



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE CLEAN ENERGY )  
MANUFACTURING FUND (CEMF) SOLICITATION – )  
AWARD MODIFICATION – FLUITEC WIND )  
 ) DOCKET NO. EG10020126 &  
 ) EG11090554V

**Parties of Record:**

**Frank Magnotti, President and CEO, Fluitec International, LLC**  
**Stefanie Brand, Esq., Director, Division of Rate Counsel**

**BY THE BOARD:**

On October 13, 2011, the Board approved a grant of \$300,000 and a loan of \$3 million to Fluitec International, LLC's ("Fluitec") under the Edison Innovation Clean Energy Manufacturing Fund ("CEMF") program. At the time of the award, Fluitec intended to establish a manufacturing facility in Jersey City, Hudson County, to make a remote fluid monitoring system designed for the wind farm sector. The New Jersey Economic Development Authority ("EDA"), as administrator of the CEMF, now recommends that the Board authorize modifications to the Fluitec loan agreement by approving a two-year extension to the loan's disbursement period and by consenting to the change in project plans. By this Order, the Board considers EDA's recommendation.

**BACKGROUND**

On November 1, 2009, the Office of Clean Energy ("OCE" or "Staff"), in collaboration with the EDA, issued a Solicitation for the CEMF program. The Solicitation offered financial assistance, in the form of zero-interest loans and grants, to support Class I renewable energy or energy efficiency companies entering or expanding manufacturing operations in New Jersey. Eligible applicants were companies that currently did, or within thirty-six months of the execution date of the Direct Loan Agreement planned to, manufacture Class I renewable energy or energy efficiency systems, products or technologies in New Jersey.

On May 13, 2011, Fluitec submitted a CEMF Intake Form proposing to manufacture filtration hardware and specialty equipment for the wind turbine industry, including: an agglomerator,

sensor array, membrane drying system, and a super capacity filter. This proposal received a favorable OCE technical review. Fluitec represented that it would dedicate a subsidiary to developing a wind product line to meet the requirements of the wind industry, and in particular the offshore wind industry which are highly specialized.

On July 26, 2011, the Clean Technology Advisory Committee ("CTAC") reviewed Fluitec's application based upon the Program's evaluation criteria set forth in the Solicitation and recommended the application for underwriting analysis and due diligence review by the EDA. On September 22, 2011, the EDA, after completing their underwriting analysis and due diligence review, recommended an award of \$3.3 million in CEMF financial assistance to "Fluitem Wind or Nominee."

On October 13, 2011, the Board approved Fluitec for a \$300,000 Project Assessment and Design Grant to fund the assessment and design costs associated with the establishment of a manufacturing facility; and a \$3,000,000 zero-interest loan for Project Construction and Operation under the CEMF. The purpose of the grant and loan was explicitly for "the construction or expansion of a manufacturing facility located in New Jersey." I/M/O the Clean Energy Manufacturing Fund (CEMF) Solicitation – Award Recommendation – Fluitem Wind, BPU Docket Nos. EG10020126 & EG11090554V (Oct. 13, 2011).

As a condition of the award and prior to executing the Grant and Loan Funding Agreements, Fluitec was required to certify that it would establish a subsidiary, "Fluitem Wind" ("FW"), in New Jersey and that all CEMF monies would be used to support wind technologies, consistent with the terms and conditions of CEMF. Id. at 4.

### **FIRST MODIFICATION REQUEST**

Following the Board's approval, Fluitec formed FW, and also formed a new holding company, Fluitem, SA ("FSA"). FSA became the sole and direct owner of FW. Because Fluitec and Fluitem's holding company, Fluitem NV, were offered as guarantors of the CEMF loan at the time of the Board's approval, FW requested FSA be substituted as the guarantor in the other companies' place. FW also requested that it be designated as the award recipient. EDA represented that these revisions did not have a material impact on the proposed project. Staff reviewed the modifications and recommended the Board approve them. On May 23, 2012, the Board approved the modification to the original award. I/M/O the Clean Energy Manufacturing Fund (CEMF) Solicitation – Award Recommendation – Fluitem Wind, BPU Docket Nos. EG10020126 & EG11090554V (May 23, 2012).

