



State of New Jersey

BOARD OF PUBLIC UTILITIES

TWO GATEWAY CENTER

NEWARK, NJ 07102

JON S. CORZINE
Governor

KRISTI IZZO
Secretary of the Board
TEL: (973) 648-3426
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December 20, 2006

Brent Alderfer, President
Community Energy, Inc.
150 Strafford Avenue, Suite 210
Wayne, PA 19087

Re: In the Matter of the Consent Assignment Agreement between the New Jersey Board of Public Utilities, Community Energy, Inc, Jersey Atlantic Wind and Bayerische Landesbank for Use of the Grid Supply Contract as Collateral – Jersey Atlantic Wind, LLC Request for a Change in the GRID Supply and Customer On-Site Renewable Energy (CORE) Award Payments and NJ Audubon Society Avian Study Award - Docket Number AO05080736

Dear Mr. Alderfer:

Enclosed for your signature and review is the Amendment to Incentive Program Award Contract.

Upon execution of the Agreement, please insert the date in the first paragraph and return the original to me for my file.

Please feel free to contact me if you have any questions.

Sincerely,

Kristi Izzo
Secretary of the Board

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AMENDMENT TO INCENTIVE PROGRAM AWARD CONTRACT

This Amendment to the Incentive Program Award Contract (the "Amendment") is made this 21st day of DECEMBER, 2006 (the Amendment Date") by and between the New Jersey Board of Public Utilities ("Board"), which maintains a mailing address of 2 Gateway Center, Newark, New Jersey 07102, and Jersey-Atlantic Wind, LLC ("JAW"), which maintains a mailing address at 150 Strafford Avenue, Suite 210, Wayne, PA 19087. The Board and JAW are also each referred to herein at times as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, on March 11, 2003, the Board of Public Utilities ("Board") and Community Energy, Inc. ("CEI") entered into an Incentive Program Award Contract (the "Agreement"), whereby the Board agreed to make certain monetary payments to CEI in support of the construction and operation of a wind energy production facility ("Facility") in Atlantic County, New Jersey;

WHEREAS, effective on January 1, 2005, CEI assigned the Agreement to JAW, and on that same date JAW assumed the rights and responsibilities in the Agreement;

WHEREAS, on September 14, 2005, the Board consented to and approved the assignment and assumption of the Agreement from CEI to JAW;

WHEREAS, on December 21, 2005 the Board, in furtherance of its clean energy policy goals, voted to amend the payment structure of the Agreement to accelerate the Incentive Program Award payments to JAW and also to restructure an existing \$1.463 million rebate commitment made to JAW under the Board's Customer On-Site Renewable Energy ("CORE") Program on February 5, 2003, as a one-time Incentive Program Award;

WHEREAS, on December 21, 2005, the Board also voted to increase the aforementioned CORE rebate commitment by \$356,241.20, in order to finance an avian impact study conducted by the New Jersey Audubon Society in connection with the Facility;

WHEREAS, on the aforementioned date the Board further voted to restructure the terms, originally set forth in the Board's CORE rebate commitment letter, under which the Board would reclaim rebate funds from JAW due to the underproduction of energy;

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to modify and amend the Agreement pursuant to Section 12(g) thereof, as follows:

1. Section 4: Section 4(b) of the Agreement shall be deleted and replaced with the following:

(b) During the Project Term, if the System consistently generates less wind energy than the amount established by Community in its Proposal, then the Parties agree that the Board may impose an Underproduction Payment on JAW as set forth in Sections 5(b) and 5(c).

Section 4(d) shall be amended with the following sentence:

Nothing in this Section shall abrogate the Parties' rights and obligations under Section 5(c) of this Amendment.

