

# MORRIS COUNTY IMPROVEMENT AUTHORITY

MINUTES of the Regular Board Meeting held on October 21, 2015, at 6:00 p.m.,  
Knox Conference Room  
Administration and Records Building, Morristown, New Jersey

At 6:00 p.m., John Bonanni, Chairman to the Morris County Improvement Authority called the meeting to order. The following persons were in attendance:

John Bonanni, Chairman  
Scott Gallopo, Commissioner  
Joseph Kovalcik, Commissioner  
Christina Ramirez, Commissioner  
Heather Litzebauer, NW Financial  
Jennifer Edwards, Acacia Financial  
Matt Jessup, Esq., McManimon, Scotland and Baumann, LLC  
Tom Brys, MatrixNewworld Engineering  
John Krickus, Freeholder Liaison (left at 6:40 p.m.)  
Hank Lyon, Freeholder  
Larry Ragonese, Public Information Officer

Commissioner Bonanni asked for the reading of the public statement in accordance with the Open Public Meetings Act which was then read by the Recording Secretary Cynthia Rueter.

Commissioner Bonanni asked for “roll call” for the Authority, four (4) Commissioners were in attendance, Mr. Scott Gallopo, Ms. Christina Ramirez, Mr. Joseph Kovalcik and Mr. John Bonanni. A quorum was established.

**Executive Session** - Commissioner Gallopo made a motion to enter into Executive Session to discuss contractual matters relating to Solar I and Solar II and regular Authority business. Commissioner Kovalcik seconded the motion. At 6:03 p.m. the Board entered Executive Session.

At 6:49 p.m. Commissioner Gallopo made a motion to come out of Executive Session. Commissioner Bonanni seconded the motion.

The public portion of the meeting was opened:

Commissioner Bonanni asked for approval of the October 5, 2015 special meeting regular and executive session minutes. Commissioner Gallopo made a motion to accept the minutes of the October 5, 2015 and Commissioner Kovalcik seconded the motion. All others were in favor to accept the minutes of October 5, 2015 and August 26, 2015.

Public: King Penna  
Harvey Roseff  
Barbara & Bill Eames  
Kurt Dinkelmeyer

Commissioner Bonanni began the meeting by addressing the Public as to the process of the meeting.

Similar to the last MCIA meeting there will first be a Public Presentation to inform the Public where we are in the process in the Solar II program, what has occurred since the last meeting. Then we will ask for public comments/questions, go back into normal business meeting. We have one resolution and a bill list on agenda for the evening. The meeting will conclude with comments/questions from the Public other than Solar II build/no build.

Ms. Eames asked for the names of all around the table of people she did not recognize. All around the table were introduced that included Jennifer Edwards of Acacia, Tom Brys of Matrix, and Cindy Rueter.

Counsel Jessup provided an update. Beginning with mentioning that this matter has been discussed at the Freeholder Meeting in in Rockaway, at the Oct 5<sup>th</sup> special MCIA meeting and again tonight.

Counsel Jessup began with informing the group that the process began with 15 sites for consideration. Those sites were numbered and posted on the IA website. After much analysis the Build/No Build committee recommended the bottom 6 sites not be considered for construction for a variety of reasons.

Counsel Jessup discussed the breakeven SREC analysis performed and noted the clear delineation between the first 9 sites. And the bottom 6. Revenue in a market SREC scenario the bottom 3 produce negligible amount of revenue and risk is higher with the lower SREC price.

The Build no Build Committee then looked at adding some county sites to the list. The added County Sites have dual impact. The pay for themselves and produce additional revenue which is a direct benefit energy savings to County.

The MCIA has posted is 3<sup>rd</sup> independent SREC Curve report on its website. Initially both Gable, Matrix prepared reports. Memo Sunshine has now prepared one which is now posted on line.

Counsel Jessup explained that the Build no Build Committee looked at Solar II as a whole with several options which included:

No further Build Out which at Market SREC's would equate to an estimated additional \$5.7M lose from today forward and could realize savings to the local entities of \$6.78M over that same period.

Build 10 sites which at Market SRECs would equate to a \$3.4M revenue gain. The difference between not building and building the 10 recommended sites at market SRES is a \$9.2 million dollar swing.

Counsel Jessup also advised of an Updated timetable that was posted on the website and advised the group that a decision will be made next month by the Freeholders and that the timetable assumes a 9 month construction schedule.

Counsel Jessup also advised the public that the MCIA reviewed estimated disposal costs to remove the panels but that the presumption is that the local units will want the panels at their life will extend beyond 15 year's

Counsel Jessup explained that as a result of Ms. Eames previous inquiry an analysis was completed and will be posted on the website that depicts the estimated removal costs by the end of the week.

Lastly and as a follow up to publicly asked questions Mr. Jessup explained the various roles going forward of Sunlight, MCIA, and the EPC Contractor which will be posted on the MCIA website by the end of the week.

Freeholder Krickus left, he had another engagement at the School of Technology he is the liaison and he apologized

Commissioner Bonanni indicated that at this time members of the Public were welcomed to ask questions

#### Comments/Questions from the Public:

Ms. Eames referenced the summary document provided in April which had a lot of financial numbers on it. Is there an update on that document?

Counsel Jessup responded by saying that he believes the document that Mrs. Eames is referring to is an accounting for every bond fund dollar that was raised \$33.1 million in proceeds. The MCIA issued a report that accounted for every dollar of that 33.1 million dollars. So that would include balance on deposit in the project fund, still sitting there for the future sites that have not been spent.

Ms. Eames remarked that she was hoping such a report might be available today?

Counsel Jessup advised that a current analysis is being prepared.

Counsel Jessup advised all that a new financial chart will be available on the web by the end of the week that depicts that the No Build \$5.76 million loss and the Build \$3.4M revenue or a swing of \$ 9.2 million the 10 recommended sites are completed.

Ms. Eames sought clarification that that referred to the system cash flows that show if you build/no build gain or loss on the Program.

Mr. Penna – asked just to clarify you are saying that if we don't build its 5.6 million?

Counsel Jessup responded by saying that based upon an independent third party market SREC curve if the decision is to not build the anticipated future loss would be \$5,766,866.

Mr. Penna remarked "That's a lot".

Mr. Penna asked "So if we don't build, that's our loss and then taking into account the other 6.9 that we already spent"?

Counsel Jessup advised that this analysis does not take into account any dollars that the County has spent prior to now, this is on a December 2015 going forward, not taking into account the fact that we have made two debt service payments shortfall payments on bonds that have matured and the County put up 6.9 or 7.0 million amount that came out of pocket the in the settlement agreement. Counsel Jessup advised that these numbers do not include such previous payments and that the \$3.4 million to the plus on solar II system wide including those payments is still a loss.

Mr. Penna – stated that "It is still speculative. It's very speculative"

Counsel Jessup responded that this is based on the independent 3<sup>rd</sup> parties' market SREC curve. So it is largely dependent on the SRECs

Mr. Eames sought clarification as to which SREC Curve was used?

Counsel Jessup advised that the Memo Sunshine, (the independent 3<sup>rd</sup> firm) curve was used. He further advised that they did a high, a low and a market.

Mr. Roseff asked "What is market, can you explain what market is"?

Counsel Jessup advised that the analysis is on the website. Counsel Jessup ask Mr. Roseff if he wanted the values.

Mr. Roseff responded "No, no, no I'm trying to understand... I know what a high is, I know what a low is, what does the word market mean"?

Counsel Jessup stated that it is their actual expectation today of what SREC's will be for the next 15 years.

Mr. Roseff followed up with asking "How is that different from high or low"?

Mr. Penna injected "That is their guesstimate".

Counsel Jessup stated that this is their market this is their realistic actual expectations of what they expect the values will be in the next 15 years.

Ms. Eames asked "So is that what you used, I think that's what Bill was asking"?

Counsel Jessup responded affirmatively noting that the analysis used the market SREC curve from Memo Sunshine.

Mr. Penna stated that “it’s really not fair to say that the \$3 point (.) something in the positive could be out there. I was in the financial business for 25 years and past performance don’t guarantee future results so you can’t we’re playing with the County’s money savings it could be \$3.2M, it is a guesstimate, it really is, at this point if we took our losses its 5.7 and change is what it really comes down to. But based on off solar I, based on what is going on out there with Solar...

Ms. Litebauer, NW financial Heather – That also uses the market SREC Scenarios.

Counsel Jessup asked Mr. Roseff what his concern was.

Mr. Roseff responded by stating that “You don’t have the same amount of risk, you’re modeling of risk is completely different between not building or projecting out 10-15-30 years.

Counsel Jessup clarified that it is 15 not 10 or 30.

Mr. Roseff responded by saying “Whatever the case, 15, so you’re modeling of risk which is what all of this really hinges on. Scott Gallopo is in the risk business, you have to model this. So all I’m trying to say is the 5.76 # has a lot less risk than the other #, no matter what you say it is based on projections. You’re projecting out 15 years vs...5, 6 (Can’t understand what he said)

Counsel Jessup responded “Right, in the event that SREC’s are lower than that number will go up as well.

