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Agenda Item: LSA

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 THE CLEAN ENERGY)
PROGRAM CUSTOMER ON-SITE RENEWABLE) ORDER
ENERGY (CORE) – REQUEST FOR)
EXTENSION OF COMPLETION TIMEFRAME)
FOR EXISTING COMMITMENT – NEW JERSEY) DOCKET NO. EO09070573
MEADOWLANDS COMMISSION)

Marcia Karrow, Executive Director, New Jersey Meadowlands Commission, Lyndhurst, New Jersey

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BY THE BOARD:

By this Order, the Board of Public Utilities (“Board”) considers and renders its decision regarding a request of the New Jersey Meadowlands Commission (“Petitioner” or “NJMC”) for a third extension of its Customer On-site Renewable Energy (“CORE”) rebate commitment deadline in order to complete its solar project.

Background

The NJMC is a State agency focused on enhancing environmental quality through the implementation of clean forms of energy.¹ In April 2006, the NJMC announced a major initiative to develop 20 MW of new sources of renewable energy in the Meadowlands District by 2020. The NJMC states that this initiative is anticipated to be an important part of the region’s economic growth strategy while also reducing its carbon footprint. NJMC also states that this initiative is intended to serve as an example of progressive energy planning for regional authorities and communities throughout New Jersey.

The Board of Public Utilities’ Customer On-Site Renewable Energy (“CORE”) program offered prescribed financial incentives to New Jersey property owners to encourage the installation of Class I renewable energy technologies behind the meter.² Eligible applicants might receive

¹ The Meadowlands District is a 30.4 square mile district along the Hackensack River, defined by statute, covering parts of 14 municipalities in Bergen and Hudson counties. N.J.S.A. 13:17-4.

² The Board closed the CORE program to new private sector solar applications on December 20, 2007 and closed the CORE program to all public sector solar applications as of April 1, 2008. In the Matter of a

rebates for a portion of the cost of installing solar, wind, or sustainable biomass at their site. The Board allocated rebate funding within the CORE program among different applications according to the technology, the project size, and the customer class of the proposed project. As a result, CORE funding was divided among private sector solar applications less than or equal to 10 kilowatts (kW); private sector solar applications greater than 10 kW; public school (k-12) solar applications from schools; SUNLIT;³ non-school public sector solar applications; and non-solar (wind and biomass) applications.

On August 24, 2007, the Board authorized, as within time, a CORE program commitment letter for an estimated rebate of \$1,570,500. I/M/O Petition of New Jersey Meadowlands Commission for an Allocation of 2008 Rebate Funds, Docket No. EO07070560 (Aug. 24, 2007). This rebate was intended to assist with the development of a 700 kW solar facility (application # MM05109) whose generation would be offset by usage at NJMC buildings located at 1 DeKorte Plaza, 2 DeKorte Plaza, and a maintenance shop at the same location (revised Technical Worksheet received May 7, 2007). The CORE program commitment letter provided that NJCEP was not authorized to process the application for payment until after 1/1/08 and that "Any changes between the system as proposed on your rebate application form and technical worksheets, and the system as installed [system] must be fully documented and will be subject to final approval by the CORE Program Manager." The rebate commitment length was 12 months from the date of the commitment letter, expiring August 1, 2008.

In July 2008, NJMC requested its first extension, stating that its ability to construct the facility on an easement held by the Transcontinental Pipeline Company ("Transco") was the subject of ongoing discussions with Transco. Prior to Transco's objections, the NJMC believed that the available property could accommodate the solar project without interfering with Transco's use of the easement and had not anticipated an issue. The deadline was extended to August 1, 2009 by letter dated July 17, 2008.