2. Section 5: Sections 5(b) and 5(c) of the Agreement are hereby deleted and replaced with the following:

(b) Within 30 days of the date of execution of this Amendment, the Board shall cause to be paid to JAW \$1,356,241, which shall constitute the full remaining balance of the Incentive Program Award payable under the Agreement. This amount reflects the first three "grid supply award" payments, \$142,488, \$17,768, and \$13,503 made by the New Jersey Economic Development Authority on authorization by the Office of Clean Energy based upon JAW's demonstration of grid supplied electricity. These payments, and the Board's Initial Payment in the amount of \$170,000.00, "are intended to make the project economically feasible, taking into account the sale price of grid supplied electricity, federal production tax credit assistance, and the income needed for the project's financial viability" (Incentive Program Award Contract, March 11, 2003).

(c) Should JAW fail to supply to the Grid less than seventy percent (70%) of the Target Grid Supply in any operational year, the Board may terminate this Agreement without penalty or may, in its sole discretion, require JAW, at the end of any Operational Year, to reimburse the Board through an Underproduction Payment (referred to in the original Incentive Program Award Contract as an "overestimation penalty") at a rate of 2.6 cents (\$0.026) for every unsupplied kilowatt hour (kWh) below 70 percent of the Target Grid Supply. As used herein, "Target Grid Supply" shall be defined as the capacity factor of twenty five percent (25%) multiplied by 8,760 hours multiplied by the installed grid supply capacity of 4.875 (7.5 MW times 65%) megawatts multiplied by the percentage of System generation that is delivered to the grid during the Operational Year. Notwithstanding the foregoing, on no account shall said Underproduction Payments exceed \$1,700,000.00 over the project term. By way of example, if the total installed capacity of the System is 7.5 megawatts, and during an Operational Year the System generates 10,000 megawatt hours, of which 65% is delivered to the grid, then the actual

grid supply of 6,500 megawatt hours would be compared to 7,473 MWhs, which is 70% of the Target Grid Supply of 10,676 MWhs (25% times 8,760 times 7.5 time 65%). The deficiency of 973 MWhs (7473 - 6500) times \$0.026 per kWh, would result in an Underproduction Payment of \$25,298 or its equivalent value in Renewable Energy Certificates becoming due to the Board of Public Utilities. By way of further example, if during an Operational Year the System generates no megawatt hours delivered to the grid, then the Board of Public Utilities may collect an amount equivalent to the Target Grid Supply at \$0.026 per kWh or its equivalent value in Renewable Energy Certificates. As used herein, an "Operational Year" shall mean each consecutive twelve (12) month period after the Board's receipt of an Operational Notice by Community which was December 30, 2005.

New Sections 5(d) and 5(e) are hereby added to Section 5, as follows:

- (d) Within 30 days of the date of the execution of this Order, the Board shall authorize the New Jersey Department of Treasury to pay a rebate amount of \$356,241.20 to JAW for expenses incurred in support of an Avian Study conducted by the New Jersey Audubon Society (NJAS), as described more fully in the NJAS Proposal Attached hereto as Attachment A and incorporated herein. Said rebate amount shall be paid as an adjunct to the CORE rebate commitment made by the Board to JAW on February 5, 2003, and shall be paid in full accordance with all CORE program standards and guidelines.
- (e) The remaining portion of the CORE rebate, \$1,463,000.00 shall be paid in accordance with the terms of the Board's February 5, 2003 Order authorizing said rebate, except that, if JAW fails to supply at least seventy percent (70%) of the target CORE supply of 5,748,750 kWh per year for two consecutive Operational Years, the Board may terminate this Agreement without penalty or may, in its sole discretion, require JAW to pay to the Board an Underproduction Payment of \$0.03956 per kWh, or its monetary equivalent in Renewable Energy Certificates, for every unsupplied kWh below the annual production level of 5,748,750 kWh. By way of example, should JAW fail to supply to the grid 4,024,125 kWh for two consecutive Operational Years, it will be obligated to pay an Underproduction Payment to the Board. If JAW's deficit in supply was 10,000 kWh in the first Operational Year, and 50,000 kWh in the second Operational Year, JAW would be obligated to pay the Board \$2,373.60 (60,000 kWh multiplied by \$0.03956) or the current equivalent value in RECs. On no account shall Underproduction Payments made under Section 5(d) exceed \$1,819,241.20 over the term of the project.