Ms. Eames stated that “I think there are two perspectives. I think we are concerned the SREC whole plan projections, the other piece is the risk that we experienced the last time, tried to fix that but, and I’m not sure that you have but, some things we know were issued before, looking today at the 2011 September Report on the MCIA report on the bidders in the financial section they talked about the County’s Security amounts and I was kind of shocked about what they said about Sunlight, but I won’t go into that, it did say that Sunlight has proposed to use public financing approach that should pose as a financial risk upon the MCIA and the County...I guess we realized that, however, their proposal to self-finance a substantial portion of the overall cost of the renewable energy projects has significantly reduced that risk by effectively eliminating the need to fund the County Security Account. “I wish we could go back and eat those words”.

Counsel Jessup responded by advising the County Security Fund was funded and it has been used for the past two-three years.

Ms. Eames asked how much was in there?

Ms. Litzebauer responded that the amount was \$2.5 million

Ms. Eames noted that she has seen that figure. And asked if that has been used?

Counsel Jessup indicated that there is roughly \$737,000 dollars in that account as of today.

Ms. Eames continued “So that will be continued to be used to up to cover”?

Counsel Jessup affirmed that and assured that in any of the scenarios being discussed that money is being considered.

Ms. Eames Barbara asked if that would eventually be the County’s?

Counsel Jessup advised that “You could look at this one of two ways, they can just take the money back, and say they just put \$737,000 in their pocket but then reality is that when the system, assuming the system is short of revenue to pay debt service that would come right back out of their pocket for that money anyway”.

He further noted that “in the end, there is no benefit. They are using the money to their benefit to use the cash in the Trustees pocket before they use their cash coming out of pocket to pay additional losses on the system if and when they are occurring. I think you are right, that is a benefit that they are taking advantage of just not in the way you are thinking of giving the money back which is great it just means there is a larger payment down the road.

Ms. Eames asked – “Is there that kind of agreement in this one. I think some of are not clear on that, is there a contract? I guess it could be amended before by February the settlement, it is really hard to understand this. Going forward is there that kind of Agreement?”

Counsel Jessup advised that “The County Security Fund that is currently being held by the bond trustee. It is not held by Sunlight. It is not being held by an EPC contractor. It is held by the bond trustee for the benefit of the County. It has always been for the benefit of the County it has on its original documents has the right to see when and why they used that money, that does not change, those documents are not changing. So that money is held by the Trustee by the domain of the County in fact that money is not pledged to the Bond holders as most funds held by a bond trustee are. Purely for the benefit of the County and controls the use those funds and that is not changing.

Ms. Eames asked for clarification “Is that the \$2.5 million?”

Counsel Jessup advised that was the 2.5 million and that has been used by the County to make payments in the last few years and is now down to approximately \$737,000.

Mr. Eames asked if there an increase or no additional money

Counsel Jessup advised that there is no additional money coming in. Sunlight is not volunteering any additional money coming in to the CSA account

Ms. Eames asked “And with this continued build out is Sunlight, I mean, there’s lots of ways to look at what how much Sunlight originally put in, to our reading of it, Sunlight really didn’t put anything of their own money in. They said they would take the 1603’s monies. And that is pretty much underlined by what I am reading here today. To complete this project they are not putting any of their own money in.

Counsel Jessup responded by advising Matt “So, a couple things, they are remaining the developer, and they are in the project when it comes to completing the unbuilt sites. Regarding the unbuilt sites, again they (Sunlight) have to be if we want the 1603 grant checks. And I was trying to say they have a very minimal role on the construction project going forward. They are not getting any money for any development fees of which is what they were entitled to originally as they built these sites no development fees or paid for their nominal role in the development of the unbuilt sites.

Ms. Eames noted “And they did get development fees in the first part of this then?”

Counsel Jessup responded by advising that “They did, I believe they got a development fee up front as part of the original transaction documents and I think at one point they may have been entitled to a milestone development fee.”

Ms. Eames asked “Do you remember how much that was?”

Counsel Jessup did not but noted that it is the transaction documents and we can look it up for you and get it to you.

Counsel Jessup further advised that there were one or more development fees that they were supposed to get with all the construction stopping, lawsuit, etc. Not that that will make anyone here feel good but there were additional development fees that they were entitled to that they never got.

Ms. Eames asked “They are not putting in any of their own money so... “

Counsel Jessup injected “Nor are they getting any money”

Ms. Eames noted “they are not losing money we’ve covered all costs for whoever, they are not making good.”

\*\*\*2<sup>nd</sup> tape – 1<sup>st</sup> side

Ms. Eames asked where is the money coming from them...to finish

Counsel Jessup responded by reminded the public that the existing money on deposit in the project fund with some, not even all, the 1603 grants is enough to build the sites that we are talking about building.

Ms. Eames asked “the Trustee fund?”

Counsel Jessup affirmed “yes, correct”

Ms. Eames asked “\$6-7 million?”

Counsel Jessup clarified that there exists approximately 7.4 million dollars in the trustee account.

Ms. Eames sought clarification “Just to clarify that will build the remaining sites”?

Counsel Jessup responded that it depended on the final number of sites, it will either build all of the sites or that together a small portion of the total 1603 grants that we will be entitled to will be enough to build all of the sites. It is anticipated that a portion of the project fund money will be left over.

Ms. Eames ask “So the money that is in the trustee fund will pay for the construction and you get the 1603 funds, I don’t know what they amount to, but the 1603 funds go to Sunlight?”

Counsel Jessup advised that 1603s come to the County, unless or until there is enough revenue in the system for them to pay back the money that Mr. Penna previously had properly pointed out that the County has paid.

Jessup continued by advising that there is a running tally every time the County comes out of pocket a dollar, that tally continues until Sunlight owes us that money. As a limited purpose LLC we all know that only sources of that money are revenue, revenue from PPA payments, and revenue from payments from SREC’s. Every dollar in the system comes to us until SREC’s are at such a number...

Ms. Eames asked “So that number should be in the report as revenue coming to the County and the MCIA.”

Counsel Jessup affirmed that that is exactly how it being modeled.

Ms. Eames asked “Do you remember off the top of your head any amount that that will be for 1603 funds for the rest of the project”?

Counsel Jessup Matt responded For the 10 sites, we have them estimated yes and we can certainly take a look at them.

Ms. Eames noted that “It should be 30% of the \$7.4 million I guess or somewhere in that vicinity”.

Counsel Jessup responded by advising that “No, its 27 ½ % of a project fund number...it is somewhere between 2-3 million dollars if believe.

Mr. Penna noted “I have a question then. On Sunlight, you said in the last meeting that we did not need Sunlight that we chose to keep them, why would we keep them?”

Counsel Jessup responded by saying that “I would never say that we did not need Sunlight. In fact, the reason Sunlight is still involved is the developer in all three of the County deals that have been sort of linked together, Sussex, Somerset and Morris is because Sunlight had an opportunity to collect grant money, the 1603 money for each project. All of these

projects are Federally subsidized, there is a date certain by which you either had to be either be 5% or 10 % (Tom was it 5% or 10 %?) constructed in order to grandfather into the 1603 grant program. The applicant for those grants, in each of the three cases, was the relevant Sunlight Morris County entity. That entity in order to now after the grandfathering in order to get the benefit when those projects are built It has to be the same Sunlight Solar County LLC so where. So Sussex is building now, when they finish their projects they will have Sunlight Solar Sussex LLC submit an application to Treasury for 1603's to collect 27 ½ % ( I think it is 27.4% actually) of the construction costs for the sites that they are currently building. If Sunlight was not the applicant, you would not have qualified for the grandfathering and you would be walking from the 27.4% subsidy. So we have always from day 1 known that we do need them to take advantage of the 1603 grant program. Do we want them no of course not, I don't think any of the County's would continue to use them unless we had to which we do because there is valuable Federal dollars available to pay back the Counties. So, I would not have said never we did not need them".

Mr. Penna noted that "According to the IRS when I spoke to them on the phone about the 1603 money, they told me it is a public/private partnership and that the private partnership had to put in so much money now they are going to check, they are checking this for me. But what I'm saying no they used in-kind equity which you explained to me, and tell me if I'm wrong, that the in-kind equity that they put in was the 1603 money and they have no skin in the game other than the 2.5 million dollars that they put into that emergency fund, am I correct?"

Counsel Jessup responded by stating "I can't comment on your conversation with the IRS was, what I can tell you King, is that all three counties for all of the sites that were built as part of this program under this exact same structure, with this exact developer and this exact business model that you are discussing and that Barbara was just discussing. That under that model all three counties received 1603 grants for every single site from the US Treasury, for every single site that has been built to date and is up and running.

Mr. Penna responded by stating "I got that, but that doesn't mean that it is right. Somebody, the IRS misses a lot of things. So we'll find that out because that is not what I read in the 1603 that's why I called and that's why I asked for someone higher up in the IRS which they will get back to me. Because I will get to the bottom of the fact is that if that was supposed to be private money there is a major problem here. But moving on, why was there not a performance bond with Sunlight then, because Sunlight legally still holds the key even we are going to be there watching them every step of the way. But they are ultimately the person in charge. Why is there no performance bond?"