FW's CEMF grant and loan agreements were signed on August 9, 2012. To date, the Company has received the \$300,000 planning grant and \$899,673.23 in loan disbursements under Tranche IIA<sup>1</sup> of the \$3 million loan based on key business and technology milestones having been met during the first three years from the closing date of the Loan. Exhibit B to the Loan Agreement includes Disbursement Milestones for Tranche IIA and Tranche IIB and stipulates that each milestone must be met at least once and the aggregate advanced to the Borrower under Tranche IIA cannot exceed \$1.5 million which represents fifty-percent of the total loan amount. In addition, all milestones noted in Tranche IIA must be met to the satisfaction of the

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<sup>1</sup> The CEMF program has two Tranches. Tranche I is a facility site assessment, procurement, and design grant. Tranche II is a loan for site improvements, equipment purchases, and facility construction and operation not to exceed \$3,000,000.

BPU, or EDA acting on behalf of the BPU, prior to any advances being made under Tranche IIB which is limited to milestones post-commencement of commercial operation.

## **SECOND MODIFICATION REQUEST**

Based on the data collected from its software, FW has since learned that a number of the originally proposed products in its CEMF application, including an agglomerator, sensor array, and membrane drying system, proved less suitable for the wind industry, and were subsequently replaced with more effective products. These new products include the turbine monitoring software, called Tribo-Analytics; Breeze 320 (a wind turbine gear oil), Boost WT (an oil additive), and the manufacturing of an oil filtration device which is intended to prolong the life of the wind turbine gear oil. FW requests the Board consent to FW's change in product plans.

FW represented to EDA and OCE that it spent the last two years developing wind turbine remote monitoring software. As a result of this change in direction, EDA states that FW's manufacturing timeline was delayed by two years. FW requests a two-year extension of the funding disbursement period, because the original thirty-six month disbursement period, which expires on August 9, 2015, is no longer sufficient, in light of FW's product changes.

EDA recommends the Board consent to a two-year extension of the loan disbursement period, from August 9, 2015 to August 9, 2017, and to the change in project plans. EDA represents the risks to the Board's interests are mitigated by FW's agreement to a reduction in its remaining loan commitment from \$3 million to \$2 million. EDA also states the Board's interests are mitigated by a letter from FSA's shareholders documenting their commitment for up to \$2 million as a loan guarantee to support FW's CEMF loan obligation. Pursuant to the terms of the loan agreement, FW also forfeits the opportunity to convert one-third of the loan to a programmatic grant. FW is further requesting that disbursements under Tranche IIA, for activities related to pre commencement of commercial operation, up to \$1.5 million be allowed under the modified loan agreement.

Staff has reviewed the modifications and recommends the Board approve the EDA-supported modifications to the award. However, Staff also recommends that disbursements under Tranche IIA be limited to a total of \$1 million. This amount represents fifty-percent of the modified loan amount. Staff believes this limit will ensure future disbursements support the establishment of the manufacturing facility and commercial operations consistent with the terms of the loan.

## **DISCUSSION AND FINDING**

The terms of the original loan agreement provide that the Board will make a direct zero-percent-interest loan of \$3 million to FW. For the first thirty-six months, FW is not responsible for any payments. Thereafter, FW is required to make eighty-four equal monthly payments, starting on September 1, 2015.

The General Terms and Conditions' Section 4, Disbursement of the Loan, provides that EDA shall disburse the loan during the first thirty-six months based on FW's satisfaction of the Disbursement Milestones. FW can only use the disbursement for allowable Tranche II costs, "as set forth in [FW's] Proposal." See Direct Loan Agreement, I. General Terms and Conditions, Section 4 at 3. Under I. General Terms and Conditions, Section 15, Additional Covenants, subsection (f), states FW agrees to:

work diligently on the development of the Project and to complete it substantially in accordance with the timeframes and in the manner set forth in its Proposal or as amended in writing by mutual agreement of [FW] and the BPU; provided that in no event shall the completion date of any milestones associated with Tranche II of the Project be later than three years from the execution date of this Direct Loan Agreement. Notwithstanding the foregoing, in the event that any such milestones for the project are not completed within said three year period, the BPU agrees that such failure shall not constitute an Event of Default . . . as long as [FW] has been making best efforts to complete the Project in accordance with its Proposal, continues to diligently pursue its completion in a timely manner and any such delay was not caused by act or omission of [FW].

