



Agenda Date: 4/15/15
Agenda Item: 8D

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF MICHAEL MANIS AND MANIS)
LIGHTING, LLC – NEW JERSEY CLEAN ENERGY)
PROGRAM RENEWABLE ENERGY INCENTIVE)
PROGRAM)
DOCKET NO. QS14040316

Parties of Record:

Michael Manis, Manis Lighting, LLC
Michael Ambrosio, Senior Vice President, Applied Energy Group
Carl Teter, Associate Vice President, TRC Solutions, Market Manager

BY THE BOARD:

Michael Manis and Manis Lighting LLC (*collectively "Manis"*) filed a motion for reconsideration with the New Jersey Board of Public Utilities ("Board") seeking reversal of part of the Board's December 17, 2014 Order pertaining to the denial of incentives under the Commercial and Industrial Retrofit Program ("C&I Retrofit Program") regarding The Brownstone House, Inc. project ("Brownstone Project"). For the reasons explained below, the Board denies Manis's motion for reconsideration

BACKGROUND

The Board administers the New Jersey Clean Energy Programs ("NJCEP") pursuant to its authority under the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-39 to 109. NJCEP includes several programs that offer incentives to both residential and commercial and industrial ("C&I") customers of electric and natural gas utilities to invest in energy efficiency ("EE") and renewable energy ("RE") measures. Residential EE and RE programs are administered by Honeywell, Inc., and C&I EE programs are administered by TRC Energy Solutions ("TRC"). Honeywell and TRC are the Market Managers for the residential and C&I programs, respectively. Applied Energy Group ("AEG") serves as the NJCEP Program Coordinator.

The NJCEP Program involved in this matter is the C&I Retrofit Program, which offers prescriptive rebates to commercial customers who install various measures such as high

efficiency lighting, motors, or heating or cooling equipment. The C&I Retrofit Program's prescriptive lighting component offers lighting rebates for the installation of certain high efficiency lamps and fixtures, including LED lighting. A business customer may contract with a lighting professional to install incentive qualified lighting at their place of business or choose to self-install incentive qualified lighting. By way of process, an application is submitted to TRC specifying, among other things, the type of incentive-qualified light bulbs to be installed, the total amount of incentive per bulb, and the total expected incentive based on the units to be installed. After review of the initial application to ensure all program requirements have been met, TRC issues a letter either rejecting or approving the application. Approved applications are given a date by which the project must be completed in order to receive the rebate.

A C&I customer may assign his approved rebate to the contractor by submitting a signed form to TRC designating the lighting contractor as the recipient of the rebate. In those cases, the rebate check is addressed and sent directly to the lighting contractor by TRC. In most circumstances, and in all instances relevant to this matter, a rebate will not be issued unless the C&I customer first obtains and submits to TRC a Tax Clearance Certificate ("TCC") from the New Jersey Department of Treasury, Division of Taxation ("Taxation")

Mr. Michael Manis is the owner of Manis Lighting, LLC, located in Hasbrouck Heights, New Jersey. Manis participated in the C&I Retrofit Program as a lighting contractor. By Order dated June 18, 2014, the Board suspended Manis Lighting, LLC from participation in all NJCEP Programs for the period of one year. The Board's order resulted from Manis's admission that he had falsified several State documents, i.e., TCCs, and a utility bill to effectuate his receipt of C&I Retrofit Program incentives.

At the time of the suspension, Manis had thirty-four open applications with the C&I Retrofit Program. To resolve these applications, the Board directed Staff to review the outstanding applications, solicit additional information from the affected applicants, and make a recommendation to the Board to approve or deny incentives on the remaining applications.

Following Staff's review of the pending applications and the information provided by Manis and the customers, Staff made several recommendations to the Board. For the Brownstone Project, the only application for which Manis seeks the Board's reconsideration, Staff recommended that the Board deny payment of the NJCEP incentive because Manis's arrangement with the Brownstone House expressly violated the Program's rule that: "Products offered at no direct cost to the customer are ineligible." Because Manis negotiated an arrangement with the Brownstone House whereby Manis would receive the entire NJCEP incentive as his payment and the customer would not pay any share of the project costs, in direct violation of the Program's requirements, Staff recommended that the Board deny payment of the NJCEP incentive.