By letter dated July 1, 2009, the NJMC filed a timely petition with the Board requesting a waiver of the CORE Program Guidelines to permit an additional twelve month extension of the rebate commitment to August 1, 2010. NJMC represented that the basis for its request was the inability to resolve its issues with Transco. In its July 1, 2009 petition, the NJMC proposed two complementary solar projects as an alternative to the originally proposed solar project, the NJMC Solar Parking Lot Canopy Project and the NJMC 1A Landfill Solar Project, both of which are located on NJMC-owned property. The first project would consist of an estimated 150 kW canopy solar system covering the visitor and administrative parking lots at the NJMC campus in Lyndhurst, NJ. The second project would be constructed on the long-closed 1-A Landfill, which is located on an NJMC-owned property in Kearny and has the capacity to house a facility with an estimated 5 MW nameplate capacity. NJMC further proposed that the CORE rebate of \$1,570,500 be applied to both projects with \$383,000 for the parking lot canopy project and \$1,187,500 for the landfill project. It was further proposed by NJMC that the energy from the NJMC MSLA 1A Landfill Solar Project would be used at an adjacent contiguous property not a NJMC-owned property but within the NJMC district, which was consistent with the CORE Program Guidelines.

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) ("December 20th Order"). The successor program, Renewable Energy Incentive Program ("REIP") was instituted in 2009.

In considering NJMC's request to waive the CORE Program Guidelines the Board applied the two-prong test set forth at N.J.A.C. 14:1-1.2(b)(1): whether the petitioner's request was in accord with the general purposes and intent of the guidelines and whether full compliance with the Guidelines would adversely affect the interest of the public. The Board found that NJMC's request met both prongs of the test and granted the request for a second extension and a third year to complete the project, subject to the following conditions:

- 1) The rebate amount would be reduced to \$1,413,450 (a reduction of 10%);
- 2) The NJMC would direct the economic benefits that it realized from these projects to fund further renewable energy and energy efficiency projects in the Meadowlands District;
- 3) The NJMC would have flexibility and discretion with respect to the amount of the rebate to be allocated to each of the two solar projects (1-A Landfill and the Parking Lot canopy); and,
- 4) The OCE staff would place this matter on the Board's August 19, 2009 agenda for consideration.

I/M/O the Customer On-Site Renewable Energy (CORE) Program – Request for Extension of Completion Timeframe for Existing Commitment – New Jersey Meadowlands Commission, Dkt. No. EO09070573 (August 19, 2009) at p 3.

On Jan. 7, 2010, the Program Manager issued a commitment letter granting a second extension to August 1, 2010, with a reduced rebate amount of \$1,413,450.

On August 7, 2009 NJMC submitted a proposal for \$10 million in funding for its 1-A Landfill Solar Project in response to a Grant Solicitation issued by the Board, in Docket EO09060470, dated July 6, 2009, for the Innovation in Energy Efficiency and Renewable Energy—Public Entities Program, grants to be funded by monies made available through the American Reinvestment and Recovery Act (“ARRA”) State Energy Program (SEP). On October 26, 2009, the Board issued an Order in that docket awarding a grant to NJMC in the amount of \$8.5 million. The Grant Agreement between the Board and NJMC was fully executed on October 28, 2010. All ARRA projects must be completed with ARRA funds disbursed prior to April 30, 2012 or the funds must be returned to the federal government. The estimated cost of the Landfill Solar Project as provided by the NJMC as part of their ARRA grant budget is \$17.7 million

NJMC's Request for Third Extension and Related Waivers

By letter dated July 29, 2010, NJMC filed a letter with the Board seeking a third extension of the completion timeframe (“July 29 Petition”). In the July 29 Petition, NJMC represented that further unforeseen events beyond its control had transpired, including a recent major storm event; inability to obtain information from PSE&G regarding interconnection to the utility's distribution circuit, which in turn delayed the vendor from developing final project specifications; and delays resulting from the length of time required to finalize the Grant Agreement to implement NJMC's ARRA grant. NJMC contends that the delays in the finalization of the Grant Agreement were the most significant cause of delay in project construction and thus in the need for a third extension. According to NJMC, without the Grant Agreement it was unable to secure the remaining financing for the project and NJMC was unable to finalize its contract with its vendor. Although the Parking Lot Canopy Project is not funded by the ARRA grant, NJMC believed that both projects must be completed prior to release of CORE funding. NJMC represents that,

because of this belief, the construction of the two projects was timed so that both will be completed together and thus both were delayed by the process of finalizing the Grant Agreement.

