



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

OFFICE OF CLEAN ENERGY

IN THE MATTER OF THE REQUEST OF)
NEW JERSEY SOLAR POWER, LLC,
ET AL. FOR THE IMMEDIATE ACTION OF
THE BOARD

ORDER

DOCKET NO. EO06110825

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Customer-Sited Clean Energy Generation Program, now known as the Customer Onsite Renewable Energy ("CORE") program, was established by the Board of Public Utilities ("Board") on March 9, 2001 in Docket Number EX99050347. In its March 3, 2003 Order, Docket Number EO02120955, the Board directed that the CORE program be administered and implemented by Board Staff and contractors as needed. In its September 11, 2003 Order, Docket Number EO02120955, the Board directed Staff to administer the Clean Energy Program ("CEP"). The Board set the CEP four-year funding level for 2005-2008 by Order dated December 23, 2004 in the within docket.

At the Board's regularly scheduled agenda meeting of February 1, 2006, the Staff of the Office of Clean Energy ("OCE") recommended several modifications to the CORE program. Among these were specific reductions in the level of rebates available to applicants. Staff recommended that these reductions take effect on March 15, 2006. Staff further recommended that the CORE program limit rebates to the first 10 kilowatts ("kw") of project capacity for applicants served under residential tariffs. Additionally, the Board directed Staff to hold each completed private sector application "in queue" (*i.e.* a given application is deemed complete and is date and time stamped without any rebate commitment letter being issued) until sufficient funds became available to issue a rebate commitment for each. These latter two program modifications were intended by the Board to take effect immediately. Thus, the Board did not specify any effective date or notice period for these modifications in the written Order memorializing its actions of February 1, 2006.

Staff recommended the aforementioned modifications in response to the overwhelming public response to the CORE program. Specifically, the surge of applications for CORE rebates could not be approved without potentially exceeding the program budget. To ensure that the program did not become overcommitted, the Board established the queue as a method of explicitly linking the issuance of rebate commitments (often payable one to two years after the commitment is made) to program funding levels. Applicants for whom rebate commitments had already been issued were not affected by the establishment of the queue. The Board indicated in its Order of March 22, 2006 that an placement in queue did not bestow any additional rights on the applicant beyond being assigned a relative priority for receiving a rebate commitment when additional funds became available. In particular, placement in the queue did not serve to lock in a certain rebate amount or rate, and did not abrogate the fundamental and oft-stated program requirement that the only binding rebate commitment made by the Board to a CORE applicant, if any, is that set forth in the rebate approval and commitment letter submitted to the applicant by OCE Staff.¹ Moreover, notwithstanding this guideline, the Board's commitment is ultimately contingent upon the availability of budgeted program funds.

At its June 21, 2006 Agenda Meeting, the Board clarified its intent that CORE rebates be limited to the first 10kw of project output for residential applicants. The Board also confirmed that this modification was intended to become effective immediately and apply to any applicant who had not yet received a rebate commitment letter, *i.e.*, all applications still in queue. Following this directive, OCE Staff mailed letters to all CORE applicants not yet in receipt of rebate commitments informing them of the Board's clarification and the transferal of their applications from the ">10kw" queue to the "<10kw" queue, as per the Board's directive .

On July 31, 2006 the Board received a written "Request for immediate attention and action" (the "Request") of its decision on June 21, 2006 from three solar photovoltaic installers: New Jersey Solar Power, LLC, GeoGenix, Inc., and Ecological Systems, Inc. (collectively, "Petitioners"). Petitioners took issue with the Board's clarification of its February 13, 2006, Order as set forth in the Board's March 22, 2006 Order, B.P.U. Dkt. No. EO04121550 and at the June 21, 2006, agenda meeting. Specifically, Petitioners took issue with "eliminating solar rebates for residential solar PV systems of 10 kW or larger which [sic] were 'in the queue' with signed contracts prior to March 15, 2006.". Petitioners alleged that this clarification constituted a retroactive revision of contracts entered into between the applicants and the solar PV installers, and as such, also violated the principles of equitable estoppel. Petitioners requested various forms of relief from the Board, including a hearing on the contested issues.