On December 17, 2014, the Board approved Staff's recommendations regarding the pending applications in full. Specifically as to the Brownstone Project, the Board denied the incentive.

By letter to the Board dated January 14, 2015, Manis requested that the Board reexamine its decision to deny incentives to the Brownstone Project because of "mitigating circumstances" and "changes to the contract." In his letter, Manis acknowledged that his contract with Brownstone was "originally structured" in a manner that contemplated that Manis would receive the incentives as payment in full for the services he provided to the Brownstone; however, Manis explained that "as the project progressed it was apparent that the total cost would be more than the rebate so the customer agreed to pay the difference" and further explained that

“at a point they even gave me a check for \$2100 to cover some purchases.” Enclosed with his letter, Manis submitted two new documents: (1) a letter, dated January 13, 2013¹, from the Brownstone’s chief financial officer, Anthony Rubino, stating, in pertinent part, that “at appoint [sic] the terms of our contract did change and we paid Mr. Manis a total of \$2,100”; and (2) an invoice in the amount of \$45,196.80, dated November 20, 2013, that Manis claims he sent to the Brownstone for his services. Manis did not enclose a canceled check from the Brownstone.

By letter dated March 18, 2015, the Office of the Secretary informed Manis that the Board received his request for reconsideration, and that the Board extended the sixty-day review period under N.J.A.C. 14:1-8.7(c) to allow for adequate consideration of Manis’s request for reconsideration.

DISCUSSION

The Board must determine whether, pursuant to N.J.A.C. 14:1-8.6 and the relevant case law, to grant reconsideration of its December 17, 2014, decision to deny payment of the NJCEP incentive for the Brownstone Project. Upon thorough consideration of Manis’s motion, the documents submitted therewith, and the entire record in this case as a whole, the Board denies Manis’s motion for reconsideration for two primary reasons. First, Manis’s motion fails to provide a reason, as required by Board regulation, why Manis did not previously provide the Board with the information he is now submitting as evidence supporting his motion. Second, Manis’s motion fails to demonstrate that the Board based its decision upon a palpably incorrect or irrational basis or that the Board failed to meaningfully consider probative competent evidence.

A. Legal Standards

A motion for reconsideration requires the moving party to allege “errors of law or fact” that were relied upon by the Board in rendering its decision. See N.J.A.C. 14:1-8.6(a)(1). If the moving party seeks to introduce additional evidence as part of its motion for reconsideration, the rule requires that the evidence be stated briefly in the motion along with “reasons for failure to previously adduce said evidence.” N.J.A.C. 14:1-8.6(a)(2). If the motion for reconsideration substantially conforms to this rule, then the Board will consider the merits of the motion for reconsideration. Generally, the Board will not modify an Order unless the moving party demonstrates that the Board's action constituted an injustice, or that the Board misunderstood or failed to meaningfully consider a significant element of fact or law. Accordingly, a party should not seek reconsideration merely based upon dissatisfaction with a decision. See D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Instead, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis”; or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. See, e.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996).

B. Analysis

The Board carefully examined the submissions regarding the Brownstone Project and summarizes those submissions herein. On or about July 30, 2014, TRC sent a letter to Manis requesting, in pertinent part, that for each pending application, Manis respond to two inquiries and provide supporting documentation. First, the letter requested that Manis “provide a copy of

¹ The date of the Brownstone letter appears to be a typographical error.

any written agreements between [Manis] and the applicant that detail the financial arrangement between Manis and the applicant for the services rendered or promised.” Specifically, TRC indicated that the information provided must state the total cost of the installed lighting project; the amount of the cost applicant is/was required to pay to Manis, if any; and the date Manis received payment, if any. Second, the letter requested that Manis provide a copy of “any and all purchase receipts for the lighting equipment used for each project” identifying the “number and type of units purchased and the price paid for each.”

On or about August 12, 2014, Manis submitted the contract between Manis and the Brownstone House, dated October 5, 2013, and invoices and receipts (all dated either October or November 2013) for the materials used to complete the Brownstone Project. In his cover letter to TRC, Manis stated that the total cost of the Brownstone Project was \$45,420.00 and explained that the contract “shows that I would supply LED lights at no charge to the customer, and that the rebate would be assigned to me.” Notably, the contract showed the costs of the materials as \$0.