2. Section 7 Section 7(a) is hereby deleted. Section 7(b) shall hereby be re-designated Section 7(a).

3. Section 11 Section 11 is hereby amended as follows:



Agenda Date: 12/21/05
Agenda Item: 1B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

CLEAN ENERGY

IN THE MATTER OF THE CONSENT ASSIGNMENT
BETWEEN THE NEW JERSEY BOARD OF PUBLIC
UTILITIES, COMMUNITY ENERGY, INC., JERSEY
ATLANTIC WIND BAYERISCHE LANDESBANK FOR
USE OF GRID SUPPLY CONTRACT AS COLLATERAL

-) Jersey Atlantic Wind, LLC
-) request for a change in GRID
-) Supply Contract and Customer
-) On-site Renewable Energy
-) (CORE) Award Payments, to
-) include NJ Audubon Society
-) Avian Study
-)
-) Docket No. AO05080736

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

By Board Order dated July 15, 2002, Docket No. EX01100646, the Board of Public Utilities (BPU) awarded Community Energy, Inc. (CEI) a production incentive grant of 2.6 cents per kilowatt-hour over a period of five years for a total of \$1.7 million under the Grid Supply program, in order to develop a 7.5 MW wind project at the Atlantic County Utilities Authority (ACUA) site near Atlantic City, New Jersey. On March 11, 2003, the Board and CEI entered into an Incentive Program Award Contract for the Grid Supply project. Effective on January 1, 2005, CEI assigned this contract to Jersey Atlantic Wind, LLC (JAW), and by virtue of this assignment JAW assumed the rights and obligations in said contract. By Board Order dated September 14, 2005, the Board consented to and approved the assignment and assumption of the Incentive Program Award Contract from CEI to JAW.

The Customer On-Site Renewable Energy Program (CORE) has been in effect since April 9, 2001. By Board Order dated February 5, 2003 Docket Numbers EX 99050347 et al. the Board approved the payment of \$1.463 million CORE award to CEI over the course of three years.

On December 14, 2004, CEI and the New Jersey Audubon Society ("Audubon") announced that they had reached a settlement of Audubon's appeal of the issuance of the ACUA project's Coastal Area Facility Review (CAFRA) permit. Under the terms of the Settlement Agreement and Release of Claims (Settlement), Audubon is to conduct a Wind Power Radar Study (avian

¹ At the time of the Board's December 21, 2005 vote on this matter, the Board was comprised of the three signatories herein and Commissioner Jack Alter. Commissioner Alter has since retired from the Board.

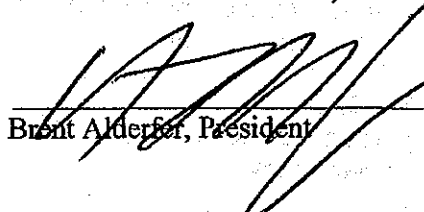
I. To the extent applicable, the provisions of New Jersey State Treasury Circular Letters 05-12-OMB and 04-04-OMB are incorporated by reference into the Agreement.

IN WITNESS WHEREOF, the authorized persons below have signed this Agreement, which is effective as of the date first written above.

DATED: 12/27/06

JERSEY ATLANTIC WIND, LLC

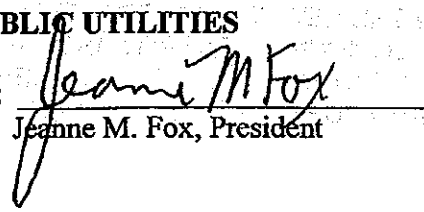
By:


Brent Alderfer, President

DATED: 12/15/06

NEW JERSEY BOARD OF PUBLIC UTILITIES

By:


