



Agenda Date: 5/23/12  
Agenda Item: 8C

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF GREEN CITIES ENERGY, LLC – )  
ORDER TO SHOW CAUSE NEW JERSEY CLEAN )  
ENERGY PROGRAM (NJCEP) RENEWABLE ENERGY )  
INCENTIVE PROGRAM (REIP) ) ORDER APPROVING  
SETTLEMENT  
DOCKET NO. ES11060377V

Parties of Record:

**Joseph Polidoro, President**, Green Cities Energy, LLC  
**Eric G. Fikry, Esq.**, Blank and Rome, LLP on behalf of Petitioner  
**Peter Bowers, Esq.**, on behalf of Petitioner  
**Joseph Genello, Operations Manager, Residential Energy Efficiency and Renewable Energy**, New Jersey Clean Energy Program

BY THE BOARD:

The Board, pursuant to N.J.S.A. 48:3-60, administers the New Jersey Clean Energy Program (NJCEP). NJCEP includes several programs, such as the Renewable Energy Incentive Program (REIP) and the SREC Registration Program (SRP), among others. NJCEP is administered by Honeywell, the Market Manager for the residential energy efficiency and renewable energy programs, and TRC, the Market Manager for the C&I energy efficiency programs.

If a contractor violates NJCEP program procedures it may be subject to Contractor Remediation Procedures in accordance with the Board's October 5, 2010 Order. In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012: Contractor Remediation Procedures, Docket No: EO07030203 (October 5, 2010) (Contractor Remediation Procedures).

Green Cities Energy LLC (Green Cities) is a solar and wind installation company. Green Cities participates in NJCEP Renewable Energy Programs as a third party to the application process. In all cases it acts as the entity submitting paperwork to the program on behalf of the applicant and installers. In some cases, Green Cities is listed as the system owner and/or rebate recipient. In this role, Green Cities initiates and completes the sales process and acts as the main contact to the applicants. Installers sign a contract with Green Cities to perform the installations while customer contact and paperwork are handled through Green Cities.

During the Market Manager's review of applications submitted to the REIP Program by Green Cities, it identified instances of alleged misconduct by Green Cities of which the Market Manager became aware on or about December 10, 22, and 30, 2010. On or about January 23, 2011 NJCEP issued a notice of proposed suspension to Green Cities. It informed Green Cities that it identified several incidents of alleged fraudulent signatures on the program paperwork submitted by Green Cities. NJCEP also informed Green Cities that the submittal of fraudulent signatures on the program paperwork is considered intentional misconduct and is subject to Level 4 sanctions under the Contractor Remediation Procedures, including a one-year suspension.

On or about March 15, 2011, the Market Manager and Green Cities met to discuss the alleged infraction. The Market Manager subsequently concluded that certain facts remained in dispute and referred the matter to the Board with a recommendation to impose a Level 4 sanction. The Contractor Remediation Procedures describe a Level 4 infraction as intentional misconduct, including "[e]vidence of theft, larceny, fraud, drugs/alcohol abuse, forged-faked invoices, or other misconduct intended to be outside the program procedures." The penalty for such infraction is a one year suspension. Contractor Remediation Procedures. The Market Manager advised Green Cities of its recommendation to the Board on or about May 18, 2011, attached hereto as Exhibit A.

Pending Board action on the Level 4 recommendation, the Office of Clean Energy directed the Market Manager to provide additional oversight of Green Cities. This included closely monitoring general quality of Green Cities' work and performance and requiring Green Cities to provide certifications regarding the authenticity of signatures on its submissions. Such oversight was within the scope of Level 1 Contractor Remediation Procedures.

On or about July 14, 2011, the Board issued an Order to Show Cause why it should not impose Level 4 sanctions on Green Cities and suspend it from participating in the NJCEP for one year. On or about August 15, 2011, Green Cities filed its Answer. On or around September 8, 2011, the parties held settlement discussions. In succeeding negotiations, the details of a settlement proposal were agreed upon, and on or about March 20, 2012, a settlement agreement ("Settlement Agreement") was executed. The Settlement Agreement is attached hereto as Exhibit B.

### **The Proposed Settlement Agreement**<sup>1</sup>

Key provisions of the Settlement Agreement are as follows:

- **Probationary Period**: Green Cities will be placed on probation for a period of one (1) year from the Effective Date of the Agreement (the "Probationary Period"). During the Probationary Period, Green Cities will be required to comply with the monitoring procedures set out in the Market Manager's May 18, 2011 recommendations, including the requirement that Green Cities submit a certification authenticating all application approvals and signatures for all new and pending projects.

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<sup>1</sup> Although summarized at some length in this Order, should there be any conflict between this summary and the Settlement Agreement, the terms of the Settlement Agreement control, subject to the findings and conclusion in this Order.

- **Enforcement Mechanism During the Probationary Period:** If, during the Probationary Period, the Renewable Energy Market Manager or any subsequent entity under contract to the NJBPU to provide the same services identifies a potential infraction(s) on the part of Green Cities, the following procedure shall be implemented:
  - The Renewable Energy Market Manager will immediately advise Green Cities in writing of the nature and circumstances of the alleged infraction(s), the identity of any complainant(s), and provide Green Cities with ten (10) days to submit a written response to the allegations.
  - If the Renewable Energy Market Manager determines that a Level 1 infraction occurred, it shall implement the appropriate "Recommended Action" for Level 1 infractions as set forth in the October 5, 2010 Order, upon notice to the OCE and Green Cities.
  - If the Renewable Energy Market Manager determines that a Level 2 or higher infraction occurred, it will forward to the OCE its recommendation, along with any supporting documentation. OCE shall review the Renewable Energy Market Manager's recommendation and make an Independent Determination as to whether an infraction has occurred. If OCE concludes that the complained of conduct occurred, it may impose sanctions appropriate to the severity of the infraction, up to and including suspension, subject to appeal to the Board by Green Cities. Green Cities shall have 30 days to appeal the OCE's decision to the Board, for a full hearing on the merits.
  - In the event that a suspension is imposed upon Green Cities upon conclusion of an appeal to the Board or as a result of arbitration, Green Cities may be reinstated only upon petition and approval by the Board.
  