Counsel Jessup noted that there were 2 parts to Mr. Penna's question, one is the sites to be built and one is sites already built. With respect to the sites to be built, as I mentioned, the contractor will be responsible to provide both a performance bond and payment bond. With respect to the sites that were built, MasTec did provide a performance bond.

Mr. Penna then stated "So where do we have a problem, Sunlight got money that was supposed to go to MasTec. How did that happen and why did that happen and how is that going to stop that from doing it again. Amendment 1, which I know Mr. Pagano OPRA'd it and we still don't know who drew it up and how much it cost. And then there is 2 and 3. So they took money from MasTec and gave that money to Sunlight which they weren't supposed to do and they never noted"...

Counsel Jessup asked "Who took money from MasTec and gave it to Sunlight?"

Mr. Penna noted "the County in Amendment 1".

Counsel Jessup noted "No, I don't think that's..."

Mr. Penna interjected "It says that in the Amendment and it says that in the Arbitrator's report says it as well, I don't have a copy of the Arbitrator's report, but in the Arbitrators report, the Arbitrator eludes to the fact that MasTec was never notified of the money that was supposed to be paid to them was paid to Sunlight to pay their leases because there wasn't enough money.

Commissioner Gallopo responded “Do you know what the lease payment is? The lease payment is the payment that Sunlight makes the County to pay the debt service. So the County got the money instead of MasTec. That’s what the Arbitration award said.

Mr. Penna noted “Scott that’s great, the problem is that the County wasn’t entitled to that money because MasTec built it, performed, did the job and they were supposed to be paid. They didn’t get paid, that’s why they started all these suits. You don’t have to be a rocket scientist to figure that out. Otherwise there wouldn’t have been a law suit, what is going to prevent that from happening again.

Counsel Jessup attempted to clarify by noting that all of the things mentioned earlier, that were allowed in the prior EPC contract, were not going to be permitted in this EP contract, those are all of the reasons that they are not going to happen again.

Mr. Roseff noted that “In the April document it was reported that the loss would be in the \$20 million dollar range, as a maximum loss and as a maximum loss really is exactly your scenario that you described tonight. Which is a no build with salvage value return, that’s your maximum loss. Scott, you can continue to argue that we don’t pay the bond back and we continue forward but that’s your maximum loss”.

Commissioner Gallopo responded “Based on the SREC curve that we are using, if the SREC’s are lower than the max loss goes...

Mr. Roseff interjected “now we get to SREC curves, now your saying is the SREC curve has now changed from April 1<sup>st</sup> from today. Is that what I’m hearing?”

Counsel Jessup responded by stating that “ A variety of things have changed, correct the SREC curve has changed the number of SREC’s we have actually sold and the revenue from those SRECs has changed, a lot of things have changed”.

Mr. Roseff continued “What has changed is the SREC’s”

Counsel Jessup noted “cost for O&M has changed” as well.

Commissioner Gallopo noted that “Construction costs have changed, estimates for construction have changed as well”.

Counsel Jessup attempted to summarize by indicating that “There are a lot of variables that have changed, yes”

Mr. Roseff noted that “SREC’s is a major factor into this analysis. Now you have an SREC curve, maybe the second, maybe the third one in two weeks, doesn’t signal a solid project management, but you got your third forecast. And this forecast, which you call market damn close to their highest”,

Counsel Jessup clarified “No, they call it their market estimate”.

Mr. Roseff continued “I said, their market estimate, if you look at their numbers, is trending fairly close to their highest estimate. Especially in the out years, which again are the risk years. I think we can all look at a transient change in the next couple years what happened in the beginning of this project, you are effectively using their high estimate. I don’t think that is conservative planning that’s just a comment on my part. I think you could rework all these numbers to a more conservative SREC forecast, it just doesn’t play well with me. Especially when you had to shop for another SREC forecast. The other thing, I’m having trouble understanding if you are going to apply for 1603 funds and Sunlight is not playing their part of the partnership how does that enable you to get this funding, just because they signed a piece of paper 4 years ago, that allows them to just get off scott free.

Counsel Jessup responded by noting that “I don’t know about scott free – but as it comes to their obligation to prepare and file those applications A) Its required by the terms of the Amendment and Consent #3 in the Settlement document B) They are a major party to the EPC because it is their system and they are the title owner of the properties.

Mr. Roseff noted “Because they signed all these papers, this thing just slides through”?

Counsel Jessup stated that “I’m saying that as title owner of built solar facilities that have been grandfathered in where they filed TAN applications that Treasury has said they are entitled to the 1603 grant. In Somerset, Sussex and Morris

Mr. Roseff asked “So where I’m going with this is everybody is signing pieces of paper with a shell company that doesn’t put up any money your future is funneling funds in a shell company”.

Counsel Jessup clarified that “We are not funneling money through them”.

Mr. Roseff responded “Sure all money is going through them, where is the PPA money?”

Counsel Jessup clarified “It goes directly from the local unit to the bond trustee”,

Mr. Roseff continued “Ok, so now we have the bond trustee First Star Development, the bond trustee bought into this deal and yet, I haven’t been able to find a single document where the Freeholders were told that the independent bond trustee, their subsidiary is buying into Sunlight.

Counsel Jessup confirmed that “They are both subsidiaries of another company. US Bankcorp”

Harvey – We have Amendments 1 & 2 we have a lot of whereas’. Isn’t it appropriate to alert people that there is a related party buying into the deal as your counterpart? It is very appropriate to properly identify who these companies are. But as far as I know, Mr. Bonanni, was there ever an e-mail saying First Star Development is part of the same group of companies as the independent trustee,

Commissioner Bonanni responded “to the best of my knowledge, no”

Mr. Roseff continues “There is no acknowledgement to the Freeholders. Every time you say the independent trustee, it is not really the independent trustee because First Star has a piece of Sunlight. It’s in the interest of the independent trustee in our interest to make sure they are independent, but they’re not. So where I’m going with this is, is your talking about all of these contracts which are probably going to be 3” thick before you get through all of this”

Counsel Jessup advised “look at the EPC contract – it is only 25 pages.”

Mr. Roseff noted “All of the contracts. All the PPA, all the contracts are probably 3” thick. You’re telling me that’s going to happen over the coming years and this is all in a shell company they don’t have any money, there is nothing there. You’re telling me that panels may be removed in 12 – 15years. Where is your performance bond, where is your financial letter of credit, financial bond. Where is it that you are going to hold a hollow shell company accountable to follow through on these words on pieces of paper? You’ve already seen that not happen.”

Counsel Jessup explained that “we’re not depending on them to do that, as I mentioned earlier, when it comes to removal, there is zero expectation that by anybody at this table that Sunlight will come out with money in their pockets to remove the PV facilities from the local units”.

Mr. Roseff continued “So when you say you are going to gain \$3 million dollars by building this out, you also put the money in to remove the panels or you are assuming Mr. Brys said that is another 10 years of life.

Counsel Jessup noted that “They are not built into this number because at this point in time there is a presumption that the local units will take that cost because they will keep the panels. It is straight forward math, you can do the math.

Mr. Roseff noted stated “That is not conservative estimation, this is like where can we burnish up the image here to make it look like its best to build out”.

Counsel Jessup clarified “I don’t think anybody is driving a point to build out or not build out, we are simply trying to use forecast and models...”

Mr. Roseff continued “In fact when I was in engineering school, in my freshman class, we were given our engineering economics course, and the first thing you are taught is to do a no build out and reference everything back to that. That is the fundamentally best way to do it. You are now on your 3<sup>rd</sup> or 4<sup>th</sup> meeting, and you have mentioned that this thing does exist. You’re not handing out any pieces of paper, we’re getting left in the dark to see what your assumptions are. You didn’t do this is for your first three meetings this is a designed political way to steer it towards a build out. You could have done this from day one. No build out and then looked at a build out. If I can best understand Mr. Brys’ role throughout the last four years, NW’s role throughout the last four years, and Acacia’s role during the last four years. If someone could describe their involvement in generating a lot of the materials.

Counsel Jessup attempted to clarify “You want everyone to tell you what they have done?”

Mr. Roseff stated “I know Mr. Brys was involved from day 1, he was an evaluator. But I don’t know what his role was from that point on.

Counsel Jessup noted “He has not been involved until the Improvement Authority hired Matrixnewworld Engineering in...”

Ms. Eames stated “that’s not true.

Mr. Roseff interjected “He was with Birdsall”.

Counsel Jessup asked “Can I continue making my statement, he has not been involved since then until he was hired by Matrixnewworld in June of 2015”.

Mr. Roseff asked “So Mr. Brys left Birdsall when?”

Counsel Jessup stated “I don’t know...Tom?”

Mr. Brys noted “June 2013”

Mr. Roseff noted “And you were on this program from 2011-until that point in time? Did you attend the meetings that were on the Arbitrators agreement?”

Counsel Jessup clarified that no one from the MCIA side was allowed in the Arbitrator’s meeting.