The Board carefully considered the Request submitted by the Petitioners in this matter. Having done so, and for the reasons set forth in its September 22, 2006 Order (I/M/O the Request of New Jersey Solar Power LLC et al. for Immediate Action of the Board, Non Docketed Matter, 9/22/06) the Board affirmed its prior clarification and declared that limiting rebates for the first 10 kw of project capacity for applicants served under residential tariffs should, and did, take effect immediately. The Board noted that a complete rebate application that is submitted to the Office

See In the Matter of the Office of Clean Energy Customer On-Site Renewable energy (CORE) Program, Order Authorizing Program Procedure Changes, Exh. A, Dkt. No. EOO4121550, March 22, 2006.

of Clean Energy and placed "in queue" does not create a contractual obligation or relationship between these applicants and the Board that results in the payment of a rebate. Nor does the execution of a contract between an installer and an applicant entitle the applicant to a rebate. Moreover, the immediate implementation of program modifications such as these was entirely consistent with the broad powers delegated to the Board by the Legislature. See, e.g., County of Bergen v. Dept. of Pub. Util. of N.J., 117 N.J. Super. 304, 312 (App. Div. 1971).

Subsequently, on October 12, 2006, Petitioners filed a Notice of Appeal of the Board's Orders in this matter, making the same or similar arguments before the New Jersey Superior Court, Appellate Division. Petitioners and the Board then engaged in court-ordered mediation, and as a result of this process, have reached an amicable settlement of this dispute that is in the best interests of all parties.

Approval of this agreement, attached hereto and incorporated by reference herein, represents the correct course of action at this time. The CORE program has been an unqualified success. This program has grown between 100 and 300 percent annually for the last 4 years. Through careful and disciplined management it has assumed a central role in helping to fulfill the Governor's Energy Task Force goal of 90 megawatts of installed renewable energy in New Jersey by 2008. While the Board firmly believes that the actions it took in February, 2006 because of the exponential growth of the program were both essential for the viability of the program and legally sound, it does not believe that protracted litigation and the uncertainty it creates would further the Board's environmental goals or the interests of the people of New Jersey. Such a course would potentially inhibit the continuing flow of CORE rebate commitments in 2007 to deserving applicants with no connection to this litigation, and would likely spread additional uncertainty and confusion within the burgeoning solar industry in this State. The economic and environmental benefits of renewable energy are too important to permit this to occur.

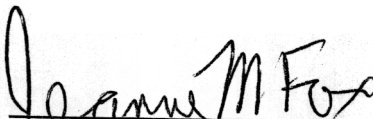
With this in mind, the Board approves the attached Stipulation of Settlement with Petitioners. The Board will also allow all other applications (not just those submitted by Petitioners) that were in the CORE >10kw queue as of March 15, 2006 and transferred to the CORE <10kw queue as a result of the Board's policy change in February, 2006 to be reinstated in the original queue without loss of relative position. Applicants who were transferred to the <10kw queue that have already received rebate commitment letters based on a smaller system will be afforded the option of reinstatement, but will only be eligible to obtain an additional rebate commitment making up the difference between what they have already received and what they would have received if they had remained in the >10kw queue. The Board believes that many eligible applicants will likely accept this option, and Petitioners and other solar installers must provide written verification from all eligible customers that they indeed wish to be transferred back to the original CORE >10kw queue. However, some applicants may choose to stay in the <10kw queue in the hope of receiving a (smaller) rebate commitment more quickly, and are free to do so under this Order. These actions will essentially restore the status quo for Petitioners and other eligible applicants, but will not permit them to receive a commitment letter any faster than they would have had they remained in the CORE >10kw queue.

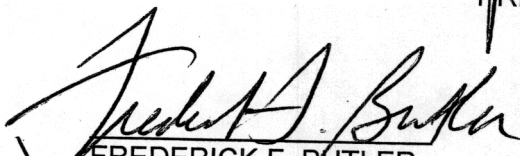
Therefore, based on the foregoing, the Board hereby APPROVES the attached Stipulation of Settlement and ORDERS its terms and conditions to be implemented by the Staff of the Office of Clean Energy.