Jeanne M. Fox, President

JERSEY-ATLANTIC WIND, LLC



By: Hunter Armistead, Vice President of Babcock & Brown Wind Park Jersey LLC, as Managing Member of JB Wind Holdings LLC, the sole member of Jersey-Atlantic Wind, LLC

study) at the project site over two years to, *inter alia*, evaluate incidents of bird mortality at small wind power facilities. As a term and condition of the Settlement, CEI and Audubon agreed to "jointly and diligently work in good faith to seek and obtain third-party funding, as may be available to fund the cost of a radar-based avian mortality evaluation study...." The Settlement specifies that the avian study will be conducted by Audubon at the ACUA project site. JAW and Audubon represent that the study will be conducted over two years and cost \$356,241.20. Accordingly, in October 2005, JAW, as successor in interest to CEI, requested funding from the Board's CORE program in the amount of \$356,241.20 to pay for the avian study.²

DISCUSSION

The above-referenced 7.5 MW wind project became operational in December 2005. JAW has requested that the Board: 1) accelerate the aforementioned \$1.7 million Grid Supply Production Incentive Award Grant payment; 2) restructure the existing \$1.463 million CORE rebate that JAW is to receive once the wind farm is in operation as a production incentive; and 3) authorize an additional \$356,241.20 payment under the CORE program to support the avian study described in the attached New Jersey Audubon Society Avian Study Proposal. Each aspect of the requested action is discussed herein.

Upon review, the Office of Clean Energy Staff recommends the acceleration and/or restructuring of the payments as requested, as it will assist in ensuring the financial health of this groundbreaking project and provide benefits to area residents. Specifically, these measures will assist with electricity cost containment, improve air quality and reduce greenhouse gas emissions. In addition, the project contributes to the goals and objectives established by the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq. (EDECA) and the Governor's Renewable Energy Task Force (2002) which calls for 300 MW of Class I renewable energy to be installed in New Jersey by 2008.

As to accelerating the Grid Supply Production Incentive Award, a \$170,000 grant as well as three initial award payments summing to \$173,758 have already been paid towards the total amount awarded. Hence, approximately \$1.356 million remains to be paid on the award. In accordance with the aforementioned policy goals, Staff recommends restructuring payments as specifically set forth in the Amendment to Incentive Program Award Contract attached hereto. Pursuant thereto, if JAW fails to supply to the grid at least 70 percent of the Target Grid Supply in an Operational year after the first Operational Year, JAW shall, at the end of every Operational Year, reimburse the Board for every megawatt hour below 70 percent of the Target Grid Supply.

The above referenced \$1.463 million CORE rebate is part of a 2.625 MW CORE project, which is part of the total 7.5 MW wind farm located at the ACUA site. Based on the original CORE rebate Order dated February 5, 2003, CEI is to receive \$731,000 when the project goes into operation. The remaining amount of \$732,000 is to be paid in two equal installments of \$366,000 each over the course of two years. The first installment is to be 12 months after operation commences, followed by a final payment 12 months after the first installment is paid.

²As requested by the Department of Treasury on May 11, 2006, CEI/JAW and Audubon executed an Accord and Satisfaction amending the above referenced Settlement Agreement. The parties acknowledged therein their expectation that the Board would disburse funds to JAW in the amount of \$356,241.20 to pay for the avian study to be conducted by Audubon. Pursuant to this expectation, the parties were released from any further obligation to seek third-party funding for the avian study.

Based on the foregoing assessment, OCE now recommends that the overall CORE rebate amount be increased from \$1.463 million to \$1.819 million. The increased rebate amount reflects an additional \$356,241.20 necessary to fund the above referenced avian study. Staff further recommends that the Board adjust the CORE rebate to reflect the full amount of the avian study as an increased construction cost, and allocate CORE monies to pay for the study, treating the \$356,241.20 disbursement as a one-time grant to JAW. This approach is consistent with current CORE policies and procedures, insofar as the amount set aside in the Settlement for the study (\$356,241.20) would have been considered an eligible project cost if included as part of the original CORE application. As it would in connection with any application for CORE funding, OCE has reviewed a detailed program description and cost breakdown of the avian study submitted by Audubon and determined that the requested funding level is justified.