- **Violations During The Probationary Period:** If, during the Probationary Period, the Renewable Energy Market Manager or any subsequent entity under contract to the NJBPU to provide the same services identifies a potential infraction(s) on the part of Green Cities, the following procedure shall be implemented:
  - Level 1 Infraction: Board Staff will follow the procedure outlined in the Contractor Remediation Procedures.
  - Level 2 Infraction or Higher: In the event of a future alleged Level 2 or higher infraction by Green Cities during the Probationary Period, Board Staff shall be entitled to present evidence and make arguments regarding the allegations which initiated the Order to Show Cause, as well as the future alleged infractions, and Green Cities shall have the right to oppose such allegations.

## **DISCUSSION AND FINDINGS**

The Board, having reviewed the record and the Settlement Agreement in this matter, **FINDS** the agreement is reasonable, in the public interest, and consistent with Board policy. The Board also **FINDS**:

1. The parties have negotiated a settlement that resolves all issues in controversy and is consistent with the law.

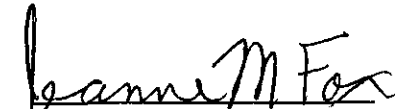
2. The Settlement Agreement represents the entire agreement between the Parties.
3. The parties agreed to the settlement to amicably resolve the disputed matter without the necessity and expense of further litigation and in consideration of the promises and mutual obligations set forth in the Settlement Agreement.
4. The parties entered into the Settlement Agreement voluntarily, as evidenced by their signatures or their representatives' signatures.

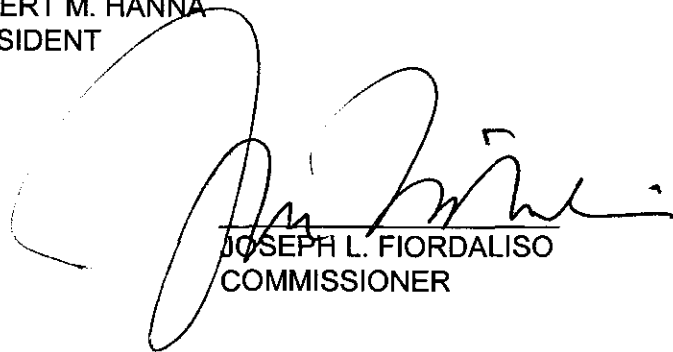
The Board **HEREBY APPROVES** the Settlement Agreement executed by the parties in its entirety and **ADOPTS** the settlement terms and conditions attached hereto as though fully set forth herein. The parties are **HEREBY ORDERED** to comply with the settlement terms. The Board's decision is limited to the instant matter and shall have no precedential value in future proceedings involving these or any other party.

DATED: 5/23/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER


  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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  


IN THE MATTER OF GREEN CITIES ENERGY, LLC – ORDER TO SHOW CAUSE  
NEW JERSEY CLEAN ENERGY PROGRAM (NJCEP)  
RENEWABLE ENERGY INCENTIVE PROGRAM (REIP)  
DOCKET NO. ES11060377V

SERVICE LIST

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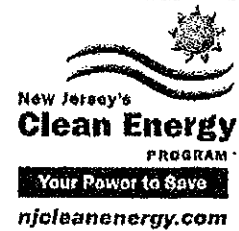
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May 18, 2011

Mr. Joseph Polidoro, President  
Green Cities Energy, LLC  
717 South Columbus Blvd., Suite 522  
Philadelphia, PA, 19147

RE: Notice of Next Steps on Green Cities Remediation Matter

Dear Mr. Polidoro,

Subsequent to our meeting on March 15, 2011 we discussed this matter with the Office of Clean Energy (OCE). Based on those discussions the Market Manager will not impose a Level 4 suspension for 12 months at this time. Alternatively, because certain facts regarding this matter remain in dispute, the Market Manager will refer Green Cities Energy, LLC (GCE) matter directly to the OCE for appropriate action.

While this matter is pending before the Board, the Market Manager has been asked by the OCE to closely monitor general quality of GCE's work and performance. GCE must continue to provide acceptable customer service and quality of work as well as be subject to new requirements, including requiring a certification under oath that all signatures on all submissions by GCE have been made by the named party. Requiring a certification regarding the signatures on forms submitted falls within the scope of Level 1 of the Contractor Remediation Procedures and addresses the core of the allegations. This Level 1 monitoring does not constitute a downgrade of the proposed issue and action, but rather a safeguard to insure the integrity of the application process pending further appropriate action by BPU Staff.

The Market Manager has developed monitoring procedures for GCE that will be followed immediately. Please see Appendices for the details as well as the certification form that was developed and will be required to be submitted to the Program with your paperwork for all new and pending projects. In addition, the Market Manager is directing GCE to provide a list of projects in which GCE is involved and to specify their role and level of involvement in each project.

Should you have any questions on these next steps, please call me directly at 732-218-3411.