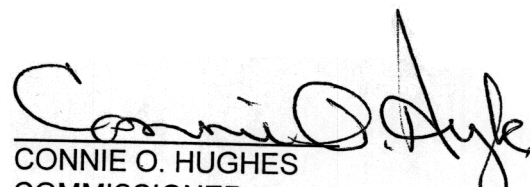
DATED:


3/2/07


BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER

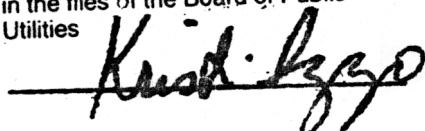

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
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



STIPULATION OF SETTLEMENT

Whereas, The New Jersey Board of Public Utilities ("Board" or "BPU") is an agency within the Executive Branch of State Government, with principal offices at 2 Gateway Center, Newark, New Jersey; and

Whereas, New Jersey Solar Power, LLC, P.O. Box 376, Pine Beach, New Jersey 08741; GeoGenix, Inc., 79 East River Road, Rumson, New Jersey 07760; and Ecological Systems, Inc., 220 County Road Rt. 522, Manalapan, New Jersey 07726 (hereafter "Appellants") are corporations engaged in the business of solar system installation; and

Whereas, Appellants filed a "Notice of Appeal" and "Case Information Statement" ("Appeal") with the Appellate Division of Superior Court on or about October 12, 2006, which was assigned Docket Number A-000904-06T2; and

Whereas, the purpose of the Appeal was to contest various directives and orders issued by the Board on February 13, 2006, June 21, 2006, September 14, 2006 and September 22, 2006 which were rendered pursuant to policy proposals respecting changes in eligibility requirements for solar projects larger than 10 kilowatts (">10kw") in the Board's Customer On-Site Renewable Energy ("CORE") program; and

Whereas, the Board, acting through the Office of the Attorney General, responded to the Notice of Appeal and thereby disputed the assertions contained in the Appeal; and

Whereas, the Board and the Appellants entered into court sponsored mediation with Judge David Landau; and

Whereas, Judge Landau has assisted Appellants and the Board, acting through its counsel, in negotiating an amicable resolution of the matters raised in the appeal; and

Whereas, representatives of the Board and Appellants, acting by and through their attorneys, have engaged in extensive discussions and negotiations, both in person and by electronic means, in hopes of achieving a just and reasonable outcome without the need for costly and uncertain litigation; and

Whereas, the Board and Appellants are now in agreement as to an outcome that will resolve all outstanding issues raised by Appellants and will, inter alia, provide the opportunity for reinstatement into the CORE >10kw queue of all Eligible Applications, as defined below, in their original relative positions in queue as set forth in this Agreement; and

Now, therefore, in consideration of the mutual covenants given herein, the Board and Appellants (collectively "Parties") hereby agree as follows:

1. "Appellants" means New Jersey Solar Power, Inc., GeoGenix, Inc., and Ecological Systems, Inc., as well as their principals, directors, officers, parent corporations, subsidiaries, affiliates, employees, agents, representatives, successors, shareholders, independent contractors/third-party distributors, any trustee in bankruptcy or other trustee, and/or any receiver appointed pursuant to proceedings in law or in equity.

2. "Eligible Applications" means: 1) the applications for CORE rebates for residential solar systems filed by or on behalf of Appellants' customers that were in the >10kw queue as of March 15, 2006 and that were transferred from the >10kw queue to the <10kw queue as a result of the Board's imposition of a 10kw "cap" on CORE rebates for residential systems by Order dated February 13, 2006, or; 2) applications for CORE rebates for residential solar systems filed by or on behalf of Appellants' customers that were disallowed or rejected by the OCE based on the belief that said applications were ineligible for placement in the >10kw queue pursuant to the aforementioned 10kw cap, but were otherwise timely submitted and complete prior to March 15, 2006.

3. ">10kw queue" means the line of applicants waiting for CORE rebate commitments for solar systems with a capacity of greater than 10 kilowatts maintained by the Board's Office of Clean Energy ("OCE").

4. "<10kw queue" means the line of applicants waiting for CORE rebate commitments for solar systems with a capacity equal to or less than 10 kilowatts maintained by the OCE.