NJMC further represented that substantial progress has been made on both projects. The July 29 Petition states that most of the pre-construction tasks have been completed on the Landfill Project, including a Phase I environmental investigation, pre-application meetings with NJDEP, a Feasibility/Impact Study by PJM, and an interconnection agreement to the electricity grid, as well as the finalization of the pricing, design and layout of the interconnection with PSE&G's distribution circuit. With respect to the Parking Lot Canopy Project, the July 29 Petition states that NJMC and its vendor have conducted site investigations, developed initial project specifications, are negotiating a final contract, and that NJMC is in talks with suppliers and subcontractors.

In response to the July 29 Petition, Board Staff ("Staff") sought detailed project schedules and an explanation of these schedules, which were received on November 3, 2010 and December 3, 2010, respectively. In addition, Staff learned that the estimated capacity for the Landfill Project had decreased from 5MW to 3MW and the estimated capacity for the Parking Lot Canopy Project decreased from 150kW to 120kW.

Staff believes that, based upon the Petitioner's representations set forth above that Petitioner qualifies for a waiver of the Guidelines so as to allow for a third extension of the rebate commitment deadline.

Staff also engaged in discussions with NJMC regarding the eligibility of its 3 MW landfill project for the CORE rebate. The CORE rebate for the two projects is predicated upon the rebate approved for the 700 kW project brought to the NJCEP in 2007. Given the change in project configuration, it became necessary to ensure that the alternative projects approved in August 2009 continued to comply with all CORE eligibility requirements, including the requirement that customer usage and generation be located "on-site".

In this case, the original 700 kW project was located in the Meadowlands District on NJMC owned property at DeKorte Park Plaza in Lyndhurst, NJ ("DeKorte Site") and documentation of usage equivalent to or greater than 700 kW at that site was submitted at the time of the original 2007 CORE Rebate Application. In its Order approving the second extension, the Board approved the re-location of a portion of project to the 1A Landfill site in Kearny which is within the Meadowlands District and is also owned by NJMC ("Landfill Site"). The Board's approval in the second extension order was based on the discussions between Staff and NJMC that one option under consideration was that a portion of the power generated at the 1A Landfill site would be consumed at an adjacent contiguous property, not owned by NMJC, but within the Meadowlands District.

In order to fulfill the eligibility requirements of the CORE program it is necessary to establish on-site usage equivalent to or greater than 700 kW to offset 700 kW of the generation of the two successor projects. The NJMC has already demonstrated at minimum customer energy usage from the 700 kW solar project at its DeKorte Site. The energy from the Parking Lot Canopy project, which is located at the DeKorte Site, represents approximately 120 kW of such usage and the NJMC proposes that the remaining 580 kW of customer usage be carved out from energy generated from 580 kW at the 1A Landfill Project, sold and transported to the DeKorte Site as set forth below.

In discussions with Staff, the NJMC has represented that it has the capability of establishing a contractual path to establish a link between the energy generated at the its non-contiguous 1A

Landfill Project and the energy consumed at its Administration Building at One DeKorte Plaza and, if necessary, to equal the energy generated by 700 kW, at other NJMC properties located at its DeKorte site (collectively, "Administration Building".) NJMC intends to arrange for a Third Party Supplier ("TPS") to take energy from the 1A Landfill Project and to deliver an equivalent amount of energy to the Administration Building. The TPS would buy the energy at the locational marginal price ("LMP") at the delivery point, in addition to all applicable charges as set forth at N.J.S.A 48:3-77. The TPS would deliver an amount sufficient to satisfy 700kW of consumption by NJMC at its DeKorte Site. NJMC presently estimates that a minimum of the energy from a 580 kW portion of the Landfill Site will be required to satisfy the 700 kW of energy consumption for the Administrative Building. This proposed sale to the NJMC includes all transportation charges set forth in the Local Distribution Company's ("LDC") tariff.

Staff notes that the actual energy produced by the Landfill Project would not be directly delivered to or used at the Administrative Building; rather, NJMC would provide documentation demonstrating that the energy from the NJMC 1A Landfill Project, combined with the approximately 120 kW of consumption generated by the on-site Parking Lot Canopy project, would supply in aggregate no less than the 700 kW of capacity on which the CORE rebate is predicated. Both the NJMC Solar Parking Lot Canopy Project and the NJMC 1A Landfill Solar Project are located on NJMC-owned property and within the Meadowlands District. This process will involve net metering of the energy generated by the Parking Lot project and the sale of energy generated by the Landfill project in the applicable PJM wholesale electricity market.

