

# Morris County Improvement Authority

## Commissioners

**John Bonanni**  
Chairman

**Scott Gallopo**  
**Joseph Kovalcik**  
**Christina Ramirez**  
**Ellen M. Sandman**

**John Krickus**  
Freeholder Liaison



May 26, 2015

MEMO TO: Morris County Board of Chosen Freeholders

SUBJECT: Update and Recommendations Related to Renewable Energy Program(s)

The Commissioners of the Morris County Improvement Authority (MCIA) have asked that, as it relates to the on-going solar issues, the following status update and recommendations memo be provided to the Freeholder Board.

As you know, there are several critical decisions that need to be made in a very short time period with respect to the Solar II Program. These decisions include:

- Selection of new General, Bond and Energy Counsel for the Authority,
- Selection of new Energy Consultants for the Authority, and the
- Site by site build-no build decision.

The available time period must be developed by working back from the end point. The deadline to construct Unbuilt Sites with the benefit of the 27.4% "Section 1603 Grant" Federal tax subsidy is December 31, 2016. It has always been represented to the Authority and County that, in a best case scenario, it will take 12-14 months to complete the Unbuilt Sites. As you can see, that deadline is 18 months off and neither the County nor the MCIA has yet reached conclusive decisions with respect to this matter.

Failure to take any action will place in jeopardy the ability to complete the Unbuilt Sites by the federal deadline and will effectively lock-in greater debt service losses to Morris County. In short, indecision can become a decision not to build the Unbuilt Sites.

The decision of whether or not to build all or some of the sites has a significant impact on the future finances of the County. The financial difference between building all of the Unbuilt Sites and building none of them is approximately \$8 million and is obviously dependent on a variety of additional factors, including construction budgets and SREC pricing.

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The MCIA has received proposals for Legal Counsel(s) and Energy Consultant(s) on May 15, 2015. These proposals have been distributed for review to the respective review committees previously established. It is important that each member of the review committee prepare and submit the respective evaluation reports, so that everyone's opinions are taken into consideration in making these important decisions.

The MCIA plans to approve one or more Legal Counsel(s) at its May 28th meeting and one or more Energy Consultant(s) at the MCIA's June 10th meeting. There will also be prepared and presented, corresponding Freeholder Resolutions supporting the recommendations of the respective Proposal Review Committees.

It is important to note one unique feature of the Energy Consultant RFP. The RFP contemplates upwards of two separate Energy Consultants to be engaged by the Authority.

- a. One Energy Consultant will be asked to perform project evaluation advisory services, which include advice on operation, maintenance, management, technological and revenue improvements to all existing sites, as well as advice on the design, procurement, build-no build analysis and construction management.
- b. A second Energy Consultant may be asked to perform project econometric services, which includes advice on SREC portfolio management (when to sell and when to hold), as well as review all reports of the first Energy Consultant on the build-no build decision and construction management.

The County and the MCIA will have flexibility to choose one consultant for both services. To the extent it chooses two, it builds in verification in the consultant process. In other words, trust, but verify.

The next critical decision will be the build-no build decision. To that end, and in an effort to collect the most up to date and accurate data possible in advance of moving ahead with construction, the Authority is working (through the Developer SunLight Morris) to collect pricing information from three EPC independent contractors. These EPC contractors have visited each Unbuilt Site, as well as a few sites that may be considered for replacement of original Unbuilt Sites. In addition to providing construction pricing and output (PPA and SREC revenue) information, the EPC contractors are providing "value engineering" ideas and costs at those sites where applicable. Value engineering is intended to provide increased output (and, as a result, PPA and SREC revenue), without exceeding the total amount of Project Funds the Authority has to complete the Unbuilt Sites. Pricing responses are being submitted on June 3, 2015. Following receipt of this information, the Build Vs. No-Build Committee, comprised of Freeholders, Improvement Authority Commissioners, and MCIA Professionals, may begin its work.

The County's special counsel, McManimon, Scotland & Baumann, LLC, has been working on behalf of the County with respect to the work outlined above (except the Legal Counsel RFP). Special Counsel has made several significant recommendations that will strengthen the future contracting process and minimizing future cost exposures to Morris County

as the County continues to work through the Solar II Program to completion. The build-no build decision will be based on competitive cost and revenue estimates for each potential Unbuilt Site, and will include the evaluations of upwards of two Energy Consultants, leading to selection of only those sites which are economically feasible and reduce aggregate financial exposure faced by Morris County. Future revenues will be managed in part through a dedicated SREC portfolio manager (if selected). Amendment 3 to the Solar II Program documents provides for enhanced input in the selection and management of contractors and ongoing analysis relative to each potential Unbuilt Site.

The County is still awaiting a written letter from the Office of the State Comptroller, as a follow up to the phone conference with Morris County on April 27, 2015. In the absence of the written response, and as a reminder, the State representatives advised the County that it undertook an internal review of the Solar II Program and conducted its own analysis and evaluation of the Solar II Program. Following this review process, the Comptroller's Office concluded that, based upon the information that Morris County had forwarded to them, it was not going to pursue a further review of the Solar II Program.

The Comptroller's Office noted several factors in its post-review decision not to review the matter further:

- a. Noting that the Solar Programs and original agreements were a local policy decision, approved by the County Freeholders, and;
- b. That in the view of the Comptroller's Office, both the change in the SREC Market, as well as the legal dispute between the developer and the contractor (SunLight/MasTec) contributed to the Solar II Program not proceeding as originally expected.

The County will provide a copy of the official letter from the Comptroller's Office upon receipt. In the meantime, if the Freeholders have any questions regarding the Comptroller's internal review, or any contemplated future third party review, the MCIA would suggest that they reach out to the County's Special Counsel, McManimon, Scotland & Baumann, LLC, who is best positioned to help address any conceptual scope of work, selection of third party professionals, comprehensive budget and timetable for completion. On a related note, the County has not yet heard from the Attorney General's Office with respect to any investigation it may be conducting, as previously stated by one or more Sussex County Freeholders.

Finally, the County and Authority participated in a conference call with current Solar II Program professionals to discuss SREC pricing. In short, after selling a significant amount of SRECs in February, 2015 at prices of approximately \$220 - \$225, SREC prices dipped down to around \$185. SunLight notified the County earlier this week that prices have again risen to the \$215 - \$225 price range and suggested a sale of a significant portion of the unsold portfolio. Gabel Associates agrees with SunLight's position, noting that there is more downward pressure on SREC pricing than upside risk. Accordingly, the Authority professionals are working on a sale of the next tranche of SRECs at prices in the \$215 - \$225 range, for both the Solar I and Solar II Program SRECs. The Authority will report the final results of the sales once available.

As it has always related to all Improvement Authority matters, the Commissioners look forward to continuing to work with Freeholder Board in a solution based environment.

On behalf of all of the Commissioners of the Morris County Improvement Authority.

Sincerely

A handwritten signature in black ink, appearing to read "John Bonanni". The signature is stylized with a large initial "J" and a cursive "B".

John Bonanni  
Commissioner

JB:ks

cc: Christina Ramirez, Commissioner  
Joseph Kovalcik, Commissioner  
Ellen Sandman, Commissioner  
Scott Gallopo, Commissioner