By letter dated July 31, 2014, TRC requested that the Brownstone House (1) provide TRC with the TCC received from Taxation concerning the application for incentives for the Brownstone Project; and (2) identify the percentage of the project that has been completed. The letter also requested that the Brownstone House provide “the written contract or invoice outlining the cost of the lighting project” and to indicate “what, if any, portion of the cost under your agreement with Mr. Manis that you are required to pay or have paid.” Specifically, the letter stated “[i]f your agreement provided that the incentive would cover the entire cost of the project, with no financial obligation on your part, please indicate this.”

By letter dated October 9, 2014, the Office of the Secretary provided Manis with another opportunity to present to the Board any additional evidence that Manis would like the Board to consider in its review of the pending applications, including the application for the Brownstone Project. The letter to Manis identified the four customers that submitted information and enclosed the customer documentation. Regarding the Brownstone Project, the Secretary notified Manis that TRC had received the information that Manis provided regarding the Brownstone Project, but that TRC had not received the information requested from the Brownstone House.

By letter received on October 28, 2014, Manis advised that based on discussions with his customers, he believed that many more customers submitted responses to the Secretary’s letter. His letter stated that he asked customers to resend the documents and, he also “had them e-mail [Manis] a copy of the letters they had composed and am including them as back up so you’ll have all of the inform necessary to make your decision.” Specifically as to the Brownstone Project, Manis provided the Board with a copy of the contract between the Brownstone House and Manis, dated October 5, 2013 (which was the same version as the one which Manis had provided on August 12, 2014). In addition, Manis submitted an unsigned letter from Anthony Rubino, the chief financial officer of the Brownstone House, dated August 8, 2014.

Thereafter, by letter dated October 20, 2014 to TRC, Mr. Rubino stated that he was certain that he had provided the information requested by TRC in its July 31, 2014 letter, but that the Board had not received it. Mr. Rubino enclosed the letter, dated August 8, 2014, that he claims he sent in response to TRC’s July 31, 2014 letter, along with a copy of the October 5, 2013 contract between the Brownstone House and Manis. In his August 8, 2014, letter, Mr. Rubino explained that the agreement stated that “Manis will supply us with all the lamps listed at no cost to us and that the rebate which was assigned to him will cover his costs.”

As is evident from the foregoing submissions, both Manis and the Brownstone House represented repeatedly that the lights would be provided at no cost to the Brownstone House. Because the no-cost contract was contrary to the guidelines of the C&I Retrofit Program, the Board correctly found that the Brownstone Project was ineligible and denied the incentive.

Now, after the Board's December 17, 2014, decision, Manis and the Brownstone House allege that the terms of the contract changed and that the Brownstone House paid Manis \$2,100. In support of his request for reconsideration, Manis submitted an invoice dated November 20, 2013 that he claims he sent to the Brownstone House. However, contrary to the requirements of N.J.A.C. 14:1-8.6(a), Manis has not articulated why this newly produced evidence was not submitted during the several opportunities that were provided. Specifically, Manis's motion fails to explain why Manis did not submit this invoice to TRC when Manis initially sent TRC his contract with the Brownstone House, along with its related invoices, on August 12, 2014. The motion also does not explain why, in response to the Secretary's October 9, 2014, request for supplemental information regarding the pending applications, Manis failed to provide the Board with the new information that he now submits along with his request for reconsideration. Because Manis's motion does not explain *why* he failed to previously produce this new evidence, as expressly required by N.J.A.C. 14:1-8.6(a)(2), Manis's motion must be denied.