As one part of its efforts to move forward with these projects, NJMC is in final negotiations with a vendor to enter in to a contract to develop the 3MW solar project on top of the 1A Landfill. This vendor, in turn, has submitted a successful bid to a solicitation to build solar on third party properties ("Solicitation"). The entity issuing the Solicitation would not actually acquire the \$8.5M ARRA grant or the \$1.3 million CORE rebate but, if the project goes forward under this model, would procure the balance of the \$17.7M cost of the 3MW Landfill Project to own and operate the 3 MW facility on a land lease arrangement. In the event the project is eventually built under this model, all parties would need to comply with the conditions of the stipulation and related Order which governs the Solicitation. In addition, the parties must comply with all federal and state requirements applicable to the CORE rebate project and/or the ARRA grant project.

Regardless of the financing mechanism ultimately utilized by NJMC, Petitioner has stated that it will pay all charges associated with the sale of power generated at its 1A Landfill generation facility and delivered to its Administrative Building for consumption as the end-use customer at the Local Distribution Company's ("LDC") tariff, including the Societal Benefits Charge, the Market Transition Charge, and all other charges set forth in N.J.S.A. 48:3-77 and in the LDC tariff.

Lastly, in keeping with the historic administration of the CORE program and to ensure that the benefits of CORE funding are provided to the ratepayers, Staff has informed Petitioner that it must enter in contract(s) for sale of the energy to be generated by the Landfill Project for the anticipated ten year duration of the CORE Projects.

Staff believes that, based upon the Petitioner's proposal, set forth above, to use generation of renewable electricity at one NJMC owned property within the Meadowlands District to offset consumption at another NJMC owned property within the Meadowlands District is reasonable given the facts and circumstances of this matter and in the narrow context of a request for a waiver of CORE Program requirements.

Staff believes that the development of clean energy projects by the NJMC is consistent with New Jersey's Energy Master Plan, which calls for New Jersey agencies to take the lead in renewable energy development. A significant portion of this project will make beneficial use of landfill space. The NJMC has stated that it considers the financial incentive provided by the CORE rebate critical to the success of these projects. NJMC has reaffirmed its commitment, consistent with the condition imposed by the Board in its August 19, 2009 Order, to direct all economic benefits that it realizes from these projects to fund further renewable energy and energy efficiency projects in the Meadowlands District in furtherance of the Energy Master Plan and NJMC's own Energy Master Plan. Accordingly, Staff further believes that Petitioner's project, if completed, will provide a public benefit which may be not be realized without a CORE rebate.

Following discussions with NJMC, Staff recommends, for the purpose of considering waivers of the CORE program requirements under the facts and circumstances of this matter that: NJMC be granted an extension of time to complete the project and be granted a waiver of the on-site generation requirements to permit generation of renewable electricity at one NJMC owned property within the Meadowlands District to offset consumption at another NJMC owned property within the Meadowlands District subject to the following conditions:

- 1) The rebate amount shall be reduced to \$1,342,777 (a reduction of 5 %);
- 2) The NJMC shall satisfy the condition set forth in the Second Extension Order to direct the economic benefits realized from both the 120 kW Parking Lot project and the 3 MW Landfill project ("NJMC Projects") to fund further renewable energy and energy efficiency projects in the Meadowlands District ("District Projects") as follows:
 - a) NJMC shall submit an Initial NJMC Energy Savings Reinvestment Plan ("Initial Plan") which shall include an estimate quantifying the energy savings and economic benefits it expects to realize from the NJMC Projects for the next twelve month period and detailed plans on how it will reinvest the anticipated economic benefits in District Projects. Board Staff shall determine whether the Initial Plan is consistent with the terms of this condition prior to authorization of payment of the CORE rebate.
 - b) Thereafter, NJMC shall submit an Annual Energy Savings Reinvestment Plan ("Annual Plan") with updates of the actual energy savings and other economic benefits it has realized from the NJMC Projects and details on the District Projects that it funded during the preceding twelve months. The Annual Plan shall also include projections of economic benefits and project plans for the next twelve month period and shall continue to be updated as set forth herein for the anticipated ten year duration of the NJMC projects.
- 3) NJMC shall arrange for a TPS to take energy from the 1A Landfill Project and to deliver an equivalent amount of energy to the Administration Building. NJMC shall provide documentation demonstrating that the energy from the Landfill Project, combined with the energy supplied by the on-site Parking Lot Canopy project, supplies in aggregate the 700 kW of capacity necessary to satisfy the on-site customer usage requirement of the CORE program.
- 4) Transportation of the energy generated by the Landfill Project shall be subject to all applicable transportation charges in the LDC's tariff including all charges set forth in N.J.S.A. 48:3-77.