Mr. Brys clarified “My role was technical only. Just to clarify, Birdsall’s role was technical only. Birdsall identified the sites and made the preliminary determination and provided conceptual site plans and pulled historical electrical consumption data to determine the practical an economic feasibility of installing the systems as prescribed to include in the RFP. When we got the responses back Birdsall’s responsibility did not include my direct involvement but did include my supervision because I was ran the renewable practice for Birdsall. Essentially to insure what was being proposed was technically feasible and the specifications that were included in the RFP.

Mr. Roseff stated “For all those years they did? Birdsall was purely the developer?”

Counsel Jessup attempted to clarify by noting Matt – the arbitrator has their own opinion, Gabel has their own opinion, all the counties have their own opinions, that’s not an issue. Tom is expressing where he is on the technical side.

Mr. Penna noted “Funneled over into the \$15,000 into the Morris County Republican committee, this is...”

Counsel Jessup corrected Mr. Penna by indicated “Contributed Contributed, not funneled”

Mr. Roseff asked “and Acacia tonight, their role in all of this. What does Acacia do?”

Ms. Edwards states “I am her as the financial advisor for the Improvement Authority related to conduit financings. General obligation bonds, bond refinancing I’m here tonight for the regular meeting.”

Mr. Roseff asks “not playing a role in the solar?”

Ms. Edwards responds “No.”

Mr. Roseff asks “What does NW do?”

Ms. Litzebauer responds “We are the financial advisor also to the IA we worked on the Solar, bond financing and now have been running numbers on whether to build or not build”.

Mr. Roseff continued “So when we did the forecast two weeks ago, that is a combination of Matrix and NW?”

Ms. Litzebauer response “Yes, we received production numbers from them and put the numbers together.”

Mr. Roseff asks “You have energy consultant certification from the BPU? Does anybody have that or they are just forecasts?”

Counsel Jessup responds “They are doing production from the PV systems”.

Mr. Roseff asks “but the financial forecast is the financial forecast”.

Counsel Jessup responds “PPA times production SREC’s times production”.

Mr. Roseff asks “But the SREC curves from two weeks ago who generated those?”

Counsel Jessup notes that the Matrix curve was used.

Mr. Roseff noted that “Matrix wasn’t hired for that role,”

Ms. Eames asks “Matrix, but then you were going to hire the financial person. What would have been the role of the financial person that you haven’t hired yet? NW was here for the first part and that didn’t turn out so well. We’re just trying to figure out if the same people are sitting at the table... The MCIA did some housekeeping and financials are an important part so I think it is fair to ask questions.

Counsel Jessup noted that “We had an RFP out for econometrics and that through a two RFP process there was never a suitable respondent”.

Ms. Eames asks “So you’re saying that Matrix and NW are doing the financials now?”

Counsel Jessup notes “ Until we, and in great part, in response to what the public asked for two weeks ago we went out and obtained a third party SREC curve from an independent company, Memo Sunshine. Matt explains the formula (math) to arrive at net positive or negative number.”

Mr. Penna interjects “So Acacia was a spin off from NW, people from NW spun off and started Acacia am I correct?”

Counsel Jessup responds “No”

Mr. King Penna – So you’re not connected to NW and you were never connected.

Mr. Roseff asks “I have a question on the financial here, is this a present value analysis, discounted cash flow?”

Ms. Litzebauer responds “No it is gross”

Mr. Roseff asks “Why wouldn’t you do present value, this is called freshman engineering class.”

Ms. Litzebauer responds “we have the present value.

Mr. Roseff asks “Why wouldn’t you put that up?”

Counsel Jessup advises “We’ll put it up. Harvey, we’ll put it up”

Mr. Roseff notes “but why wouldn’t you present, present value numbers? That’s a respectful way to do a multi- year project like this.”

Counsel Jessup responds “Ok, we understand your comment”

Mr. Roseff states “You don’t understand because you tried to fool the public again.”

Counsel Jessup responds “Ok, we understand your comment”

Mr. Roseff states “Don’t say ok, where is the present value analysis”

Counsel Jessup responds “We will post it to the website we’ll note that they are gross, we’ll note that the others are present value”.

Mr. Roseff stated “That is the fundamental right I don’t want more information, I want the right way. I don’t know what these numbers will be but they will be closer. And that is the correct way to do it, you put your anticipated inflation rates there and you put it out.

Counsel Jessup responds “And that is what we will do and we appreciate the input”.

Ms. Eames asked “I don’t understand why no representatives from Sunlight have never been at any meetings. It seems that since they are such a crucial part of this deal that they should be at the meetings”.

Counsel Jessup responds “We have not invited them to any of the MCIA meetings. And our focus is to minimize their role, not to maximize their role. I’ll ask them”,

Ms. Eames states “We’ve never seen them, we’re talking about the elephant in the room but they are never here so we can ask them any questions”

Counsel Jessup responds “We’ll invite them to a meeting”.

Mr. Dinklemeyer asks “You have three independent reports from Gabel, Matrix and Sunshine is there any substantial difference between the three reports and what is the difference? Is Sunshine more liberal or more conservative in their estimations?”

Counsel Jessup responds “Sunshine is more conservative that the curve that Matrix produced, they were fairly close”

Mr. Dinkelmeyer stated “Now with Matrix and Sunshine how much difference is there in the projections and how much difference is there in the low average and the market average?”

Counsel Jessup responds “To answer your second question first, the market forecast today is \$220 and the low SREC is \$116, for energy year 2016 there is a little over \$100 difference between the market and the low SREC curve”.

Mr. Dinkelmeyer asks “What is the SREC price now?”

Counsel Jessup responds "\$235"

Mr. Dinkelmeyer asks "now over a period of time how much difference is there between the low and the market?"

Counsel Jessup responds about \$100 - \$110 every time.

Mr. Dinkelmeyer asks "so in the future there is a possibly a professional guess of \$100 difference between the conservative and the market?"

Counsel Jessup responds "No one is guaranteeing the performance of SREC's and continued by advising "Tom (Brys) has a history of SREC's, but the way to look at that is post 2013 Solar Act legislation that really formulated and valued with the SACP payment.

Mr. Dinkelmeyer asks "You can provide information using history from 2013 to present on how accurate the estimates from Gabel, Matrix and Sunshine were?"

Counsel Jessup responds "yes, you can try to get a sense of what they were"

Mr. Roseff states "you can pull the 2009 SREC forecast from Gabel and Tioga and see if they forecasted 11, 12 & 13 properly & we would all be laughing right now. You can go back and do that, this is a really tough scenario, you are in no man's land as to where SREC's go in the next 15 years."

Counsel Jessup responds "That's why we are turning to experts to help us figure this out".

Mr. Roseff states "These aren't experts, they're all interested in getting more business. Memo Sunshine makes money the more facilities that are built and the more SREC's are traded, everybody's happy, it is in their fundamental interest to have more facilities built.

Counsel Jessup responds responds that have more SREC's in the market would allow the value to go down.

Mr. Roseff stated "they don't care what the values are, they trading them...turning SREC's into money

Counsel Jessup responds "They are developers..."

Mr. Roseff interjects "Just like Sunlight".

Counsel Jessup responds "they're not traders, they are also developers"

Mr. Roseff noted "They are working off the public's nickel. First Star, was that a tax equity deal?"

Counsel Jessup responds "Yes, as we understand it, yes".

Mr. Roseff asks "Usually you do a solar farm... either you have tax equity funding or you get the federal 1603, here we get both, it's an interesting combo.

Mr. Roseff asks "In the deal, we have both scenarios".

Counsel Jessup responds "That is correct"

Mr. Roseff asks "And then we have our independent trustee invested in a tax equity, this is a real nightmare."

Counsel Jessup notes that he does not understand the conflict of interest, so can we keep going?

Mr. Roseff noted that “The conflict of interest is everyone you are asking for a forecast from derives benefits from if there is a build out. They want more solar, either or indirectly they derive a benefit. You have a market forecast here if you look at the Tioga market forecast, you tell me what they forecasted for 2011, 12 & 13. If they nailed that then we should build all 16 of these things. But you know they didn’t, and you’re working off a market forecast, (another guess) somehow it’s not the high or the low it got renamed as market but it is damn close to the high forecast. And if you took 20% off of that, you would still have a meaty SREC forecast but the numbers you gave us earlier would be totally different and it would shine that that you did no build out”.

Counsel Jessup notes “If I took my market SREC curve and I took of 60% of that number 15 for the next years if the loss or gain, let’s assume it is a loss, it would be less than the no build loss. Sorry 55%

Mr. Roseff noted “what is the yearly SREC contribution, you’ve got a 3 ½ million nut for the bonds? So 2/3 of that is roughly SREC revenue?”

Commissioner Gallopo adds “Don’t forget that so when SREC’s go lower they also bring down the contribution from the proposed built sites it also creates a loss for the currently built sites. I like you’re thinking about your spread concept from the SACP to the actuals to try to figure and if there is not a lot of volatility in the spread what is that spread should be your baseline forecast.