5. The Board maintains its position that the procedural changes to the CORE program it implemented in February, 2006 were both lawful and necessary, which Appellants have contested in their appeal. Notwithstanding the foregoing, and in consideration of the dismissal with prejudice of the aforementioned action by Appellants, upon execution of this Agreement by the Board and Appellants the parties will take the following actions:

- a. Appellants will send, by electronic and U.S. Mail, a copy of the attached "Consent Letter" to each customer/applicant who has filed or caused to be filed an Eligible Application, seeking his or her consent to be reinstated in the >10kw queue pursuant to this Agreement. If Appellants do not receive written notice from any given customer/applicant indicating his or her desire to be reinstated in the >10kw queue within 14 days of receipt of the Consent Letter, it shall be presumed that said customer/applicant wishes to remain in the <10kw queue. After 14 days from the execution of this Agreement, Appellants shall inform the OCE of the results of the aforementioned inquiry.
- b. The Board shall, in its sole discretion, have the option of issuing rebate commitment letters for CORE projects of all sizes after the date of the execution of this Agreement. To the extent it does so, the Board will,

through the OCE, calculate the quantity of rebate commitment letters it issues and the rebate size associated therewith to account for inclusion of the Eligible Applications in both the >10kw and <10kw queues (as determined by the original OCE date stamp on each application indicating the date on which said application was deemed complete).

- c. Upon receipt of the final count of consenting customer/applicants on or about 14 days after execution of this Agreement, the OCE will "true-up" the >10kw and <10kw queues, and reinstate any Eligible Application in the >10kw queue in accordance with the associated customer/applicant's wishes. Any application reinstated in the >10kw queue will be reinstated in the same position it occupied or would have occupied at the time of the Board's imposition of the 10kw cap.

6. Issuance of rebate commitment letters and/or payment of rebates will be authorized and made by the Board in accordance with pre-established CORE guidelines and Board Orders, including, but not limited to the availability of Clean Energy Program ("CEP") funds and the order of admittance into the >10kw queue as per OCE date stamp.

7. In consideration of the foregoing, Appellants shall withdraw and/or move for the dismissal with prejudice of their action before the Superior Court of New Jersey, Appellate Division entitled "I/M/O Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis" Docket No. A-0904-06T2. Withdrawal and/or the filing of a motion for dismissal of the aforementioned appeal shall be a condition precedent of the implementation of this Agreement, except that, should Appellants' motion to dismiss or withdraw their appeal be denied for any reason, this Agreement shall cease to have effect and shall not bind any parties hereto.

8. In consideration of the foregoing, Appellants shall also forever release, waive and forgo any and all claims, demands, suits, allegations, complaints, penalties, or offsets, known or unknown, asserted or unasserted, actual or potential, that relate to or arise out of the allegations in the Appellants' aforementioned appeal, against the Board or any individual commissioner or employee thereof in his or her official or personal capacity.

9. This settlement agreement is further subject to the Board's issuance of a written decision and order in which the Board accepts this Agreement in its entirety and executes same without change, based on the mutual compromise by Appellants and the Board, except that if, for any reason, the Board wishes to impose new, altered or additional conditions or changes to this settlement agreement, Appellants will have ten (10) business days following receipt of said Board order to accept or reject the settlement based on the Board's proposed changes in same.

10. The execution of this Agreement by the Board is for the sole purpose of avoiding costly and time consuming litigation, and shall not be deemed an admission by the Board


or any individual commissioner or employee thereof of any violation of law, statute or regulation, or any wrongdoing whatsoever. All parties shall bear their own costs.

11. The Parties represent that a representative of each has signed this Agreement with the authority to legally bind the respective party, and that each party has full knowledge, understanding and acceptance of the terms of this Agreement.


12. This Agreement represents the entire agreement between the Parties, and may be signed in counterparts.

13. This Agreement shall be governed by the laws of the State of New Jersey

STUART RABNER
ATTORNEY GENERAL OF
NEW JERSEY
On Behalf of the Board of Public Utilities

By: 
Todd C. Steadman
Deputy Attorney General

Dated: 3/2/07

A handwritten signature in dark ink, appearing to read "R. William Potter", with a horizontal line drawn through the middle of the signature.

R. WILLIAM POTTER, ESQ.

On Behalf of Appellants New Jersey Solar Power, Inc., GeoGenix, Inc.,
and Ecological Systems, Inc.

Dated: 2-27-07