- 5) NJMC shall maintain a contract, with the appropriate entity, or entities, for the sale of electricity generated at the NJMC's Landfill Project and transportation of same to the NJMC Administrative Buildings for the anticipated ten year duration of the CORE Project. NJMC shall submit evidence of such contract(s) to Board Staff annually commencing with the effective date of the first such contract.
- 6) NJMC shall allocate a pro rata share of the CORE rebate, based on 120 kW, to the Parking Lot Canopy project. NJMC may allocate additional funds from the CORE rebate to the Parking Lot Canopy project. However, consistent with CORE Program requirements, the rebate amount to be applied to the 120 kW Parking Lot project may not exceed 60% of the cost of that project.
- 7) NJMC shall comply with all other requirements of the CORE program and the terms and conditions of this Order.

Because of the strict April 30, 2012 deadline for the expenditure of ARRA funds, Staff recommends that the progress of project construction be tightly monitored through the monitoring of the interim benchmarks provided by NJMC and that NJMC be required to notify Staff immediately of any delays in construction and to simultaneously provide a specific list of the actions it will take to get the project back on schedule. Further, the Board should have the authority to require that remedial steps such as the hiring of additional workers or any other necessary action be taken. Delay beyond the specified schedule will jeopardize both the CORE Rebate funding and the ARRA funding.

Discussion and Findings

This matter requires two waivers of the CORE program requirements. The first is for a third extension of time to complete the project. The second waiver is related to certain requirements for on-site generation. In considering the waivers the Board engages in a two prong analysis pursuant to N.J.A.C. 14:1-1.2. The Board must first consider whether Petitioner's request is in accord with the general purpose and intent of the Guidelines; and second, whether full compliance with the Guidelines would adversely affect the interest of the public.

The first waiver for the Board to consider is Petitioner's request for a third extension of time to complete its project. Under the first prong of the waiver test the Board considers whether Petitioner's request supports the general purpose and intent of the Guidelines. See N.J.A.C. 14:1-1.2(b)(1). To determine the general purpose and intent of the Guidelines, the Board looks first to its policy on initial extensions. Initial 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. The Guidelines 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.

NJMC states the third extension request is the result of delays in the project caused by unanticipated circumstances beyond the control of the NJMC or its vendor. Specifically, according to NJMC the project schedule was delayed for months by NJMC's inability to obtain information from PSE&G regarding interconnection to the utility's distribution circuit. NJMC states that recent major storm events that knocked out power in its area forced PSE&G to reallocate resources that they had previously dedicated to this project. NJMC represents that information concerning the pricing and design of the interconnect is an important component of the overall system design and that its vendor was unable to develop the final project specifications in the absence of this information.

NJMC also represents that was unable to finalize its contract with the vendor and the vendor was unable to secure the remaining financing for the project because the ARRA grant agreement between the NJMC and the BPU was not completed as of the date of its Petition on July 29th. According to NJMC, many of the provisions of the agreement between the NJMC and the vendor will be dictated by the terms of the agreement, making its completion a prerequisite for further progress on the project. As noted above, the ARRA Grant Agreement between the Board and NJMC was executed on October 28, 2010.