Mr. Roseff adds “You don’t know if that is going to change”

Commissioner Gallopo adds “That’s in place for 15 years”

Tom Brys started that “The bill says that the Board of Public Utilities can change the SACP, it can change it if they raise it, and they can’t change it to reduce it. The Solar Competition Act specifically says that SAC can be modified but only modified up.”

Mr. Roseff adds “If technology changes and solar becomes much more efficient, easier to use, easier to install, they are going to change the SACP or they are going to wind up like Germany. Germany right now is a disaster because renewables are screwing up the electrical grid. There are times they can’t turn on their nuclear plants, because economically they won’t get paid. Let’s say you get a more efficient panel 3-4 years out these SREC’s could plunge in value. And you are trying to project out 15 years, as I said earlier you need to model that risk. You’ve already lived through that risk because 6 years you did the first solar program. That is all I’m saying here.”

Tom Brys states “I don’t think examining future SREC prices as a sky is falling approach is the right approach. I don’t think even the industry looks at the SREC pricing forecast as being aggressively depressed, some brokers do because they can’t find liquidity in the long years but people who are stake holders and people who ultimately depend on the value of SREC’s understand currently there is a gross oversupply of SREC’s and everyone that is not directly a stakeholder in the market an estimate you give over \$100 over the next 15 years is way too high. SREC prices keep going up, in the middle of the worst over- supply the past 5 years have been record breaking builds, there is no way you can possibly maintain that build rate, the first 5 years was catch up then there was a land rush for safe harbor...If you look at broker sites that do a really go job of examining where they think the market is, how many new projects are coming on line, its less than expected so that’s another driver for values going up. I understand that you don’t want anyone on this side of the conversation to be too aggressive in projecting what we think SREC values are going to be but we have to be realistic, you can’t expect new projects to come on line at the rates that they have and not only do they need to come on at the rates they have, they have to come on at higher rates because the renewable energy portfolio standards dramatically ratchets up dramatically over the next 5 years. At the end of the SREC program we have to have over 5000 gigawatt hours of solar production. It’s not accurate, and it is not really responsible to look at the SREC market and say it’s just going to be low.”

Mr. Roseff adds “I said you have a flat SREC curve”. All I know is the PPA the SREC revenue ratio indicated to me something was wrong, that’s I’ll I knew. Now today, you are projecting out 15 years and I give you the next 3 – 4 years. I won’t say that 2011 like we had 2011 a year later SRECS were in disarray I’m not saying that’s going to happen in 16, it may not happen ever but your projecting out 15 years and I think we are all crazy to be aggressive probably from year 6 – 15. That’s all I’m saying

Mr. Penna stated “ A couple things I want to point out one is the fact that I know we have all these goals that we have to reach but that was also set by a very liberal President. And we have a new administration coming in and that is going to change a lot of that is going to change. And if the conservatives get in that’s not going to happen...we’re going to oil, we’re going back, there’s no question about that. So that’s one thing, the second thing I want to put out there is the County should not be in the Solar business how they got in the Solar business is beyond me. First of all it shows there is a major inexperience here but there is a boondoggle I mean at best. And they knew nothing of what they were doing and the Freeholders in all due respect and I’m told most of them, they have no clue and I know some of them on a personal basis and have had conversations with them OK, they don’t understand what’s going on. They were sold a bill of goods and they voted on it. So my question is, really going forward who was the engineer last time if you weren’t? Who was the engineer who was on the ground that was running this thing? And who is it now...is that you now and who is it before?

Counsel Jessup stated: “With respect to the built sites it was Gabel, and with respect to the un-built sites the Authority can do it themselves or they can designate somebody to do it, I presume that is a decision for the Authority/the County, and I presume that will be Matrix and CHA Engineering as quote “boots on the ground.” But it was Gable for the built sites and the EPC contract which provide for an Authority representative if the Authority chooses to do that. One of the Counties in our issue has done that, and one has not.”

Mr. Penna added “coming full circle here is that you mentioned several times that the MCIA will be responsible for hold on to this and I’m not going to repeat this. Is that factored into the cost, where is the money coming from and I guess you answered part of my question, is Matrix going to be the engineer who does all the building?

Counsel Jessup noted “ Well I don’t make that decision, King that’s up to the Authority in the end but yes, but yes to the answer I can answer, yes the soft costs not just the hard construction costs but the soft costs to build the facilities, but the soft costs to have the Authority consultant, engineer...the boots on the ground, is built into the cost to build the systems so when we say we need X millions of dollars to build a 10 sites, in that number includes all of the softs costs that would include the Authority Engineer, boots on the ground”

JB –can I interrupt, sorry, but I think it is important, and correct me if I’m wrong, but Gable would have significantly less autonomy and authority than the new CM going forward would have right?

Counsel Jessup noted: yes, we tried to highlight that in talking about who has what roles under this EPC contract vs who has what roles under this contract.

Commissioner Bonanni noted “That is going to your question”

Mr. Penna responds “Yea, I got that”.

Counsel Jessup states “Gable essentially was observing and reporting but they were not approving and signing and verifying the way we are doing in this”

Mr. Penna asks “you said they weren’t ...who is they?”

Counsel Jessup notes “Gable”

Mr. Roseff stated “Gabel and Birdsall? In the traders report it was always Gabel/Birdsall.”

Counsel Jessup attempted to clarify by responding “Well, I don’t know how long Gable was just Gable vs Gable/Birdsall.

Commissioner Bonanni noted that “Birdsall has been gone for years”.

Mr. Roseff noted “I’m saying...Gabel/Birdsall”

Commissioner Bonanni responds “initially it was.”

Counsel Jessup added “I believe, as the projects were being built it was Gabel. Somebody that knows when Birdsall went under can correct me if I’m wrong?”

Tom Brys reported that Birdsall worked on the engineering side, did the shading analysis and did not provide analysis on markets.

Counsel Jessup noted that “The EPC did that.”

Tom Brys stated “Well...we did the conceptual design... the way the RFP was ultimately developed and advertised it was the collective groups decision to present it as a performance spec. And to present it as a performance spec we had to get that baseline conceptual fundamental project size. And we did things like determine the size and expense on a particular building that we would or would not necessarily allow solar panels to be installed. Ultimately it was presented to the developers and they submitted their proposals and then the Birdsall’s portion of the scope work was to take their proposals and ultimately look at their proposals from a technical standpoint, in other words if they were recommending and proposing that they were going to use a certain kind of solar panel and a certain kind of inverter and aluminum wire instead of copper wire, we needed to provide some kind of opinion as to the acceptability of that. That is pretty much of our participation in the project ended, I will say with the exception of revising the compliance the contract documents and technical matters during the submittal process and ultimately some of the build, for all I know there may have been even some of the punch list process but it really never went beyond that nuts and bolts”

Counsel Jessup noted “I think it is important to know that the engineering side was left to the EPC to do, for you to say that it was ok to go ahead with that plan.

Tom Brys agreed

Counsel Jessup noted “What we are proposing to do is 100 % of the engineering on our side to control that process and not turn it over to the EPC and/or developer to say...we think you should build this # of panels in these spots, etc. We are doing that design work taking control of that so there are no change orders or cost issues and there is more control.”

Mr. Penna stated “That was not done originally...”

Counsel Jessup “It was left to the EPC originally and the developer. And now we are saying we’re putting it in the hands of the Authority.

Mr. Penna noted “There is another key thing now, you talk about the ballasts, and the putting the ballasts on the roof and the load. When you’re putting all...is Matrix set up as an engineering firm to do all the all calculations?”

Counsel Jessup and Tom Brys advised that is what CHA is for.

Tom Brys – MatrixNewworld Engineering...

Mr. Penna asks: CHA what does that acronym stand for?

Counsel Jessup and Tom Brys advised and Tom Brys advised that they did not know and it used to stand for Clough Harbor, but I don’t know...it is not an acronym anymore, just CHA.com

Mr. Penna asks – and did they bid for that job?

Counsel Jessup advised “When the Improvement Authority went out to RFP for an Energy Consultant it was a joint proposal by Matrix and CHA”

Tom Brys added that “we do not have structural engineers at Matrix in house, CHA has structural engineers in house...”

Counsel Jessup adds “And again, King structural engineering was left for the EPC’s, allowed for sites that turns out, were not able to be used, if you start switching sites, you start incurring different costs, and different sizes from before and all of that gets eliminated because we will have CHA do all the structural engineering so that there is no site swapping, which is part of the issue we had with the prior EPC contract.

Mr. Penna added that “My problem is that I built for 20 years, I couldn’t stick a shovel in the ground until I had every little thing accounted for, now I could do an as build, but the way this arbitrator’s report is willy-nilly, go see what you can do... this is crazy, we didn’t know if this is going to be a roof mount, now a canopy mount they didn’t know any of those things”.

Counsel Jessup added “Again this is what why in this EPC we are...they are really a “C” they are a contractor, they are doing the construction, we are doing the structural engineering. There is no contemplation for site replacement, or just go find sites or as you said just go figure it out, this site that site maybe a ground, maybe turned into a roof. This is fully designed, fully site located, again this is only if any the sites are built at all. Fully engineered, fully structurally engineered and then put out to say who can build this at what price. I agree with you, they were absolutely issues that ultimately did not benefit the County.”

