



Agenda Date: 5/19/15
Agenda Item: 8B

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 THE EDISON INNOVATION) ORDER
GREEN GROWTH FUND – LOCUS ENERGY'S)
REQUEST FOR LIMITED WAIVER OF DEFAULT ON)
THE DIRECT LOAN AGREEMENT) DOCKET NO. EG12070655V

Parties of Record:

Sandy Zeglarski, New Jersey Economic Development Authority
Michael Herzig, CEO, Locus Energy, Inc.

BY THE BOARD:

On August 15, 2012, the Board of Public Utilities ("Board") approved a loan to Locus Energy, L.L.C. ("Locus Energy") for working capital in the amount of \$1,454,000 with repayment beginning in January of 2014 under the Edison Innovation Green Growth Fund ("EIGGF"), as recommended by the Economic Development Authority ("EDA"), the administrator of the EIGGF. Several loan financing documents were executed, including a direct loan agreement. On December 17, 2014, the Board approved a second EIGGF loan to Locus Energy for additional working capital in the amount of \$546,000 at the recommendation of EDA. In the Matter of Edison Innovation Green Growth Fund – Locus Energy's Request for Award Modification, Dec. 17, 2014, BPU Dkt. No. EG12070655V.

On December 31, 2014, approximately two weeks after Board approval of the \$546,000 loan, Locus Energy LLC in the State of New York ceased to exist upon its merger with Locus Energy, Inc., the sole surviving corporation. By the merger, Locus Energy, Inc., formed in the State of Delaware, became the successor corporate entity to all debts, liabilities, and obligations of Locus Energy LLC.

On April 15, 2015, EDA notified the Board that Locus Energy had reorganized as a C Corporation when, by the direct loan agreement, Locus Energy was required to have continued as a limited liability company and not modify its corporate structure or legal name without the prior consent of the Board. EDA requests the Board approve a waiver of unintended technical default by Locus Energy and authorize EDA to amend existing and new loan documents to reflect the change in corporate structure and name from Locus Energy, LLC to Locus Energy, Inc.

BACKGROUND

Locus Energy was formed in 2007 in New York to provide monitoring and data analytics services for the renewable energy industry. Locus Energy offers a platform (comprised of hardware and software) that provides monitoring and data analytics for distributed generation systems in residential, commercial and utility applications. The platform integrates distributed energy sources into the electric grid and provides customized interfaces and analytics to owners, operators, original equipment manufacturers, financiers, insurers and regulators in real-time.

Locus Energy has received the following benefits from the State of New Jersey:

- EDA Business Employment Incentive Program Grant (BEIP) of \$365,200, closed May 2013
- EDA Edison Green Growth Fund Loan of \$1,454,000, closed December 2012
- EDA Edison Green Growth Fund Loan of \$546,000, approved by the Board on December 17, 2014

Based on its review and findings, EDA has requested the default by Locus Energy be waived by the Board and requests to be given the authority to amend legal documents reflecting the entity's change in corporate structure and legal business name from Locus Energy, LLC to Locus Energy, Inc. EDA Staff submits that the company reorganized to attract capital from more investors and for tax advantage purposes. EDA Staff has stated that the corporate structure change does not impact the Board's secured interests nor does it pose a risk to repayment of the loan. EDA states that Square 1 Specialty Bank ("Square 1"), a venture capital bank with priority lienholder status on Locus Energy assets, has consented to the merger and resulting transfer of assets and liabilities to Locus Energy, Inc.¹

Board of Public Utilities Staff ("Board Staff") has reviewed the EDA recommendations.

Based on a review of EDA recommendations and the direct loan agreement allowing for limited waivers, Board Staff recommends that the Board both approve a limited waiver on the event of default and authorize EDA to amend all legal documents reflecting the proper corporate structure for Locus Energy.

DISCUSSION AND FINDINGS

The Board EIGGF offers loans up to \$2 million with a performance grant component to support technology companies with Class I renewable energy or energy efficiency products or systems

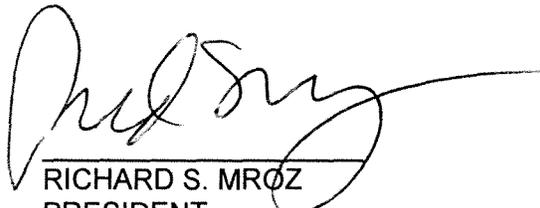
¹ On May 21, 2014, the Board modified the first EIGGF loan by approving the EDA's recommendation for Square 1 to assume a first lien holding position and the Board to subordinate its lien holding position to secondary status on all Locus Energy assets up to the \$1.45 million, except for Locus Energy intellectual property ("IP"), pursuant to an intercreditor agreement between the BPU and Square 1. In the Matter of Edison Innovation Green Growth Fund – Locus Energy's Request for Award Modification, May 21, 2014, BPU Dkt No. EG12070655V. This loan modification allowed Locus Energy to fund its working capital growth through a factoring arrangement with a third party. Id. at 2. The second EIGGF loan dated December 17, 2014 was collateralized by a third blanket lien on all business assets with consent to future additional senior indebtedness of up to 25% of the proposed \$546,000 loan as well as a pro rata lien on IP with the existing \$1,454,000 EIGGF loan and a \$1 million line of credit from a third party lender. In the Matter of Edison Innovation Green Growth Fund – Locus Energy's Request for Award Modification, Dec. 17, 2014, BPU Dkt No. EG12070655V.

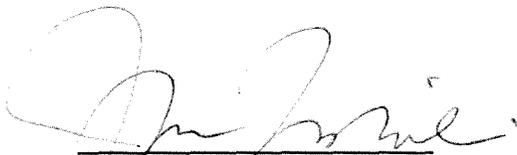
that have achieved "proof of concept" and successful independent beta results, have begun generating commercial revenues, and will receive dollar-for-dollar match funding by time of loan closing. EIGGF growth capital is intended to advance newly discovered energy efficient, renewable energy or supply chain products that will assist Class I renewable energy or energy efficient technologies in becoming competitive with traditional sources of electric generation.

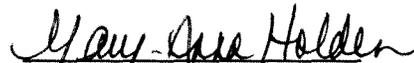
The Board **HEREBY ACCEPTS** Board Staff recommendations. Locus Energy was required to continue as a LLC and not modify its organizational documents or its legal name without the prior consent of the Board. Locus Energy's reorganization as a C corporation triggered an event of default under the direct loan agreement. As the direct loan agreement allows for a limited waiver on default, the Board **APPROVES** a limited waiver with all other terms and conditions continuing. The Board retains all other rights and remedies available. The Board also **AUTHORIZES** the EDA to amend all necessary legal documents, including any loan financing documents, to reflect the proper legal name and corporate structure of the successor entity to Locus Energy.

DATED: *May 19, 2015*

BOARD OF PUBLIC UTILITIES
BY:

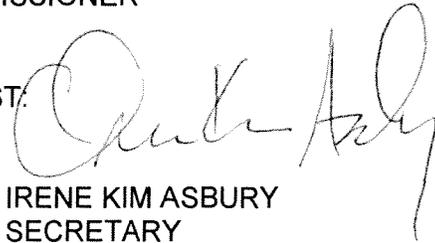

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

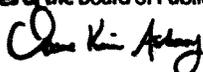

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
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 THE EDISON INNOVATION GREEN GROWTH FUND – LOCUS
ENERGY - LIMITED WAIVER OF DEFAULT ON THE DIRECT LOAN AGREEMENT

DOCKET NO. EG12070655V

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