Similarly, II. Post Closing Requirements, Section 3, Use of Funds, states FW may only charge costs to the Loan that result from obligations incurred during the Funding Period. Funding period is the period beginning on February 26, 2011, and ending the earlier of thirty-six months from the date of the Direct Loan Agreement or the date upon which the loan is fully disbursed. FW must commence operation of the Project's manufacturing Facility on or before the funding period ends, unless the Board agrees to extend the deadline.

Modifications to the Direct Loan Agreement to memorialize changes in scope, objective, key personnel, timing of the Project, or deviation from the approved budget, must be obtained through prior written approval. See II. Post Closing Requirements, Section 4, Modifications.

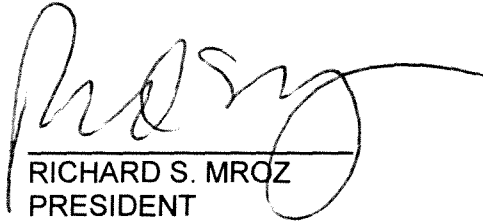
Here, FW requests the Loan Agreement be modified to account for the change in products and to extend the Funding Period for two years. EDA recommends approval of the loan modifications based on the reduction of the maximum loan amount to \$2,000,000 and FSA guarantee of the loan amount. EDA states these factors significantly reduce the Board's risks. OCE has also reviewed the documents and recommends the Board consent. EDA also notes that the repayment period for the loan will remain the same and FW will begin making loan payments on the outstanding portion of the loan balance in September 2015. EDA also points out that FW recently executed a 10-year lease for a 9,800 sq. ft. combined office/manufacturing facility in Bayonne, Hudson County and FW has moved its office, lab, and manufacturing operations to the new facility in Q2 2015. EDA further represents that FW has begun testing the proposed filtration device which is proposed to be manufactured in the Bayonne facility. Development and successful manufacturing and commercialization of the FW wind filter device will take two years with commercial operation of the Bayonne manufacturing facility expected in Q1 2017.

A review of the terms of the Direct Loan Agreement, indicate a change in project design and scope is permitted with prior Board Approval. The facts of this case demonstrate that FW still plans to develop products for the wind farm sector. This modified scope of the Project is consistent with the goals of the CEMF program to foster renewable energy product manufacturing operations located in New Jersey. Furthermore, modification of the loan terms is consistent with the legislative findings of the Electric Discount and Energy Competition Act, which authorizes the Board to promote economic development. See N.J.S.A. 48:2-21.16(a)(5).

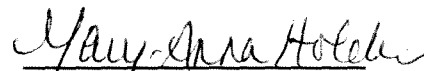
Upon consideration of the facts set forth above, the Board **FINDS** that the modifications to the October 13, 2011 award are reasonable, and therefore the Board **HEREBY APPROVES** changes to the business plan and a two-year extension to the loan disbursement period from August 9, 2015 to August 9, 2017. Disbursements under Tranche IIA shall be limited to fifty-percent of the modified loan amount. All other terms and conditions of the original approval shall remain unchanged. This Board Order is effective August 1, 2015.

DATED: July 23, 2015

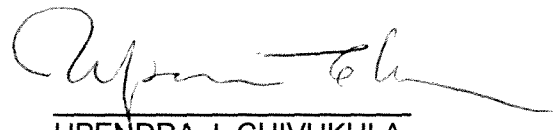
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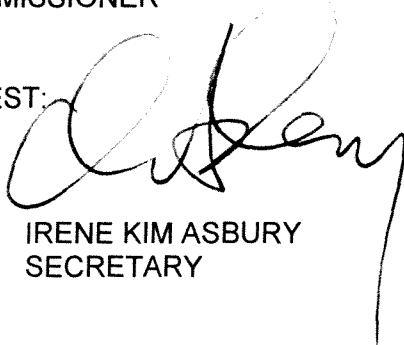
  
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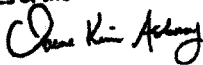
  
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SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



I/M/O the Clean Energy Manufacturing Fund (CEMF) Solicitation –  
Award Modification – Fluitec Wind  
Docket Nos. EG10020126 & EG11090554V

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