Tom Brys added that “I just have one response to one of the things you said, you mentioned/referenced that the federal government could change the requirements/regulations that could ultimately impact the SREC market in NJ, I’m not housekeeping item. All the SREC fundamentals and requirements and SACP all of that has been determined by the NJ Legislator. It is independent of federal influence...”

Counsel Jessup added “and signed by Christie.”

Tom Brys stated “So that is how it exists today”.

Mr. Penna states “and I understand that but the Assembly and the Senate will change, I know we are on different sides of the isle, I understand that but just because the Democrats are in power, doesn’t mean they will stay in power. If the Republicans get in that is a tax debt it’s on us.

Mr. Eames added: First off, I don’t want to speak for any of the members of the MCIA, but long public meetings can be somewhat of a burden but I think it is incredibly healthy that all of these meetings the information is being debated, this is pretty sophisticated stuff, it was not discussed in some of the other Counties and it wasn’t discussed early on but I think it is a healthy process and I just want to commend your process and not wanting to shut down it is important. I do have a couple questions as they relate, just to spin back a little bit, I know that the IRS granted this process approval when it was originally started and moved forward, is there any chance they can look at it further and make a decision that no in fact the way it was structured and the way Sunlight was operating violated the 1603 rules is that feasible? Is that out of the ball park is a risk factor?

Counsel Jessup added: “So, we have no indication whatsoever, that there is any policy at US Treasury is going to change with the 1603 grant program. We have correspondence from Treasury, that you may recall, that we talked about around settlement time the supplemental 1603’s, you get a check on the construction price and Sunlight for the built sites submitted on the construction price as they built it, not the higher construction price that the arbitrator determined was the actual construction price. So Treasury has corresponded and we have some of the correspondence, not sent to us, but to Sunlight. Sunlight had sent us some of the correspondence from Treasury and we acknowledge that you’re fighting over the price and if it is a higher price you should resubmit to us and we will consider a check for the higher portion of the cost. In fact, to date, those supplemental obligations have gone in and Treasury asked a host of technical and informational questions about the cost themselves. And that package has gone in and now the developer is waiting for Treasury’s determination but in that entire process, which is even a more unique process, than taking a brand new project from scratch and saying are we entitled to it under the grandfathered 1603 procedure or not? So far Treasury has been marching down the line of getting ready to process that. On the risk side, again it depends on the number of sites built, if any are built. We either don’t need either a single dollar of 1603 money or we need a fraction of the dollars 1603 money, so to your 1603 risk hypothetical, if they, if Treasury said you are entitled to 100% of the 27 ½ % we’re going to give you 30% of the 27 ½ % that reduces the cash balance we have after all of the projects are all built. But still built all of the

projects we are talking about. Is that one way of evaluating risk? We think we are going to get 30 % instead of 100% of the even though there is no indication that we will not get 100%? We think so, we're..."

Mr. Eames asked "In contrast to the SREC's the 1603's are a one-time thing, correct, essentially?"

Counsel Jessup stated "Yes, absent of the process of the unbuilt sites. You send in the amount they look at all of the costs and determine which costs are eligible and which costs are ineligible, figure out what 27.4% is and send you a check."

Mr. Eames asked "Liability...with the assumption by the County of so many more holes, I want to make sure I'm thinking clearly, since the County is 100% liability to begin with the assumption of more management responsibilities doesn't assume any more risk but to some extent does mean that you cannot pass off to someone else performance bond kind of obligation Except for the Construction contractor that can install each of those sites, is that correct?"

Counsel Jessup responds "There will be a performance bond provided by the contractor, which will cover performance and complete construction to substantial completion of the unbuilt sites. In the event that does not happen you call on the performance bond provider they have multiple options to force the contractor to do it, do it themselves, call on the money, etc. Once the facilities are constructed and substantially complete, Title becomes Sunlight's. Sunlight technically becomes the owner of the assets, they are required to provide insurance policies on all the assets, as they currently have on all the assets, and there is an operation and maintenance component that is currently contracted to Sunlight and we can fire Sunlight as O&M provider and hire someone else to be O&M provider. So you've got that piece of if that is covered by insurance policies provided by Sunlight and by and O&M contract that is currently provided by Sunlight."

Counsel Jessup asks Mr. Eames "Does that get you to where you wanted to go?"

Mr. Eames responded "Yes, that's pretty close. I just wanted to see normally when you assume more responsibility there is less ability to pass on to somebody else. As John & I have talked probably 8 times over the last 6-7 months. Each of those steps to divide this down have more accountability and direct and more transparent in this process and I commend you for that. Just to touch on conversations on the King had a minute ago, theoretical that anything in the world can happen at any time, but it is of concern to me as a taxpayer to look at this with the way government policies are and trying push renewable energy, which to my way of thinking, a little bit fanatical and a whole lot of ideology and not as much reality as they would like to be. But the same thing holds true in the financial markets when we're talking that the country has 19 trillion dollars in outstanding unfunded debt and many other countries do as well in the entire credit markets that are kind of teetering at the moment ... If somebody says the Emperor is nude the whole thing will collapse. It's not quite that with the solar market because the panels are in fact producing electricity in a number of places. I think it would be pulled back from somebody's best estimate some marginal percentage and work it on that reduced number and base it on the new low. The market estimate is in the earlier years lower than your high end in later years they get closer. I hear Scott has said this and Tom you said it and made good references to the technical information out there in the market for SREC's but I still have that question mark in my mind... a lot of it is just hypothetical. But your numbers, it looks like you've done a reasonable effort trying to put all those things together to look at the viability.

Commissioner Gallopo noted "Bill that is a fair concern. I share that it is not anybody's number in particular but which is why we keep getting new curves because we need to plug in the number to make an assessment, and on top of that you need to figure the rigor of the analytics that generate the particular curve, which we are not in a position, I mean as laymen how much can you really pick that apart? Harvey made comments a while back about the spread between the SCAP and where the actual market was, and recently a couple days ago and/or today, nailing down exactly what that spread was and if we stuck to that ok with a haircut on it to be conservative, what would that forecast look like? Again you want to try to get to a conservative level, but what I saw some of these curves, I kind of have a problem with that as well, but at the end of the day it doesn't change the break even number for each of the sites, it changes the excess cash flow. At any time when you change lower any of those SREC numbers in any of those years it not only impacts the to be built potential sites it also impacts the built sites which basically makes, it doesn't, there is a ripple effect it's not just a snapshot on what we're looking at on the potential to be built sites. So, the focus..."

Mr Roseff interjected "it is a five dimensional moving target".

Commissioner Gallopo noted “It’s just like juggling chainsaws, I mean to Harvey’s point, I’ve been concerned about the tail risk,

Mr. Roseff responded “That’s exactly what it is, tail risk”.

Commissioner Gallopo added “I’ve said it a number of times, at a number of meeting, and that actually in conjunction with suggestions from a lot of people around this table also Freeholder Krickus, that we arrived at a minimized risk as much as you can the great unknown of what an SREC is going to be, when we just do avoid any project with a high break even rate for SREC and if you can have a project with a break even rate of 50 or 40 again we are not in the risk business, and this is not what we shouldn’t be doing, this is the hand we have been dealt, and the loss itself with the SREC curve solar II is close to 16 million dollars that is 9 Million dollar swing, that’s no like what are you using that extra money for. By doing nothing it is 16 million and because the County has already laid out the 7 million bucks, part of the claw-back of the 1603’s so and a host of a bevy of other things and we are kind of solving for that number”.

Mr. Roseff stated “Just to be clear though, when you were quoting 5.76 million you focused only on build outs”.

Commissioner Gallopo responds in the affirmative

Counsel Jessup adds “from today forward, that’s what we said. And the bond payments we made so too”.

Mr. Roseff clarifies “So we’re going to have a revenue gain, a positive revenue gain of 3 million that are only the built-out sites.”

Counsel Jessup affirms “that’s exactly what we said”.

Ms. Litzbauer adds “Whether you build out or don’t, you’re in the same position. You’ve already lost that money so it’s added up”.

Commissioner Gallopo states “This is part of the problem there are so many ways you can look at this, that and we talked about this, and personally I want to see, and we are going to run these numbers and the entire Solar II project, start to finish what the numbers are going to look like, with various scenarios, build – no build, build conservative really low, build really high SREC, everything so you can see the entire picture, because we are not just generating excess revenue to build a road somewhere, the known is the hole we already know from the build sites from Solar II and we have to plug that one”.

Ms. Eames states... “And Solar I too”.

Commissioner Gallopo reply’s “But Solar I..

Ms. Eames adds “But it’s lost”

Commissioner Gallopo adds “It is but, but then argues that for building every nickel of project money and building everything regardless of breakeven price. Every project you build throws off cash flow which again, tail risk, I have to be concerned about the doomsday scenario, the low probability, the high smack in the mouth outcome because we are not an enterprise, we are not in business of taking risk, we are dealing with a situation that was left to us by the prior Freeholder Board. And we have to solve for a County budget hole that will affect everybody. The taxpayer and people who run other departments in this County. We have to figure out how to plug that hole in a prudent way. There are so many dimensions to this my head spins”.