To document its progress, the NJMC represents that most of the pre-construction tasks have been completed on the Landfill Project, including: a Phase I environmental investigation; submission of the permit application to NJDEP for construction of the facility on the 1-A Landfill; a Feasibility/Impact Study by PJM; an interconnection agreement to the electricity grid; the finalization of the pricing, design and layout of the interconnection with PSE&G's distribution circuit; selection of a third-party financing entity for the project; and negotiation of that contract. With respect to the Parking Lot Canopy Project, NJMC states that it and its vendor have conducted site investigations, developed initial project specifications, will finalize the contract upon receipt of the final terms of the rebate extension, and will be able to begin material purchases and construction shortly thereafter.

The Board recognizes the Guidelines' two limitations on extensions. First, extensions are only available for public entities, such as Petitioner. Second, the Guidelines limit second extensions to documented instances of public contract litigation. The use of public contract litigation as a justification shows the Board's intent to extend deadlines for public entities where the unforeseen delays are associated with the peculiarities of public contracting and procurement. In this matter, the Grant Agreement was a necessary part of receiving the federal ARRA funding through the state agency charged with disbursing it, the Board. The delay associated with finalization of this agreement thus springs from this public entity's application for public funding.

The Board **FINDS** that Petitioner's representations, as set forth above, are reasonably in accord with the general purpose and intent of the Guidelines governing extensions of time for completion of CORE projects.

The second prong of the waiver test requires the Board also considers whether full compliance with the Guidelines would adversely affect the interest of the public. The development of clean energy projects by the NJMC is consistent with New Jersey's Energy Master Plan, which calls for New Jersey agencies to take the lead in renewable energy development. A significant portion of this project will make beneficial use of landfill space. NJMC has reaffirmed its commitment, consistent with the condition imposed by the Board in its August 19, 2009 Order, to direct all economic benefits that it realizes from these projects to fund further renewable energy and energy efficiency projects in the Meadowlands District in furtherance of the Energy Master Plan and the NJMC's own Energy Master Plan. The NJMC has further stated that it considers the financial incentive provided by the CORE rebate critical to the success of these projects. Based on the information provided, the Board considers the rigid application of the Guidelines in this specific instance contrary to the public interest, which would otherwise be well-served by the project. Therefore, the Board **HEREBY FINDS** that Petitioner's project, if completed, will provide a public benefit which may be not be realized without a CORE rebate.

The Board **CONCLUDES**, for the reasons set forth above, that Petitioner qualifies for a waiver of the Guidelines so as to allow for the grant of a third extension of the CORE rebate commitment deadline

The Petitioner's second request requires the Board to consider the CORE Program's intent to foster eligible, on-site renewable electricity generation. The CORE Project, as originally proposed, would have generated 700kW of renewable energy at the NJMC's administrative headquarters located at the DeKorte Site. The on-site generation would have been located on the parking lot facility and on an adjacent landfill. In the course of pursuing this project, Petitioner determined that it was unable to locate the panels on the adjacent landfill and proposed to locate the panels to another property owned by NJMC, the 1A Landfill site.

The Petitioner's current proposal would still generate on-site renewable electric energy of approximately 120 kW at the parking lot of the DeKorte site for use in Petitioner's administrative facilities at that site. The Petitioner is also developing a 3 megawatt renewable energy project at the 1A Landfill site. It proposes that a portion of the solar generation from the 1A Landfill be dedicated to make up the difference between the 700 kW CORE rebate amount and the 120 kW to be generated at the DeKorte site. As proposed, there would be a carve-out of approximately 580 kW from the 1A Landfill site that would be dedicated to usage by the NJMC at its DeKorte site facilities. Since the generation of the 580 kW from the 1A landfill is not at the DeKorte site a waiver of the CORE Program's requirement of on-site generation is required.

As proposed, approximately 580 kW of generation at the NJMC-owned 1A Landfill site, which is within the New Jersey Meadowlands District ("District"), would be sold to a TPS. The TPS would sell an equivalent amount of power to the NJMC for consumption at another NJMC owned property (the DeKorte site) within the District. The applicable transportation charges in the LDC's tariff shall apply to such sale, including all charges set forth in N.J.S.A. 48:3-77. Both generation and consumption will be documented by contracts setting out specific dollar and kilowatt amounts. The aggregate amount of customer generated renewable electrical energy shall total the 700 kW amount of the original CORE proposal. Further the Customer shall use not less than 700 kW at its DeKorte site facilities.