The monies allocated for the avian study are to be paid directly to JAW, which will tender the full amount, in stages, to Audubon for the study. JAW is to play no role in preparing the interim or final study reports, which will be the independent work of Audubon, although JAW's comments may be attached thereto in appendices. The purpose of these reports is to inform the general public and the applicable regulating agencies (Board of Public Utilities and Department of Environmental Protection) on the impact of coastal development and wind power facilities on ecology and bird mortality. Accordingly, Staff recommends this sum be added to the \$1.463 million CORE rebate, bringing the total rebate to \$1.819 million. The avian study portion of this amount will be payable within 30 days of the execution of this Order. The remaining portion of the CORE rebate will be disbursed in accordance with the terms of the Board's February 5, 2003 Order referenced above.

Staff further recommends that the entire remaining CORE rebate payment (including the avian study portion) (collectively, "CORE payment") be restructured to function as a Production Incentive. JAW is currently required to generate electricity and sell a portion of it to the ACUA. JAW is required to supply the remaining electricity generated by the Project to the electrical grid. Pursuant to the incentive recommended by Staff, JAW shall be required to supply at least 70 percent of the Target CORE Supply (as defined in the attached contract amendment) to the grid on a yearly basis for eight years from the date of disbursement of the first component of the CORE payment ("Performance Period"). Within 30 days after the end of the Performance Period, JAW shall submit to the BPU an accounting or other documentation supporting the amount of kilowatt-hours of electricity produced and sold.

If JAW fails to supply at least 70 percent of the Target CORE Supply for two consecutive Operational Years, JAW shall return to the Board the unearned balance of the CORE payment. Since the total expected production over the eight-year Performance Period is 45,990,000 kWh, Staff recommends that any unearned balance of the CORE payment be calculated at \$0.03956 per kWh multiplied by the deficiency in the Target CORE supplied kWh. This amount or its monetary equivalent in Renewable Energy Credits will be returned to the Board.

Staff further recommends that JAW be required to document to the Board the renewable electricity produced monthly, beginning with the date that the project becomes operational. Staff also recommends that JAW be permitted to use the payment for the bona fide expenses associated with the operation and maintenance of the project.

FINDINGS AND CONCLUSIONS

The Board HEREBY FINDS it is in the public interest to restructure the 2002 Production Incentive Grant as recommended by Staff, and HEREBY APPROVES the attached "Amendment to Incentive Program Award Contract," which is incorporated by reference herein, and further HEREBY AUTHORIZES the Board President to execute said Amendment. The Board HEREBY APPROVES the Office of Clean Energy's increasing the original JAW CORE rebate from \$1.463m to the sum of \$1,819,241.20 to reflect the inclusion of the avian study settlement amount of \$356, 241.20. The Board HEREBY AUTHORIZES Staff to restructure the increased \$1,819,241.20 CORE rebate as a Production Incentive Award to be paid within 30 days after the wind farm becomes operational or the effective date of this order, whichever is later. As more fully set forth above, and, through this Board Order, HEREBY AMENDS the corresponding CORE rebate approvals such that the Board may reclaim funds from JAW for inadequate production, in the event the wind farm produces less energy than projected at the time the Board awarded the original rebate, as set forth more fully above.

DATED: *12/15/06*

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M. Fox
JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

Connie O. Hughes
CONNIE O. HUGHES
COMMISSIONER

ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

1940

Dear Mr. [Name],

I have received your letter of the 15th and am glad to hear from you. I am sorry that I cannot give you a more definite answer at this time, but I am sure that you will understand my position. I am sure that you will understand my position.

Sincerely,
[Name]

[Name]

Dear Mr. [Name],

I have received your letter of the 15th and am glad to hear from you. I am sorry that I cannot give you a more definite answer at this time, but I am sure that you will understand my position. I am sure that you will understand my position.