Mr. Roseff adds “If you take 15-20% off on your SRECS - you do a net present value, I bet you these two numbers come pretty close together. Whether you build or don’t build under your current scenario. You can prove me wrong, but, just eyeballing it net present value take 20% off, it wouldn’t be 20% across the board, you should forecast it in the 5 - 15 years out, that would be a steeper curve. If you did that I bet you the two numbers build – no build pretty close together, one has risk the other one has none.

Commissioner Gallopo states “and we are also tightening up a scenario of possibilities in the no build scenario, what can you do, if anything, on a refinancing or rollover or whatever, how does that stack up and again you are right it is risk vs no risk ok and but the risk isn’t just the 5.3 vs 3. It is 16 million bucks”.

Ms. Eames adds “It’s also an opportunity risk. I think you’re talking staff, time, energy, time going forward...”

Commissioner Gallopo states “Most of that time actually...”

Ms. Eames adds “Time spent on looking at the budget to cut other ways and I don’t think this is going away, it’s a time sucking black hole project”.

Commissioner Gallopo notes “You guys have been very helpful, and it has been said before, no one can perceive, the smartest people on the planet, the smartest people in this room, we’re not going to think of everything, getting that input from you guys is important. Sometimes we don’t actually enjoy it but it’s critical. And that’s why when we stay on point in terms of drilling down and a lot of your suggestions have been worked into the analytics and the actual proposals that the Freeholders will be mulling over. It isn’t just based on just moving the air around the last several months, you guys play an important role to the extent that we have to focus on the cast at hand here, it is really important...”

Ms. Eames adds “I would be curious to hear what you guys, when we’re not in the room, what your conversation is and what you are thinking about the possibility of just not doing it because of what Harvey says, because to what you point to about the government, who knows what Trenton will do, I mean, if Trenton is going to drive us all into the ground and they do intentionally sometimes, but the stock market, who would think that under Obama that the stock market would go up and up. Nothing in this world is real anymore, nothing makes sense, everything is upside down, and so what we think, what the least likely to happen, when you factor in variables of opportunity lost and present value, and I have to believe that the technology risk, that you think these things are going to be bought by these units in 15 years and are to be used for another 10 years, I think...probably in 5 years they will come up with a solar panel that is 20% the size and twice as efficient and they will look at those dinosaurs on the roof and say how fast can we get those off. I would almost guarantee that that is going to happen. If something else doesn’t come along, a new form of, the use of hydrogen, there are just so many variables out there that downside risk is and I think that is very real besides what Trenton or the Feds say or politics changes... that the risk of technology change and development is really significant. And then we are devoting all this time and opportunity and for what. I don’t know how you adequately take public opinions because ultimately the Freeholders and board are supposed to do what the public wants, this is s... 90% of the public their eyes will roll back into their head if you even started to talk about this. I don’t know how you take that assessment but a reasonable fair number of people would say, sometimes you just cut and run. And I would just like to plant the thought that if that were to be your ultimate conclusion instead of feeling that like you have to drive toward the build out because of the loss, and then all these people that are making money off that, and you can’t deny that that that’s not a part of this just to say that I’m not sure that the public that they really understand what’s at risk here they would say that that’s not a bad option. Cut and run, find other ways to cut your budget and suck it up and go on because there are lots of us on all sides.

Mr. Penna stated “I think the real issue, Scott, I think...some of what you say is disingenuous, when you say the 7.9 million dollars what is factored into this. Harvey, Bill and I are good friends and we disagree during the last campaign we disagreed because I believe that John (Cesaro) made the right decision to cut our losses and move on. And that’s what they said, it’s going to be, let’s settle.

Ok, let’s pay the 7 million or 6.9 million dollars, cut our losses and move on. Then all of the sudden, it raises its ugly head again and now it’s build or not build. We cut our losses that loss we already assumed. It’s not factored into this, the fact, are we looking to cut another loss or are we going to get into this again? Being in the market knowing that the market is manipulated by other people and people with large amounts of money and that’s the same thing with the SREC’s and we’re fooling ourselves if we think that it is not. So looking at the SREC’s which are a good point in this, that’s a problem and the fact is we’re not in the risk business, the County is not in the risk business, the County is in the business of serving the people, and this does not serve the people. That’s where it is, I’m not going to go on and further argue here, because I know you are going to go on and make your decision and that we’ll argue with the Freeholders but I do want to ask a couple quick questions, you mentioned that there was the back to the original statement to when they come in and

test whether the line from the solar panel back to the inverter if there was a loss, they would come in and inspect it every 5 years...so why is it not every year?

Because if there was something wrong, you wouldn't go to the doctor every 5 years you go to the doctor every year, why would you not check to see if there was a loss, why would you check every 5 years"?

Counsel Jessup noted " I'll let Tom answer but I'll point out that the local units gets to the same spot because if there was a loss tested after 5 years you go back and reconcile the 5 years' worth of shortfalls and they are owed that money from the contractor. So the local units are put in the same place, but I'll let Tom talk about it."

Mr. Byrs attated: "You need multiple years to flush out and annual anomalies like weather, temperature has a huge effect on the ability of transferring light to electricity, reliability, if for some reason the grid if there were brown outs in some areas that take the system off line unexpectedly, those are anomalies that can happen in the life of a system and generally speaking when I perform third party measurement verification services I won't agree to do it for 12 months, it always has to be a minimum of 24 months and that is just for third party measurement verification it's not a performance guarantee, for a performance guarantee, you need multiple years, as long as you have a condition in there where you can go back and get it. Because to go back and get it the price to compare I to the price of the time".

Mr. Penna notes "So I got that, who is the person we go back to? Is it Sunlight?"

Counsel Jessup states "No it is the contractor, the contractor is the one providing the performance guarantee, it is the contractor the one building the system, you go back to the contractor".

Mr. Penna adds "Which we don't know who that will be right now?"

Counsel Jessup noted "We have not selected who it is yet, Correct"

Mr. Penna asks "So the performance bond will be a part of this. The performance bond is for building, is there another type of insurance...what if they go bankrupt?"

Counsel Jessup adds "If they go bankrupt that is an issue we will have to consider, you are absolutely right".

Mr. Roseff state "That is missing, you don't have a financial bond with the developer that is a key need".

Mr. Penna adds ""So it doesn't matter if they go back every 10 years, and check it every 10 years, they don't have the solvency to pay us..."

Counsel Jessup states "Well either they're not going to go do it, because they are not going to exist or if they are going to go do it, they are going to pay."

Mr. Roseff states "It's going to come out of your own money anyway".

Counsel Jessup adds "you mean the EPC company?"

Mr. Roseff notes – It is a hollow shell company, they money

Counsel Jessup states "the EPC, you mean the EPC right? The EPC is not a hollow shell company".

Mr. Roseff interjects "no not the EPC is not, but the developer is which has to be doing the operations and the maintenance for 15 years".

Counsel Jessup clarifies "They don't have to be, we can have somebody else do it".

Mr. Roseff go on further to say " It's still going to come out of your own money, it's all...you're in the hole ...all the money is being flushed through this cash machine and it arrives back to pay off the bonds".

Counsel Jessup address the matter by stating that “It is a revenue system. That’s correct if we know what the revenues are...”

Mr. Roseff adds “So you are never in a position to say they are going to pay...we are going to pay if they’re any issues the taxpayer will pay, if you build this out and double the size you double the risk that the taxpayer has an O&M exposure so in the end the cash flows are always insufficient to pay off the bonds.

Counsel Jessup adds “The County does have an O&M exposure we contemplated that in every model we’ve done, I was answering King’s question about the performance guarantee provided by the EPC. That’s different than O&M, and I agree with you. But that is different than the contractor performance 3, 5 year performance guarantee.

Mr. Penna notes “I think you answered my question. So the O&M which is Sunlight right now, can we change, that is what you were talking about?”

Counsel Jessup reply’s “The O&M contract which is separate from the developer that owns the system, we can hire anybody to O&M this thing on a days’ notice to Sunlight that they are terminated”.

Ms. Eames asks “Are these things publically bid? How are these subcontractors, I know there is a slew of them, how are...”

Counsel Jessup noted that “If there are subs, that will be the responsibility of the EPC to hire those subs, typically what will happen...What’s that”?

Mr. Brys notes “That’s on the prime”

Counsel Jessup clarifies “That’s right, it’s on the EPC, which again is not the developer, it is not Sunlight it is on them if they want to hire subs, they will give us list of the subs that we would approve or not approve of they will be responsible for payment, you heard me earlier, they would have to provide a payment bond which is what insures that the subs get paid so that there are no liens on the system when it gets put together. So the EPC’s, I can’t imagine, that they would bid it out but I don’t know. It is their responsibility whether they build it directly or whether they do a mix doing their own building and going to subs. Again Tom may be able to explain a little bit...”

Mr. Penna asks “Two things, if Sunlight were to go bankrupt, forget that, if Sunlight gets the 1603 money because it gets paid to them and they are a conduit, am I correct, and then it is paid to the County because it is not directly paid to the County because the contract is with the IRS and Sunlight correct.”

