



STATE OF NEW JERSEY
Board of Public Utilities
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Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE BAYONNE MUNICIPAL) ORDER
UTILITIES AUTHORITY PETITION FOR THIRD)
EXTENSION OF THE CUSTOMER ON-SITE)
RENEWABLE ENERGY (CORE) REBATE) DOCKET NO. EG11030135V
COMMITMENT PERIOD)

Parties of Record:

Leslie G. London, Esq., McManimon & Scotland, LLC
Stephen Gallo, Executive Director, Bayonne Municipal Utilities Authority

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") considers and renders its decision regarding a request of the Bayonne Municipal Utilities Authority ("BMUA" or "Petitioner") for a third extension of its Customer On-site Renewable Energy ("CORE") program rebate commitment deadline to construct a 1.5 megawatt wind turbine to power the BMUA's main sewage pumping station.

Background

The CORE program was designed to support the sustained and orderly development of markets for distributed renewable electric generation in New Jersey. The program offered financial incentives to New Jersey public utility customers investing in eligible, on-site renewable electricity generation using photovoltaic, wind, biomass, and fuel cell systems¹.

BMUA is a municipal public utilities authority located in Bayonne, New Jersey. By letter dated July 16, 2008, the Board's New Jersey Clean Energy Program ("NJCEP") through its Renewable Energy Market Manager ("Market Manager") issued BMUA a CORE rebate

¹ The Board closed the CORE program to all new solar applications in 2008. See In the Matter of a Request to Suspend the Acceptance and Processing of New Solar Applications in New Jersey's Customer On-Site Renewable Energy (CORE) Rebate Program, Docket No. EO07100773 (Dec. 20, 2007).

commitment for an estimated rebate amount of \$822,600.00, to cover part of the costs of a 1.5 MW wind system, with an expiration date of July 16, 2009. The initial estimated rebate level was based on the public, non-profit wind rebate levels that were in effect at the time that the application was approved. Following BMUA's first June 16, 2009 request to extend due to delays in obtaining financial assistance, the Market Manager on July 10, 2009 granted a twelve-month extension of the rebate commitment period to July 16, 2010. On December 16, 2009, the Market Manager granted a second extension of the CORE rebate expiration period to July 10, 2011. See Board order dated October 7, 2009, Docket No. EO07030203 (authorizing second extensions for CORE public projects greater than 10 kilowatts under certain circumstances).

On January 12, 2010, BMUA entered into a contract with FAI-GON Electric Inc., its general contractor for electrical design of the wind project, for a total contract bid price of \$5,604,856. As of this month, the applicant has certified that the site has been generally graded to the proposed contours; hundreds of tons of existing concrete foundations have been demolished and removed; heavy duty steel piles have been delivered and some installed; and excavation for the concrete pile cap has been commenced. BMUA's engineer further certifies that as of November 1, 2010, approximately \$675,931.05 had been expended in payments for partial performance of the contract, comprising approximately 12% of the total project cost expenditure. BMUA has additionally expended \$1,200,000 in associated costs involving engineering, permitting and other preliminary costs. Given that the New Jersey wind market has not reached an advanced stage in its development compared to other renewable energy sources such as solar and considering the technical and more complicated measures that must be employed to install wind power, BMUA's progress since 2008 is significant and consistent with the State's efforts to achieve its renewable energy goals.

On December 11, 2010, BMUA applied to the United States Environmental Protection Agency ("USEPA") for approval of a waiver for the wind project to comply with the Buy American requirement, pursuant to Section 1605 of the American Recovery and Reinvestment Act of 2009 ("ARRA") (mandating that all iron, steel, and manufactured products used in ARRA-funded public projects be U.S.-manufactured), Pub. L. 111-5. BMUA averred that the only available domestic company capable of manufacturing a wind turbine generator had earlier withdrawn due to its inability to meet the BMUA project's specifications. On March 8, 2011, FAI-GON Electric Inc. ("FAI-GON") and Leitner-Poma of America ("LOPA") entered into a letter of intent to contract by March 15, 2011 providing that the LTW77 wind turbine generator would be deliverable to BMUA within six months of the date of an executed contract of sale. On March 10, 2011, the USEPA granted a waiver of the Buy American requirement pursuant to Section 1605(b)(2)[manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality to the BMUA]. U.S. Envtl. Agency, 76 Fed. Reg. 18,757 (Mar. 10, 2011), The waiver, which was made effective on April 5, 2011, allowed BMUA to waive its compliance with the Buy American requirement and to remain eligible for ARRA-funds for the project upon its purchase of the Leitwind 77 1.5 mW wind turbine generator manufactured by LOPA. Ibid.