The Board **FINDS**, for purposes of considering this request for a waiver from CORE Program Guidelines, that the Petitioner has proposed an arrangement which provides a contractual mechanism by which customer generation at one NJMC-owned property will be offset by consumption at another NJMC-owned property within the Meadowlands District.

The NJMC operates within the New Jersey Meadowlands District. As noted above, the District is a statutorily defined geographic area pursuant to N.J.S.A. 13:17-4. The Board **FINDS** that both of the NJMC owned properties, the DeKorte site parking lot and the 1A Landfill are within the statutorily defined geographic boundaries of the District. Such a statutorily defined area may, for purposes of considering a waiver from CORE Program guidelines, be viewed as analogous to a municipality. The Board has previously held that properties owned by a municipality and located within the municipality stand in a special relationship to each other for purposes of the CORE program. See I/M/O the Clean Energy Program Authorization of Customer On-site Renewable Energy Rebates Exceeding \$100,000 – Request to Change Location: Ocean City Aquatic Center, Dkt. Nos. EX04040276 & EO07080587 (August 19, 2008).

In the Ocean City Aquatic Center matter, the Board considered whether to permit a municipality to relocate a solar system from one building to a new facility. The Board treated the relocation as a "change to an existing application rather than a new application, approving the relocation subject to four criteria: 1) the total capacity of the new systems did not increase in size; 2) the municipality is the utility customer of record; 3) the municipality owns both locations; and 4) the municipality submits a revised rebate application, utility consumption, and technical worksheet. NJMC, like Ocean City, is the utility customer of record, owns both locations and proposes to maintain the total capacity and size of the portion of the project attributable to the CORE

program. NJMC shall also be required to submit a revised rebate application, utility consumption and technical worksheet.

Petitioner has stated that it will pay all applicable charges for the sale of energy from an on-site generation unit to an end-use customer, including the applicable LDC tariff charges for transportation further including those set forth in N.J.S.A. 48:3-77. In addition, Petitioner has represented that it will pay all applicable charges in the applicable tariff of the LDC, an arrangement which resembles the sale of energy generated by a solar system in the applicable PJM Market. Based on such representations by Petitioner, the Board **FINDS** that there will be no subsidization of Petitioner's Landfill Project by the LDC or by its customers.

The Board further **FINDS**, for purposes of considering a waiver from CORE Program Guidelines, that NJMC's proposal, subject to the conditions set forth herein, is reasonably in accord with the general purpose and intent of the CORE Program and the successor REIP Program to foster eligible, on-site renewable generation.

The Board has already considered the public interest prong of the waiver test hereinabove and **FINDS** that Petitioner's project, if completed, will provide a public benefit which may be not be realized without a CORE rebate.

Therefore the Board **CONCLUDES**, for the reasons set forth above, that Petitioner's proposal qualifies for a waiver of the CORE Program Guidelines with respect to on-site generation. This determination is limited to the facts alleged, and should not be viewed as precedential.

The Board is aware that NJMC is in final negotiations with a vendor to enter in to a contract to develop the 3MW solar project on top of the 1A Landfill and that this vendor, in turn, has submitted a successful bid to a solicitation to build solar on third party properties ("Solicitation"). This program is governed by a stipulation entered into by the parties to that matter ("Stipulation), which will govern any project built under that program

For the reasons set forth herein, the Board **FINDS** Staff's recommendations and proposed conditions are reasonable. Accordingly, the Board **HEREBY ADOPTS** Staff's recommendation and **GRANTS** the Petitioner's request for a third extension. The Board **FURTHER GRANTS** Petitioner's request for a waiver of the CORE Program Guidelines with respect to on-site generation. The Board's granting of Petitioner's request for waivers is subject to the following conditions:

- 1) The rebate amount shall be reduced to \$1,342,777 (a reduction of 5 %);
- 2) The NJMC shall satisfy the condition set forth in the Second Extension Order to direct the economic benefits realized from both the 120 kW Parking Lot project and the 3 MW Landfill project ("NJMC Projects") to fund further renewable energy and energy efficiency projects in the Meadowlands District ("District Projects") as follows:
 - a) NJMC shall submit an Initial NJMC Energy Savings Reinvestment Plan ("Initial Plan") which shall include an estimate quantifying the energy savings and economic benefits it expects to realize from the NJMC Projects for the next twelve month period and detailed plans on how it will reinvest the anticipated economic benefits in District Projects. Board Staff shall determine whether the Initial Plan is consistent with the terms of this condition prior to authorization of payment of the CORE rebate.