Thank you,

  
Janja Lupse  
NJ Program Director

Cc: Eric G. Fikry, Blank & Rome LLP Counselors at Law  
Peter C. Bowers, Attorney at Law  
Mike Winka and Scott Hunter, BPU/OCE  
Mike Ambrosio, AEG

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## ATTACHMENT A

### **NJCEP Renewable Program's Monitoring Procedures for Green Cities Energy, LLC For Existing and Future Project Applications**

*Effective Immediately (May 18, 2011)*

**Full Company Name and Address:**

Mr. Joseph Polidoro  
President  
Green Cities Energy, LLC (GCE)  
717 South Columbus Blvd., Suite 522  
Philadelphia, PA, 19147

The following monitoring procedures will be implemented and be followed by GCE and the renewable processing team during the period of the remediation matter pending with the OCE Staff:

1. Each existing\* or future project that GCE is involved with, GCE operations or performance representative will be required to complete, sign and submit with the project documents the *Affidavit Certification Application Form* (See Appendix A). This required Form is a certification under oath that all signatures on all submissions by GCE have been made by the named party.
2. When the GCE applications packages arrive to the NJCEP Renewable Program, the mail administrator will review the entire package to ensure all documents look in order, signatures are matching and that the Affidavit Certification Application Form has been included and it indicates which role GCE plays in the specific project.
3. Once reviewed by the mail administrator, it will be reviewed by the MM's remediation manager and stored in a separate location. A detailed tracking spreadsheet of all existing and/or new applications will be created and requirement information will be logged. If during that time, it is discovered that either the Form is missing or signatures do not match or any other paperwork quality seems poor, the MM will immediately notify the OCE Staff to report additional non-compliance under the current procedures during this pending period. The project status will be put on hold until the issue is resolved.
4. All projects, in which GCE is involved, as indicated in the Affidavit Certification Application Form, will be flagged for inspection.
5. Level I provides that when the general quality of work of a contractor participating in the clean energy program(s) is not up to accepted standards that the MM may provide guidance to the contractor to bring performance up to standard and to monitor the applications submitted by the contractor.

*\*Note: GCE will need to submit the Affidavit Certification Application Form even for the projects currently at NJCEP offices that may have already been approved or are pending approval.*

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**ATTACHMENT B**

**CERTIFICATION IN SUPPORT  
OF NJCEP RENEWABLE PROGRAM  
APPLICATION**

STATE OF New Jersey  
COUNTY OF \_\_\_\_\_

Application Name \_\_\_\_\_

Project Number (if available) REIP / REIP-NR / SRP - \_\_\_\_\_

I, \_\_\_\_\_, of full age, certify and say:

- 1. I hold the position of \_\_\_\_\_ with Green Cities Energy, LLC which is submitting this application.

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

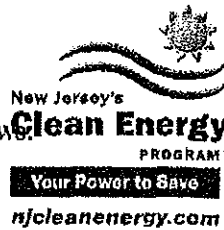
- 2. I am the authorized representative of Green Cities Energy, LLC and I am authorized to make and submit this certification on behalf of Green Cities Energy, LLC.
- 3. The information regarding this application is referenced in Attachment A, which is appended hereto.
- 4. I have personally examined and I am familiar with the application referenced in this certification and all attached documents.

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5. Green Cities Energy, LLC involvement with this applications is as follows:

- Project Manager (Paperwork Processor)
- SREC Owner
- Rebate Recipient
- Project Financier
- Installer

6. I further certify that all approvals and signatures identified in Attachment A are authentic and have been affixed and executed by the parties named in the application.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

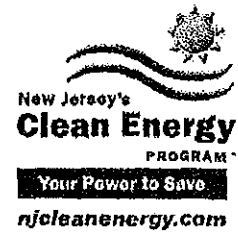
Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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ATTACHMENT A (PLEASE ATTACH RELEVANT DOCUMENTATION)



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## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made effective this 27th day of September, 2011 (the "Effective Date"), by and between The Office of Clean Energy ("OCE"), and Green Cities Energy, LLC ("Green Cities") (collectively, the "Parties").

### RECITALS

**WHEREAS**, The New Jersey Board of Public Utilities (the "Board") administers the New Jersey Clean Energy Program ("NJCEP"), which includes several programs, such as the REIP and the SREC Registration Program ("SRP"), among others.

**WHEREAS**, Honeywell, Inc., ("Honeywell") under contract to the NJBPU, is the NJCEP Renewable Energy Market Manager. Honeywell is responsible for managing the suite of NJCEP renewable energy programs for the NJBPU which includes both REIP and SRP.

**WHEREAS**, Green Cities is a solar and wind installation company that to date has performed 27 commercial and residential solar energy installations in the State of New Jersey that have been approved by NJCEP.

**WHEREAS**, by Order dated October 5, 2010, Docket No. EO07030203 (the "October 5, 2010 Order"), the Board established contractor remediation procedures for the NJCEP. The procedures categorize different types of behavior into levels based upon severity and establish recommended action for issues identified within each level. For example, the contractor remediation procedures approved by the Board define a Level 4 infraction as: "Intentional misconduct including evidence of theft, larceny, fraud, drug/alcohol abuse, forged-fake invoices, or other misconduct intended to be outside program procedures." The recommended action: "Level 4 infractions result in a one-year suspension from the program and reinstatement only upon petition and approval by the Board." A true and correct copy of the October 5, 2010 Order is attached hereto as Exhibit A, and is incorporated herein by reference.

**WHEREAS**, the OCE has been advised by Honeywell that Green Cities submitted REIP applications with improper signatures, *i.e.*, more than one person who allegedly signed the applications has informed Honeywell that the signature on the application is not theirs and was not authorized by them.

**WHEREAS**, Green Cities disputes Honeywell's conclusion, but nevertheless in April 2011 voluntarily implemented a self-imposed policy of obtaining a Statement of Signature Attestation in connection with all applications in an attempt to prevent future similar allegations.

**WHEREAS**, By letter dated May 18, 2011, Honeywell advised Green Cities that certain monitoring procedures had been developed that would be applicable to all new and pending project applications submitted by Green Cities, which procedures were immediately implemented by Green Cities (the "May 18, 2011 Letter"). The monitoring procedures are set out in the May 18, 2011 letter, and include a requirement that Green Cities submit a certification authenticating all application approvals and signatures for all new and pending projects. A true and correct copy of the May 18, 2010 Letter is attached hereto as Exhibit B, and is incorporated herein by reference.