Even assuming, arguendo, that Manis's motion had provided the Board with the explanation that N.J.A.C. 14:1-8.6(a)(2) requires, Manis's motion fails nonetheless because it does not demonstrate that the Board's decision to deny the incentive payment for the Brownstone Project -- based on the record that existed at that time, which record was produced in part by Manis -- was palpably incorrect or irrational. To the contrary, Manis's papers raise more questions than they purport to answer. First, the invoice Manis submitted with his motion lists November 20, 2013, as the "invoice date," and lists December 20, 2014, three days after the Board issued its decision to deny the incentive payment for the Brownstone Project, as the "date shipped." Manis's motion fails to explain this discrepancy. Second, Manis's August 12, 2014 letter to TRC indicated that the total cost of the Brownstone Project was \$45,420.00. But the invoice Manis now submits in support of his motion for reconsideration indicates that the total cost of the Brownstone Project was \$45,196.90, or \$223.10 less than what was originally stated as the contract amount. This is yet another discrepancy that Manis's motion leaves unexplained. Finally, Manis claims that there were "changes to the contract" with the Brownstone House that ultimately led the Brownstone House to provide him with a check for \$2100 "to cover some purchases." But Manis failed to itemize those purchases and explain the nature of these alleged "contractual changes." Nor did Manis provide the Board with a copy of the Brownstone House's canceled check or any other documentation that would verify that the Brownstone House did, in fact, pay him any money directly.

Moreover, as detailed above, in all submissions preceding the Board's order, Manis and the Brownstone House consistently represented to the Board that the Brownstone House would not incur any costs on this project, and that the parties agreed that Manis would receive the NJCEP incentive as payment in full for the services provided. The Board provided Manis and the Brownstone House with several opportunities to submit additional, relevant information so that the Board could render a fully-informed decision on the Brownstone Project. Both Manis and the Brownstone House availed themselves of those opportunities, and, in each of their submissions to the Board, reiterated that, under the terms of their agreement, Manis would perform the contemplated services at no cost to the Brownstone House. In light of other evidence in the record, the Board is not persuaded that Manis's November 20, 2013, invoice—submitted only after the Board's December 17, 2014 decision and omitted from both Manis's

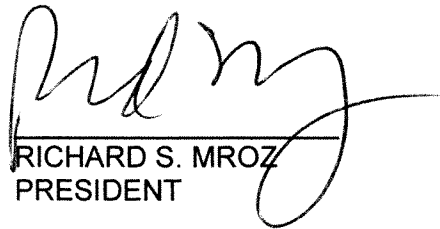
and the Brownstone House's prior submissions to the Board—accurately reflects the nature of the agreement between the Brownstone House and Manis.

Because Manis's motion fails to provide any legal or factual basis that would compel the Board to reverse its decision, the Board **HEREBY FINDS** that nothing in Manis's motion for reconsideration causes or requires the Board to reconsider its December 17, 2014 decision to deny Manis payment of the NJCEP incentive for the Brownstone Project.

For the foregoing reasons, the Board **HEREBY DENIES** Manis's motion for reconsideration.

DATED: 4/15/15


BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT




JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER

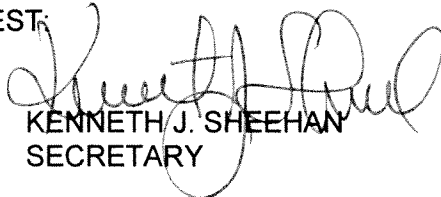


DIANNE SOLOMON
COMMISSIONER



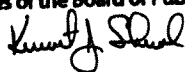
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



KENNETH J. SHEEHAN
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 MICHAEL MANIS AND MANIS LIGHTING, LLC – NEW JERSEY
CLEAN ENERGY PROGRAM RENEWABLE ENERGY INCENTIVE PROGRAM
DOCKET NO. QS14040316

SERVICE LIST

Carl Teter
Associate Vice President
TRC Solutions
900 Route 9 North, Suite 404
Woodbridge, New Jersey 07095

Michael Ambrosio
Senior Vice President
Applied Energy Group, Inc.
317 George Street – Suite 400
New Brunswick New Jersey 08901

Michael Manis
Manis Lighting, LLC
110 Hamilton Avenue
Hasbrouck Heights, New Jersey 07604

Christopher Salloum, D.A.G.
Department of Law and Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-450296

Carolyn McIntosh, D.A.G.
Department of Law and Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-450296

Kenneth J. Sheehan, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Elizabeth Ackerman, Director
Division of Economic Development and
Energy Policy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton NJ 08625-0350

Allison E. Mitchell, AAI
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Heather Azoulay, Esq.
Office of the Chief Counsel
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350