- b) Thereafter, NJMC shall submit an Annual Energy Savings Reinvestment Plan ("Annual Plan") with updates of the actual energy savings and other economic benefits it has realized from the NJMC Projects and details on the District Projects that it funded during the preceding twelve months. The Annual Plan shall also include projections of economic benefits and project plans for the next twelve month period and shall continue to be updated as set forth herein for the anticipated ten year duration of the NJMC projects.
- 3) NJMC shall arrange for a TPS to take energy from the 1A Landfill Project and to deliver an equivalent amount of energy to the Administration Building. NJMC shall provide documentation demonstrating that the energy from the Landfill Project, combined with the energy supplied by the on-site Parking Lot Canopy project, would supply in aggregate the 700 kW of capacity necessary to satisfy the on-site customer usage requirement of the CORE program.
- 4) Transportation of the energy generated by the Landfill Project shall be subject to all applicable transportation charges in the LDC's tariff including all charges set forth in N.J.S.A. 48:3-77
- 5) NJMC shall maintain a contract, with the appropriate entity, or entities, for the sale of electricity generated at the NJMC Landfill Project and transportation of same to the NJMC DeKorte facilities for the anticipated ten year duration of the CORE Project. NJMC shall submit evidence of such contract(s) to Board Staff annually commencing with the effective date of the first such contract.
- 6) The NJMC shall allocate a pro rata share of the CORE rebate, based on 120 kW, to the Parking Lot Canopy project. NJMC may allocate additional funds from the CORE rebate to the Parking Lot Canopy project. However, consistent with CORE Program requirements, the rebate amount to be applied to the 120 kW Parking Lot project shall not exceed 60% of the cost of that project.
- 7) NJMC shall comply with all other requirements of the CORE program

Because of the strict deadline for the expenditure of ARRA funds for the related 1A Landfill project, Staff has also recommended that the progress of project construction be tightly monitored through the monitoring of the interim benchmarks provided by NJMC. The Board is very concerned about the timely completion of the Petitioner's projects given the history of delay and the strict deadline imposed by federal law under ARRA. Accordingly, the Board **HEREBY DIRECTS** Staff to develop, with input from the Petitioner, project milestones which shall result in the completion of Petitioner's projects no later than February 20, 2012. The Board **FURTHER DIRECTS** Staff to closely monitor the Petitioner's projects.

The Board **DIRECTS** Petitioner to provide Staff with detailed reports on milestone progress not less than monthly. The Board **FURTHER DIRECTS** Petitioner to notify Staff immediately of any delays in construction and to simultaneously provide a specific list of the actions it will take to get the project back on schedule including such remedial steps such as the hiring of additional workers or any other necessary action be taken. Delay beyond the specified schedule will jeopardize both the CORE Rebate funding and the ARRA funding, representing approximately \$10 million in public funds.

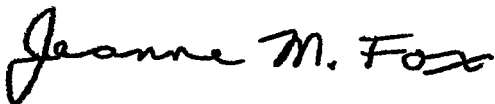
The Board **HEREBY DIRECTS** the Program Manager to issue a rebate commitment extension to Petitioner, for application MM05109. The extension shall reflect a reduced rebate of \$1,342,777. In light of the ARRA funding and the strict timelines associated with that funding, by which all funds must be expended and documented prior to April 30, 2012, this extension shall have an expiration date of February 20, 2012. The Board **HEREBY ORDERS** that this approval shall be contingent on the NJMC's continued commitment to direct the economic benefits realized by these two projects to fund further renewable energy and energy efficiency projects in the Meadowlands District and all other conditions identified in this Order. This Order is limited to the facts and conditions set out in this Order and has no precedential weight.

DATED: 4/21/11

BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
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