**WHEREAS**, on or about July 14, 2011 the Board entered an Order directing Green Cities to show cause why a Final Order should not be entered imposing a Level 4 infraction on Green Cities (the "Litigation").

**WHEREAS**, after substantial negotiations and in consultation with their respective counsel, the Parties have individually and independently concluded that it is in their respective best interests to settle and resolve the Litigation, subject to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements exchanged herein, the receipt and sufficiency of which is acknowledged, Plaintiff and Defendants hereby memorialize their agreement in resolution of the Litigation as follows:

1. **ONE YEAR PERIOD OF PROBATION.** The Parties agree that Green Cities will be placed on probation for a period of one (1) year from the Effective Date of the Agreement (the "Probationary Period"). During the Probationary Period, Green Cities will be required to comply with the monitoring procedures set out in the May 18, 2011 Letter (Exhibit B) including the requirement that Green Cities submit the above-described certification for all new and pending projects, and will continue for the duration of the Probationary Period. Upon the expiration of the Probationary Period, Green Cities will no longer be obligated to comply with the monitoring procedures set forth in the May 18, 2011 Letter, however it may continue to utilize said monitoring procedures, or a similar procedure constituting best practices in the future.

2. **MECHANISM FOR ADDRESSING POTENTIAL INFRACTIONS DURING THE PROBATIONARY PERIOD.** If during the Probationary Period, the Renewable Energy Market Manager or any subsequent entity under contract to the NJBPU to provide the same services identifies a potential infraction(s) on the part of Green Cities, the following procedure shall be implemented:

- a. **Notification of Green Cities and Initial Response.** The Renewable Energy Market Manager will immediately advise Green Cities in writing of the nature and circumstances of the alleged infraction(s), the identity of any complainant(s), and provide Green Cities with ten (10) days to submit a written response to the allegations.
- b. **The Renewable Energy Market Manager's Recommendation.** After review and consideration of Green Cities' response, the Renewable Energy Market Manager will make a determination regarding whether or not, in its opinion, an infraction occurred.

If the Renewable Energy Market Manager determines that a Level 1 infraction occurred, it shall implement the appropriate "Recommended Action" for Level 1 infractions as set forth in the October 5, 2010 Order, upon notice to the OCE and Green Cities.

If the Renewable Energy Market Manager determines that a Level 2 or higher infraction occurred, or seeks to impose any penalty involving either (1) suspension of Green Cities from participation in NJCEP for any length of time; or, (2) communication with Green Cities' clients, it will forward to the OCE its recommendation, along with any supporting documentation. The Renewable Energy Market Manager shall contemporaneously serve Green Cities with a copy of its recommendation to the OCE, as well as any attachments thereto. Green Cities will have ten (10) business days from service of the Renewable Energy Market Manager's recommendation to submit a written response to the Renewable Energy Market Manager's recommendation to the OCE.

- c. **OCE Review of Market Manager Recommendation.** OCE shall review the Renewable Energy Market Manager's recommendation and make an Independent Determination as to whether an infraction has occurred. In making an Independent Determination, OCE shall review and consider both the Renewable Energy Market Manager's recommendation, and Green Cities' response thereto. If OCE concludes that the complained of conduct occurred, it may impose sanctions appropriate to the severity of the infraction, up to and including suspension, subject to appeal to the Board by Green Cities.

- d. **Green Cities' Right to Appeal OCE Decision to the Board.** If OCE finds that a Level 2 or higher infraction occurred, or seeks to impose any penalty involving either (1) suspension of Green Cities from participation in NJCEP for any length of time; or, (2) communication with Green Cities' clients regarding the infraction, it shall notify Green Cities of its determination in writing. Notice of suspension shall be provided at least 30 days before the effective date of the suspension. Green Cities shall have 30 days to appeal the OCE's decision to the Board, for a full hearing on the merits.
- e. **Reinstatement.** In the event that a suspension is imposed upon Green Cities upon conclusion of an appeal to the Board or as a result of arbitration, Green Cities may be reinstated only upon petition and approval by the Board.

3. **NO ADMISSION OF LIABILITY.** This Agreement is a compromise and settlement of disputed claims and is entered into in order to avoid the expense and uncertainty of additional litigation and is not to be considered a judgment on the merits. This Agreement and the execution and performance of same shall not be construed, considered or otherwise deemed to be an admission or acknowledgement by any party of any wrongful or improper act or conduct, nor of any liability to any other party, or evidence thereof, and said liability is expressly denied. This Agreement shall not be taken or used, or be deemed admissible evidence in any action or proceeding except to enforce the terms of this Agreement.

4. **WITHDRAWAL OF LITIGATION.** At the earliest opportunity following receipt of the fully-executed copy of this Agreement, NJBPU Staff shall recommend to the Board that the Board enter an Order withdrawing the Order to Show Cause, and shall provide counsel for Green Cities with a copy of the Order that has been entered and signed by the Board.

5. **FUTURE VIOLATIONS DURING THE PROBATIONARY PERIOD.**

**(a) Level 1 Infraction**

Board Staff will follow the procedure outlined in Exhibit A.

**(b) Level 2 Infraction or higher**

In the event of a future alleged Level 2 or higher infraction by Green Cities during the Probationary Period, Board Staff shall be entitled to present evidence and make arguments regarding the allegations which initiated the Litigation and these settlement proceedings. Green Cities shall have the right to offer evidence and make arguments in support of its position on these allegations, the Litigation and these settlement proceedings. If upon expiration of the Probationary Period, Green Cities has not been determined by the Board to be liable for a Level 2 or higher infraction, OCE agrees not to prosecute Green Cities for the alleged infractions which are the subject of the Litigation. Green Cities understands that this does not bar anyone not a party to this Agreement from petitioning the Board for review of any alleged infractions which are *not* the subject of the Litigation. In the event that someone not a party to this Agreement files a petition with the Board during the Probationary Period seeking review of the alleged infractions which are the subject of the Litigation, Board Staff agrees that it will not use the Order to Show Cause in this matter as the basis for the prosecution of an enforcement action, and after review of any future petition brought before the Board, if that petition contains the same contents as the alleged infractions subject to this litigation, Board Staff agrees not to prosecute pursuant to this agreement.

6. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties hereto. It supersedes any and all prior agreements relating thereto. There are no other understandings or agreements between or among the parties with respect to the subject matter hereof except as set forth herein. No condition or provision of the Agreement may be modified, waived or revised in any way except in writing executed by all parties and referring specifically to this Agreement.

7. **COUNTERPARTS.** The Parties agree that this Agreement may be executed in any number of counterparts, each of shall be taken to be one and the same instrument, to the same effect as if all Parties had the same signature page. The exchange of copies of this Agreement and of signature pages by electronic mail (.pdf) or facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by electronic mail (.pdf) or facsimile shall be deemed to be their original signatures for all purposes.

8. **PARTIAL INVALIDITY.** In the event any provision of this Agreement is held to be contrary to or invalid under the laws of any country, state, municipality, or other jurisdiction, such illegality or invalidity shall not affect in any way any of the other provisions hereof, all of which shall continue in full force and effect.

9. **CONSTRUCTION AND ENFORCEMENT.** The terms of this Agreement are the product of negotiations between the parties through their respective counsel, and shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. All words used in this Agreement shall be construed to be of such number and gender as the context requires or permits.

10. **NO WAIVER.** The failure of any party to this Agreement to exercise and/or delay in exercising any power or right hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise of any other power or right hereunder. Further, the waiver by any party to this Agreement of any right or remedy hereunder on any occasion shall not be construed as a waiver of any such right or remedy on any future occasion.

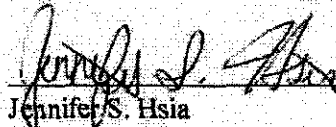
11. **AUTHORITY.** Each party represents that each person executing this Agreement on its behalf has been authorized to sign on behalf of the respective party and to bind it to the terms of this Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

12. **GOVERNING LAW, CHOICE OF FORUM AND JURISDICTION.** This Settlement Agreement and its interpretation and performance shall be governed by the laws of the State of New Jersey, without giving effect to its conflicts of law rules.

**SIGNATURE PAGE TO FOLLOW.**



**IN WITNESS WHEREOF**, the undersigned further state that they have read this Agreement and that they have reviewed it with their respective legal counsel and understand and agree to be bound by the terms herein.



Jennifer S. Hsia

**Deputy Attorney General**

**On behalf of the New Jersey Board of Public  
Utilities, Office of Clean Energy Staff**

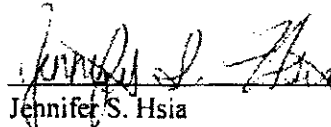
**Dated:** 3/8/12

Joseph Polidoro, Member

**GREEN CITIES ENERGY, LLC**

**Dated:** \_\_\_\_\_

**IN WITNESS WHEREOF**, the undersigned further state that they have read this Agreement and that they have reviewed it with their respective legal counsel and understand and agree to be bound by the terms herein.



Jennifer S. Hsia

**Deputy Attorney General**

**On behalf of the New Jersey Board of Public  
Utilities, Office of Clean Energy Staff**

Dated: 3/8/12

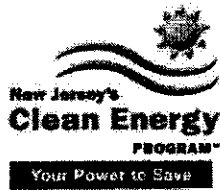


Joseph Polidoro, Member

**GREEN CITIES ENERGY, LLC**

Dated: 3-20-2012

# **EXHIBIT A**



On October 5, 2010 the Board of Public Utilities approved new procedures related to remediation of NJCEP contractor issues. The new procedures will become effective 30 days from the date of the Order. Attached please find the Board Order which sets out the new procedures. Please contact the program managers, Honeywell or TRC, if you have any questions regarding the new procedures.



Agenda Date: 10/5/10  
Agenda Item: 8C

**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 COMPREHENSIVE ENERGY )  
EFFICIENCY AND RENEWABLE ENERGY RESOURCE ) ORDER  
ANALYSIS FOR THE 2009 -2012: CONTRACTOR )  
REMEDIAATION PROCEDURES ) DOCKET NO. EO07030203

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities ("Board") at its October 5, 2010 public meeting, where the Board considered proposed New Jersey Clean Energy Program (NJCEP) contractor remediation procedures.

BACKGROUND

The Board has issued numerous Orders that approved NJCEP program and budgets administered by Honeywell, the Market Manager for the residential energy efficiency and renewable energy programs, and TRC, the Market Manager for the C&I energy efficiency programs. Several of the programs including the Home Performance with Energy Star, Residential HVAC, C&I New Construction, C&I Retrofit and Renewable Energy Incentive Programs are designed to allow for participation by any third party contractor that meets the program requirements.

Honeywell and TRC have indicated to the Office of Clean Energy (OCE) that at times contractors have violated program procedures and that in some cases a contractor may consistently violate program procedures. Honeywell and TRC have pointed out that they do not currently have the authority to take action against contractors that violate program procedures or to prohibit a contractor from participating in a program even in an extreme case where fraud is involved.

To provide the Market Managers with additional ability to take action against contractors that violate program procedures, Honeywell and TRC developed proposed contractor remediation procedures which were submitted to the OCE for review. The OCE reviewed and provided comments on the draft proposal. A revised proposal was submitted which was discussed at the January 12, 2010 meeting of the Energy Efficiency (EE) Committee. There was general support for the proposal from the contractor community. Honeywell and TRC prepared a revised draft of

the proposed contractor remediation procedures which was circulated by the OCE for comment on August 4, 2010. Specifically, the draft contractor remediation procedures were posted on the NJCEP web site and circulated to the EE and RE committees list serves with a request for comments by August 18, 2010. The following summarizes the comments received on the proposed contractor remediation procedures.