On March 11, 2011, BMUA requested a third extension of the rebate commitment period due to delay in obtaining federal waiver approval and a delay in obtaining the wind turbine generator. BMUA asserts that additional delays and costs increased when the proposed configuration required significant changes after the award of the construction contract and the local utility was unfamiliar with the aspects of interconnecting a wind turbine with their system. Petitioner asserts that its financing model requires the CORE rebate incentive and that in order to proceed it needs assurance that these rebate monies will remain available upon the project's completion.

Based upon BMUA's representations that it has resolved its legal compliance preventing the sale of the wind turbine generator, Staff therefore recommends that CORE Program Guidelines be waived to allow a twelve-month extension of the rebate commitment period to July 10, 2012.

Discussion and Findings

Petitioner's request for a third extension would require a waiver of the CORE Guidelines. Customer On-site Renewable Energy (CORE) Program Update. See Board order dated October 7, 2009, Docket No. EO07030203. In considering BMUA's request to waive the CORE Program Guidelines, the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1): first, whether the request is in accord with the general purposes and intent of the guidelines; and second, whether full compliance with the guidelines would adversely affect a ratepayer, utility, or the public interest.

To determine the general purpose and intent of the Guidelines, the Board looks to its policy on initial and second extensions. Such extensions will be granted when the delay was unavoidable and unforeseeable at the time of the rebate application and when the applicant can document significant progress toward project completion. Customer On-site Renewable Energy (CORE) Program Update, 14 (Aug. 17, 2006). The Guidelines and the Order authorizing the Market Manager to allow second extensions suggest that extensions are reasonable when the delay was beyond the control of the applicant, but where the applicant has made a good faith effort to advance the project.

BMUA represents that an unforeseen delay occurred beyond its control when the petitioner was unable to foresee that it would not either timely be able to comply with or be waived from compliance with the "Buy American" requirement in order to meet the second extended rebate commitment expiration deadline. BMUA took prompt actions to resolve this issue. BMUA applied for a waiver, yet the administrative process delayed resolution for four months. BMUA contemporaneously entered into a letter of intent to purchase the required equipment and set a delivery date for six months from the date of execution of the contract of sale, but alleges that without assurance of a CORE rebate extension as a component of its funding, this contract was not executed. The Board **FINDS** that these delays were unavoidable and unforeseeable.

As to Petitioner's progress with its project, BMUA has provided documentation that the project is approximately 12% complete and that in excess of ten percent of budgeted funds for construction have been expended, in addition to engineering and other preliminary costs in excess of \$1.2 million. The rebate commitment length for wind projects in New Jersey's Clean Energy Program have historically been longer than solar rebate commitments to account for the greater degree of difficulty for wind project development, permitting, equipment supply, and construction. In light of the relatively undeveloped nature of the wind market compared with the solar market in New Jersey as well as the continued reliance upon rebates required by wind project economics, the Board **FINDS** that Petitioner has made significant progress toward completion of the project. The Board **FURTHER FINDS** that BMUA has acted in good faith to resolve its legal and financial impediments in an effort to proceed with its construction.

The Board also considers whether full compliance with the Guidelines would adversely affect the interest of the public. See N.J.A.C. 14:1-1.2(b)(1). The development of a wind energy project by the BMUA is consistent with New Jersey's Energy Master Plan, which calls for New Jersey agencies to take the lead in renewable energy development. The proposed 1.5 MW wind project is anticipated to power at least 1,300 MWh of electricity to offset existing power needed at the public water supply. The BMUA has stated that it considers the financial

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