and Monmouth Park Racetrack. The project was to commence construction by the end of the fourth quarter of 2009 and complete in nine months (June 2010). The applicant estimated 60 jobs of varying duration would result. The solar systems would generate 2,351,000 kWh annually.

At its June 18, 2010 agenda meeting, the Board accepted the Evaluation Committee's Amended Evaluation Report and authorized approval of projects 1 through 6. As a result of those approvals, only \$3,166,721 in funding remained in this grant program.

The Board directed staff to obtain further information on the NJ Sports and Exposition Authority's (NJSEA) 7th ranked project to determine whether the proposed racetrack projects would continue to be owned and operated by NJSEA, in light of the then pending, July 21, 2010 Report of the Governor's Advisory Commission on New Jersey Gaming, Sports and Entertainment, and report back to the Board at its August agenda meeting. Despite several attempts by staff, the requested information was not provided by NJSEA to the Board for its August 18, 2010 agenda meeting. At that meeting the Board directed that Board Secretary's Letter be sent to NJSEA requiring the submittal of the requested information within five (5) business days from receipt of the letter.

On August 31, 2010, the Board Secretary issued a letter to NJSEA specifying that the requested information should include representations, in terms acceptable to the Board, that upon award of the ARRA SEP State Entity grant the NJSEA: will be able to construct and operate the solar system project within the time frames set forth in the July 6, 2009 Notice of Availability of Grants; will continue to be the owner and operator of the Meadowlands Sports complex and/or the Monmouth Park racetrack, whichever is the location of the solar facility; and further that the funded solar system will continue to be operational by the facility owner or operator.

In a letter dated September 13, 2010, the Vice President of Engineering, Construction & Regulatory Affairs at the NJSEA responded stating that the issues in the Board Secretary's August 31st were presented and discussed at length with the NJSEA's Construction and Executive Committees which concluded that:

"the proposed solar projects should move forward as it is planned for the properties in question to remain owned by the State. Based on that recommendation the NJSEA requests a continued opportunity to be awarded an ARRA SEP State Entity grant to construct and operate a solar system within the time frames set forth in the July 6, 2009 notice and that the NJSEA will continue to be the owner of the facility where the solar systems are located. Attached for your use is an updated proposed project scope as requested."

In its August 31, 2010 letter the Board also requested documentation reflecting a scaled down project since the amount of funds remaining under the program is limited to \$3,166,721. The original project, as proposed by NJSEA, included installations at two sites and requested \$11.5 million in grant funding for a total project size of 2006 kW with a total project cost of \$14 million. In response to this issue, the NJSEA stated that it is proposing that the project be scaled down to one site; the Monmouth Park Racetrack. NJSEA further stated that the anchor of the Monmouth Park site project would continue to be the Auxiliary Parking Lot Carport system, the size of which would still be on the order of 800 to 1000 kW with a total project cost of approximately \$4.5 to \$6.5 million. The NJSEA further stated that as an option, based on cost effective proposals it would include the Manure Shed and Barn roofs, as well as the Grandstand roof, as potential additional sites for solar arrays at Monmouth Park (the "Updated NJSEA Project").

The Board, at its September 16, 2010 agenda meeting considered the September 13, 2010 response from NJSEA and determined that it was adequate but remained concerned about timely action and that the Updated NJSEA Project continues to be operated, with the net benefits flowing to NJSEA as the State Entity, for the intended life of the project. Accordingly, the Board considered the following conditions:

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 flowing to NJSEA as the State Entity, for the intended life of the Updated Project based on a simple payback of the total project costs. In the event that the Updated 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. The net benefits referred to herein include, but are not limited to any investment tax credits, accelerated depreciation value, the avoided cost of electricity and the long term value of the Solar Renewable Energy or other energy capacity or air quality credits after any lease payments.

FINDINGS AND CONCLUSIONS

The Board **FINDS** the actions taken by Staff and the Evaluation Committee to address the issues raised by the Auditors are necessary and appropriate. The Board **ACCEPTS** the Evaluation Committee's Revised Award Recommendation Report subject to the conditions set forth below.

The Board **HEREBY APPROVES** the awarding of grants under the Grant Program according to the revised and corrected scoring and evaluation of the Evaluation Committee to the projects one (1) through six (6) in the amounts listed below, which are subject to reduction by the amount of incentives received from Clean Energy Programs.

1. New Jersey Meadowlands Commission (NJMC) – Landfill Solar Project, in the amount of \$8,500,000
2. New Jersey Institute of Technology (NJIT) – Residence Hall Energy Efficiency/Renewable Energy Upgrade Project, in the amount of \$1,675,084;
3. William Paterson University (WPU) – Smart Buildings/Energy Management System Project, in the amount of \$1,120,000;
4. Richard Stockton College (Stockton) – Solar Thermal/Solar Photovoltaic and Demand Side Management Project, in the amount of \$3,464,599;
5. Rutgers Office of Research & Sponsored Programs (RORSP) – Eco Complex – Gas boiler Retrofit Project, in the amount of \$63,100;
6. Montclair State University, Solar Farm Project, in the amount of \$2,653,496.

The Board further **ACCEPTS** the recommendation of the Evaluation Committee with respect to the Updated NJSEA Project and **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.

7. NJ Sport & Exposition Authority - Updated Project in the amount of \$3,166,721 provided that:

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.

Finally, the Board **DIRECTS** Staff to prepare and negotiate Grant Agreements, with those entities awarded grant funding in this proceeding. Such Grant Agreements shall be consistent with applicable Treasury requirements as well as for SEP-ARRA programs. The Board **HEREBY AUTHORIZES** President Solomon to execute Grant Agreements consistent with this Order and with federal and state requirements for such grant agreements.

DATED: 10/5/10

BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER



ELIZABETH RANDALL
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