#### *Summary of Comments*

Comments were received from Public Service Electric and Gas Company (PSE&G), Laury Heating Company (Laury), and EnergySolve.

PSE&G stated that the process seems fair and effective and has been needed for a long time. PSE&G also indicated that it does not understand how designating a payment to a contractor will eliminate financial loss to the customer.

Laury commented that: the standards need to be defined and that there needs to be an appeal process, not just an immediate suspension or probation; that there needs to be some warning or heads up that standards are not being met; that there needs to be some consideration for the work that is already in the pipeline after the change or corrections are made; and that there needs to be timeframes associated with each step and level including timeframes for reviews, probations and notifications. Lastly, Laury also requested "some sort of process" to address customers who abuse the system.

EnergySolve submitted a redlined draft of the proposed procedures. EnergySolve proposed that contractors be given 5 days to dispute a proposed probation and that if the Market Manager is not persuaded it can then notify customers. EnergySolve also commented that customers should not be penalized for contractor actions in cases where the work was performed satisfactorily.

**Response:** The OCE concurs with PSE&G's comment that such procedures are needed. As a point of clarification, designating an incentive payment to the contractor would result in the contractor not receiving a rebate payment if outstanding issues are not resolved. This would transfer the risk on non-payment of a rebate from the customer to a contractor.

Both Laury and EnergySolve recommended an appeals process and some warning that standards are not being met. The OCE concurs. The revised contractor remediation procedures set out below incorporate an appeals process and also clarify that the existing NJCEP dispute resolution procedures are applicable to the contractor remediation procedures. The proposed procedures already include "verbal guidance and email correspondence documenting the remedial actions to bring the contractor up to the expected operating levels" which the OCE believes meets the request that some warning that standards are not being met be given.

The OCE also concurs with EnergySolve's comment that customers should not be penalized for contractor actions. The proposed procedures, as drafted, are intended to as a disincentive for contractors, not customers. The OCE will coordinate closely with the Market Managers to ensure customers are not harmed by contractor actions.

Laury also commented that that there needs to be some consideration for the work that is already in the pipeline after the change or corrections are made; and that there needs to be timeframes associated with each step and level including timeframes for reviews, probations

and notifications. The OCE concurs that consideration should be given for work already in the pipeline. The procedures allow for pending work to continue subject to close supervision and inspection. The OCE also believes that the proposed procedures include sufficient timelines such as the length of any probation period and the number of days given for making recommended improvements. The revised procedures set out below provide contractors with 5 days to appeal any proposed probation. Finally, while OCE appreciates Laury's concern regarding customers who act irresponsibly, a process for that situation is beyond the scope of this proceeding.

The following sets out the proposed contractor remediation procedures that incorporate the above changes recommended by the OCE:

#### **Proposed Contractor Remediation Procedures**

One of the primary responsibilities of the Market Managers is to oversee the level of performance of the contractors that participate in the New Jersey Clean Energy Program (NJCEP). This involves two primary areas: adherence to program processes and the level of service delivery. The Market Managers will continue to support those companies who participate in the NJCEP at both the management and field/administrative staff levels. These procedures are applicable to contractors participating in any NJCEP energy efficiency or renewable energy program.

For all contractors involved in the programs, Board Staff understands that three types of contractor issues commonly arise:

1. Deficiencies in adhering to established guidelines and procedures (administrative and field services)
2. Failure to provide the services to the customer in a timely and professional manner as described in the program
3. Intentional misconduct outside the established guidelines and procedures.

The following table describes most types of contractor issues and the recommended actions to either remedy the problem or take appropriate actions relative to the involved firm. The areas of non-performance will affect the level at which they enter the matrix if the infraction is deemed serious by the Market Manager.

	<b>Issue</b>	<b>Recommended Action</b>	<b>Follow-up</b>
Level 1	<p>General quality of work not up to accepted standard (delivery as required). For example:</p> <ul style="list-style-type: none"> <li>• Bad data on customer routinely provided</li> <li>• Miscounts</li> <li>• Wrong SEER/EER/HSFP numbers</li> </ul>	<p>Verbal guidance and e-mail correspondence documenting the remedial actions to bring the contractor up to the expected operating levels.</p>	<p>Provide more guidance on pending processes upfront, monitor their applications for improvement, retrain as needed</p>
Level 2	<p>Continued sub-par performance on process/field work issues. Continued sub-par performance is defined as submittal of any new applications or installation of any new measures, subsequent to the provision of Level 1 guidance defined above, that do not meet program standards.</p>	<p>Written probation letter is sent to contractor principal, copy to Program Coordinator for file. Defined timeline (30 days) given for making the recommended improvements based on the infractions to date. No issuance or approval of new jobs until quality is marked as improved by Market Manager. Probation includes no use of program forms, funding of co-op payments, use of logos or authorized software until fully reinstated. Contractor is given 5 days to dispute the probation by meeting in-person with Market Manager personnel to review all open work. If Market Manager is not persuaded within the 5 day period that the probation is not appropriate, the Market Manager must state that in writing and has the right to notify Customers whose applications are pending approval that their contractor is on probation. If imposed, Market Manager has the ability to remove contractor from any program list during this probationary period.</p>	<p>30 day probation period starts. If there are more problems during the probation period relative to program rules/processes, new projects are put on indefinite hold until the existing problems are resolved and Contractor would then be moved to Level 3. If work is improved as noted by Market Manager, notice of reinstatement sent and applications processed.</p>
Level 3	<p>No improvement in performance during 30-day probation period</p> <ul style="list-style-type: none"> <li>• Continuation of above</li> </ul>	<p>Written notice of suspension, cc: OCE and Program Coordinator. Contractor is given 5 days to dispute the suspension by meeting in-person with Market Manager personnel to review all open work. For (C&amp;I) rebates/incentives, all new applications must designate payment to contractor to eliminate potential financial loss to customer. No new assignment of work or new applications will be accepted. Contractors will be denied access to IT systems that submit new applications. For applications coming from contractors, customer will be notified of their status.</p>	<p>90 day suspension for any new work to be assigned/approved pending further investigation. Pending work to be closely supervised and inspected. Reinstatement only upon appeal, review, in-person meeting with MM personnel. Upon reinstatement the contractor will be returned to Level 2 with a 30 day probation period prior to being fully reinstated into the program</p>
Level 4	<p>Intentional misconduct</p> <ul style="list-style-type: none"> <li>• Evidence of theft, larceny, fraud, drugs/alcohol abuse, forged-faked invoices, or other misconduct intended to be outside the program procedures.</li> </ul>	<p>Written notice of suspension, cc: OCE and Program Coordinator. Market Manager will provide notification to the Attorney General's office detailing the allegations, cc: OCE and Program Coordinator. No applications processed for any customer listing the involved contractor. Customers contacted by Market Manager to advise them of contractor status.</p>	<p>One year suspension. No reinstatement without petition for BPU approval.</p>