Counsel Jessup adds “It is not a contract, but you are correct in that when the Federal Government cuts the 1603 grant check, that is not actually a check it is a wire. A wire directly to the bank account that the County and the Improvement Authority have control over. It is a Sunlight bank account, make no mistake but it is a Sunlight bank account that we get monthly statements and can log onto every and go and log on and look at the account right now, or at any given moment.”

Mr. Penna asks – “So Sunlight has no control, they couldn’t syphon that money off the top?”

Counsel Jessup reply’s “If the Federal Government wired the money into that bank account, and the application has the bank information on it, and they wired that money to that bank account, it would be recognized as going into that bank account and if they were to take it we would all see it going out of that bank account”.

Mr. Penna adds “No I understand that, but if they took it...”

Commissioner Ramirez stated - “What would you do about it?”

Counsel Jessup states “They would commit various State and Federal crimes taking that money”.

Mr. Penna states “Look at Birdsall, they committed all kinds of crimes”

Counsel Jessup reply’s “Apples to oranges”

Mr. Penna states “It is possible, it is very possible”

Counsel Jessup replay’s “That is your assessment of the risk”.

Mr. Roseff asks “So in your Morris situation, as compared to Sussex, you’re saying the MCIA is going to contract directly with the EPC?”

Counsel Jessup explains “The MCIA will be a contract party along with the developer and the EPC. We will sign that agreement.”

Mr. Roseff asks “So the contract is with Sunlight and you are a party to that contract?”

Counsel Jessup adds “That is correct. Is that not how not they did it in Sussex? I wasn’t aware. They aren’t a party at all? “

Mr. Roseff responds “That isn’t how they did it...MasTec is involved”

Counsel Jessup states “MasTec is involved, so maybe that’s why”.

Mr. Roseff adds “MasTec hired Vanguard”

Counsel Jessup states “Sussex still has MasTec involved. Sussex still has all the original parties involved.”

Commissioner Bonanni asks “Are there any other questions because we still have some business to...”

Mr. Dinkelmeyer states “Some fast ones and some/a couple that aren’t. Who is Larry Ragonese?”

Commissioner Bonanni responds – He is the Public Information Officer, he was actually here.

Kurt Dinkelmeyer – I know additional Professional costs, County’s Professional costs were included in the Operating expense for these projections correct?

Counsel Jessup affirmed.

Mr. Dinkelmeyer asks “What about additional County Employee expenses and time, because County employees will be spending substantial time on this”.

Counsel Jessup states “Well, It is these folks and they are unpaid members of the Improvement Authority. I guess they get pizza.”

Mr. Dinkelmeyer asks “You talked about dispute resolution. Is that by arbitration or how is the dispute resolution done? And what if Sunlight, in the arbitration the Arbitrators found that Sunlight was demanding more for higher levels than was generally accepted practice which MasTec was going for and that Sunlight’s demands created the problems, the extra expenses, delays and finally litigation. Now how does this dispute resolution work and would Sunlight in a position to cause a dispute that would make it impossible for the projects to be completed by December.”

Counsel Jessup responded by saying “As you mentioned earlier in the last go around and we hit on this a little bit earlier before Sunlight was responsible in the original EPC contract together with MasTec to design and engineer. And based on the Arbitration panel found among other things Sunlight was making demands with respect to the design of those facilities that was the source of a significant amount of those problems, say it that way. (People speaking...muffled). Everybody

read it, everyone can come to their own conclusions, but no one was in the room. All of those things that were allowed that that contract are not allowed in the contract as we are proposing it because all of the systems are already designed and engineered so what we are trying to do is take from that last process what that was somebody said earlier, it was just wild wild west between those guys the way they went off and did what they wanted to do instead, the Authority is doing all that work before it even goes out to that other contractor. The payment dispute mechanism I mentioned earlier is a mechanism we would anticipate having in the contract. That is with respect to if the EPC contractor says that we did this portion of the work for we are entitled to \$200,000. And it is up to the Authority, not Sunlight, that says we are going out to review this work we only think you did this work, and we are not satisfied with this piece so we are going to only pay you proportionate share that is \$150,000. And either you are going to perform that work according to our consultants, not Sunlight's, our consultants/or representatives satisfaction or we go to what is typically an arbitration dispute resolution between the contractor and the Authority over as to whether or not that work was in fact done or whether or not they are entitled to that payment. So again, different than the last deal where unfortunately we tried 100 times, neither the County or the Authority were allowed to be a part of the Arbitration Dispute Resolution between MasTec and Sunlight in this case it would be between the Authority and the contractor directly, so there would be more control over that process.

Mr. Dinkelmeyer continues "Two points, if the County, considering the old documentation, if the County were a party to the arbitration the results wouldn't really have been significantly different. And, the length of the arbitration would have been just as long. What I'm asking about is the present or the new arbitration procedure, what if the contractor disagrees with the County on how much work it did and goes into arbitration what is to prevent that not delaying the work so it is not completed by December 2016"

Counsel Jessup responds "If it got to that, with respect to a milestone payment, that is why we do milestone payments vs a payment at the end to prevent that from happening. And that is exactly what we would do Harvey, I imagine that is what Sussex is doing. They probably pay every 15 days."

Mr. Roseff states "that is what the real world does"

Counsel Jessup states " Right, every 15 days or so, so you don't get to the point where you have a dispute over an amount of money and a scope of work that is as sizeable as it was in this case."

Mr. Dinkelmeyer adds "But there is still a possibility that there might be a dispute and there might be delays".

Mr. Brys responds "But there may be a dispute but to Matts point it will be a measured because it will be a detailed schedule of values, There will never be able to bill ahead far enough ahead to put the County, I don't want to say never, the idea is that you develop an accurate schedule of values such that they can do the work and make their fair overhead and profit, but there is never a material exposure to the Improvement Authority for work that they have paid for that has not been completed. Not a material amount that is the point of developing the schedule of values the way we do and the progress payment that Matt talks about".

Ms. Eames asks "I would like to ask a quick a question".

Counsel Jessup notes "I don't know if Kurt is done."

Mr. Dinkelmeyer continues "On the County project that would not get the 1603 money correct",

Counsel Jessup asks "on a County project?"

Mr. Dinkelmeyer clarifies "On the new proposed County project".

Counsel Jessup notes "Yes, they would be eligible for the 1603's."

Mr. Denkelmeyer asks "I understood that Sunlight was brought in, a developer brought in in order to have a third party to which was required to get the all the 1603 money".

Counsel Jessup responds “And they are still that third party for all of the sites including local boards of Ed, local municipalities and the County. And by way of example there are County sites that are in prior solar deals, County College?”

John Bonanni – CCM, the Park Commission, across the street the voting machine warehouse in Hanover.

Kurt Dinkelmeyer – They are from the Phase 1 projects

John Bonanni – County College is from Solar II

**End of tape**

**Agenda item 6(i)** was discussed – Resolution authorizing an application to the Local Finance Board. Commissioner Gallopo made a motion to adopt this resolution, Commissioner Kovalcik seconded the motion, and Commissioner Ramirez abstained. Roll was called. The resolution was approved unanimously No. 15-42 “RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING APPLICATION TO THE LOCAL FINANCE BOARD PURSUANT TO N.J.S.A. 40A:5A-6” (No. 15-42) was adopted.

**Agenda item 6(iv)** Bill List - Resolution approving the payment of bills as listed on the Schedule of Warrants. Commissioner Gallopo made a motion to adopt this resolution; Commissioner Kovalcik seconded the motion. Roll was called. The resolution was approved unanimously. The motion carried and Resolution “Bill List” (No.15-43) was adopted.

Commissioner Bonanni opened the meeting up to the Public again for any final comments.

Mr. Dinkelmeyer asked referring to solar initiatives if the County had received an LOC (Letter of Credit)?

Commissioner Bonanni responded by indicating that during the initial Solar 1 RFP Process respondents were asked to provide Letters of Credit and that to the best of his recollection no proposals were received. Commissioner Bonanni further explained that after further consideration and upon this matter being presented to the Freeholder Board the Board authorized the MCIA to re RFP the program with respondents not being required to provide an LOC

Mr. Dinkelmeyer then asked if the second solar project required a letter of credit.

Commissioner Bonanni responded by advising Mr. Dinkelmeyer that neither Solar Initiative required Letters of Credit

Mr. Penna offered the following comments:

Who is responsible for the Solar Programs indicating that he has spoken to Freeholders who say it is the Improvement Authority and the Improvement Authority says it is the Freeholders.

“There is over a million dollars of Pearlman and Miranda Bills here was”

“There is something corrupt here”.

Commissioner Bonanni asked if there were any other public comments. Upon hearing none that portion of the meeting was closed.

Commissioner Gallopo made a motion to adjourn the meeting. Commissioner Kovalcik seconded the motion.

The October 21, 2015 meeting of the Morris County Improvement Authority was adjourned at 9:35 p.m.

The next Improvement Authority meeting will be held on **Monday, November 16, 2015**

Respectfully submitted,

Cynthia Rueter  
Recording Secretary