**NOTE:** Customers calling to file a complaint will be advised that they can also contact the Division of Consumer Affairs (Phone 973-504-6200 or visit [www.njconsumeraffairs.gov](http://www.njconsumeraffairs.gov)). Further, all issues involving evidence of fraud or theft will be referred to the Office of the Attorney General.

***Market Manager Administration of Contractor Complaint Resolution Process***

- A) All issues regarding disputes and complaints relative to contractors need to have a hard copy paper trail (e-mail, customer letter, etc.). A copy of the complaint should be kept in the application folder with a scanned copy on a common hard drive, for future reference. The information required includes application number, date, complaint, resolution and any communications made to the involved contractor.
- B) Complaints involving a contractor need to be brought to attention of the Market Manager's Project Manager in all instances. If the complaint comes in from a source other than the customer, the Market Manager's Program Manager will reach out to the customer to verify and discuss the complaint. If the complaint is consumer-based, the customer may also wish to pursue other available avenues including the Division of Consumer Affairs.
- C) Once a contractor is at the Probation Level 2, all work in hand is monitored. That requires internal sign off by authorized Market Manger personnel prior to the incentive approval. All work (monitored and tracked at that Contractor level) is post inspected. All activity within the 30 day probation period is reviewed and shared with the involved Contractor at month end. If the work in hand is satisfactory, the Market Manager can reinstate the Contractor.
- D) If the contractor reaches the Probation Stage, the Market Manager will notify the Contractor in writing with a copy to the appropriate Market Manager personnel that they are on probation. In the event a new application is received that is related to the Contractor in question, a "notice of probation" letter will be sent to the customer advising that the involved Contractor is not approved to participate in the Program at this time. If the Program maintains a list of approved contractors, the contractor on probation may have their name removed from the list until the probation issues are resolved satisfactorily.
- E) If the Contractor improves their performance, they may be reinstated on a "probationary status" by the Market Manager.
- F) The Contractor will be suspended if another infraction occurs within 60 days of the end of the probation period as deemed by the Market Manager. A letter will be sent to the Contractor, with a copy to the Program Coordinator and OCE with the case history. Again, the same customer notification process would be in place as in item D above.
- G) The NJCEP has developed dispute resolution procedures which can be found on the NJCEP web site at; <http://www.njcleanenergy.com/main/board-public-utilities/board-public-utilities-0>. The existing dispute resolution procedures are applicable to any disputes regarding the contractor remediation standards set out above. A stay of any contractor suspension or probation issued by a Market Manager will be granted during the pendency of any related dispute filed with the Program Coordinator or informal complaint filed with the Office of Clean Energy. If all attempts to resolve an issue have been exhausted, pursuant to N.J.A.C. 14:1-1, contractors may file a petition with the NJ Board of Public Utilities.

The OCE has reviewed the proposed contractor remediation procedures and believes such procedures are necessary to maintain the integrity of the programs. As noted above, the contractor community generally supported the proposed procedures based on comments provided at the January 12, 2010 EE Committee meeting and the procedures proposed above were modified to address many of the written comments received. The OCE recommends that the Board approve the proposed contractor remediation procedures and authorize Honeywell and TRC to implement the procedures effective upon 30 days' notice to the contractor community.

**DISCUSSION AND FINDINGS**

The Board has reviewed the proposed contractor remediation procedures set out above. The Board believes that the programs require a certain level of rigor such that customers participating in the program have the confidence that the contractor they select is not a significant or consistent violator of program procedures. Further, the Board believes that the programs require procedures for the Market Managers to address issues related to contractor non-performance or in extreme cases fraud or theft. Such procedures do not currently exist.

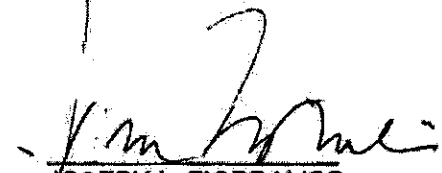
The proposed procedures set out above distinguish between different levels of infractions and the recommended actions are appropriately related to the level of the infraction. Based on the above, the Board **HEREBY APPROVES** the contractor remediation procedures set out above and authorizes Honeywell and TRC to implement the procedures effective upon 30 days' notice to the contractor community.

DATED: 10/5/10

BOARD OF PUBLIC UTILITIES  
By:

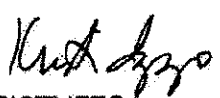
  
LEE A. SOLOMON  
PRESIDENT

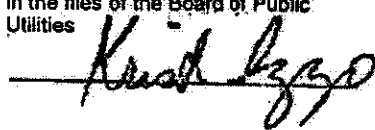
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

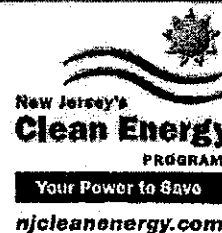
ATTEST:  
  
KRISTI IZZO  
SECRETARY

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


# **EXHIBIT B**

May 18, 2011

Mr. Joseph Polidoro, President  
Green Cities Energy, LLC  
717 South Columbus Blvd., Suite 522  
Philadelphia, PA, 19147



RE: Notice of Next Steps on Green Cities Remediation Matter

Dear Mr. Polidoro,

Subsequent to our meeting on March 15, 2011 we discussed this matter with the Office of Clean Energy (OCE). Based on those discussions the Market Manager will not impose a Level 4 suspension for 12 months at this time. Alternatively, because certain facts regarding this matter remain in dispute, the Market Manager will refer Green Cities Energy, LLC (GCE) matter directly to the OCE for appropriate action.

While this matter is pending before the Board, the Market Manager has been asked by the OCE to closely monitor general quality of GCE's work and performance. GCE must continue to provide acceptable customer service and quality of work as well as be subject to new requirements, including requiring a certification under oath that all signatures on all submissions by GCE have been made by the named party. Requiring a certification regarding the signatures on forms submitted falls within the scope of Level 1 of the Contractor Remediation Procedures and addresses the core of the allegations. This Level 1 monitoring does not constitute a downgrade of the proposed issue and action, but rather a safeguard to insure the integrity of the application process pending further appropriate action by BPU Staff.

The Market Manager has developed monitoring procedures for GCE that will be followed immediately. Please see Appendices for the details as well as the certification form that was developed and will be required to be submitted to the Program with your paperwork for all new and pending projects. In addition, the Market Manager is directing GCE to provide a list of projects in which GCE is involved and to specify their role and level of involvement in each project.

Should you have any questions on these next steps, please call me directly at 732-218-3411.

Thank you,

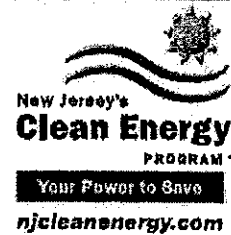
  
Janja Lupsse  
NJ Program Director

Cc: Eric G. Fikry, Blank & Rome LLP Counselors at Law  
Peter C. Bowers, Attorney at Law  
Mike Winka and Scott Hunter, BPU/OCE  
Mike Ambrosio, AEG

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ATTACHMENT A

**NJCEP Renewable Program's Monitoring Procedures for Green Cities Energy, LLC  
For Existing and Future Project Applications**

*Effective Immediately (May 18, 2011)*

**Full Company Name and Address:**

Mr. Joseph Polidoro  
President  
Green Cities Energy, LLC (GCE)  
717 South Columbus Blvd., Suite 522  
Philadelphia, PA, 19147

The following monitoring procedures will be implemented and be followed by GCE and the renewable processing team during the period of the remediation matter pending with the OCE Staff:

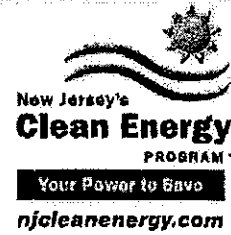
1. Each **existing\* or future** project that GCE is involved with, GCE operations or performance representative will be required to complete, sign and submit with the project documents the **Affidavit Certification Application Form** (See Appendix A). This required Form is a certification under oath that all signatures on all submissions by GCE have been made by the named party.
2. When the GCE applications packages arrive to the NJCEP Renewable Program, the mail administrator will review the entire package to ensure all documents look in order, signatures are matching and that the Affidavit Certification Application Form has been included and it indicates which role GCE plays in the specific project.
3. Once reviewed by the mail administrator, it will be reviewed by the MM's remediation manager and stored in a separate location. A detailed tracking spreadsheet of all existing and/or new applications will be created and requirement information will be logged. If during that time, it is discovered that either the Form is missing or signatures do not match or any other paperwork quality seems poor, the MM will immediately notify the OCE Staff to report additional non-compliance under the current procedures during this pending period. The project status will be put on hold until the issue is resolved.
4. All projects, in which GCE is involved, as indicated in the Affidavit Certification Application Form, will be flagged for inspection.
5. Level I provides that when the general quality of work of a contractor participating in the clean energy program(s) is not up to accepted standards that the MM may provide guidance to the contractor to bring performance up to standard and to monitor the applications submitted by the contractor.

*\*Note: GCE will need to submit the Affidavit Certification Application Form even for the projects currently at NJCEP offices that may have already been approved or are pending approval.*

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ATTACHMENT B

CERTIFICATION IN SUPPORT  
OF NJCEP RENEWABLE PROGRAM  
APPLICATION

STATE OF New Jersey  
COUNTY OF \_\_\_\_\_

Application Name \_\_\_\_\_

Project Number (if available) REIP / REIP-NR / SRP - \_\_\_\_\_

I, \_\_\_\_\_, of full age, certify and say:

1. I hold the position of \_\_\_\_\_ with Green Cities Energy, LLC which is submitting this application.

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

2. I am the authorized representative of Green Cities Energy, LLC and I am authorized to make and submit this certification on behalf of Green Cities Energy, LLC.
3. The information regarding this application is referenced in Attachment A, which is appended hereto.
4. I have personally examined and I am familiar with the application referenced in this certification and all attached documents.

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5. Green Cities Energy, LLC involvement with this applications is as follows.

- Project Manager (Paperwork Processor)
- SREC Owner
- Rebate Recipient
- Project Financier
- Installer

6. I further certify that all approvals and signatures identified in Attachment A are authentic and have been affixed and executed by the parties named in the application.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

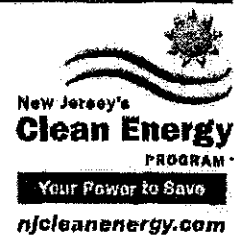
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ATTACHMENT A (PLEASE ATTACH RELEVANT DOCUMENTATION)



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