

**BEFORE THE NEVADA ENERGY ACTING COMMISSIONER
NEVADA RENEWABLE ENERGY AND
ENERGY EFFICIENCY AUTHORITY**

In the Matter of the Application of:)	
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CC LANDFILL ENERGY, LLC.)	Application Filing No. 10-10007B
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing was held before the Nevada Energy Acting Commissioner of the Nevada Renewable Energy and Energy Efficiency Authority (Acting Commissioner) on March 15, 2011 regarding Application Filing Number 10-10007B. At the hearing, applicant CC Landfill Energy, LLC (CCL) was represented by Brent Keele of McDonald • Carano • Wilson, LLP. The Acting Commissioner was advised by Louis Ling. Based upon CCL's presentation at the hearing, the Acting Commissioner makes the following findings of fact, conclusions of law, and order in this matter.

FINDINGS OF FACT

1. At the hearing of the matter, CCL presented the testimony of Donald Butler, Vice President of Projects for Energetic, LLC, the sole member of CC Landfill Energy, LLC. The Acting Commissioner admitted into evidence as Exhibit 1 a packet that contained six subparts: (A) Notice of Public Hearing, dated March 7, 2011; (B) CC Landfill Energy LLC Pre-Application filed with the Nevada Energy Acting Commissioner on 04/01/2010, and response letter from the Nevada Energy Acting Commissioner, dated April 13, 2010; (C) CC Landfill Energy LLC Application (redacted) as filed with the Nevada State Office of Energy on November 4, 2010; (D) Energy Related Tax Incentive Fiscal Note as required by NRS 701A.375-1(a) by the Budget Division of the State of Nevada Department of Administration,

received on February 23, 2011; (E) Fiscal Impact Renewable Energy Partial Abatement of Sales/Use and Property Taxes as required by NRS 701A. 375-1(b) by the State of Nevada Department of Taxation, received on January 20, 2011; (F) Correspondence from Brent M. T. Keele, McDonald-Carano-Wilson dated October 25, 2010; (G) Prefiled Testimony of Don Butler. At the hearing, CCL presented the testimony of Don Butler. Based upon the testimony of the witnesses and the evidence presented, the Acting Commissioner finds the following to be the facts in this matter.

2. CCL is a wholly-owned indirect subsidiary of Energic, LLC. CCL is a Nevada LLC with its primary office located in Las Vegas, Nevada.

3. On April 1, 2010, CCL submitted its Pre-application in this matter.

4. On November 4, 2010, CCL submitted its Application seeking partial abatement of sales and use taxes and property taxes for the construction of a biomass power generation facility that would be located on 1.4 acres of land leased from Republic Dumpco, Inc. and located at the Apex Regional Landfill in Clark County, Nevada (Application Filing Number (AFN) 10-10007B). The Application described a biomass power generation facility that would install that would generate 10.6 megawatts (MW) nameplate that would be sold to NV Energy for a period of 20 years pursuant to a power purchase agreement.

5. At the hearing and in his written testimony, Mr. Butler testified that CCL was properly licensed and qualified to do business in Nevada; that CCL had obtained and intended to maintain all of the required licenses and permits to operate the CCL facility; that CCL had received all necessary approvals for the CCL facility, including most recently all the necessary building permits from Clark County for the various phases of the project; that the CCL facility would have a nameplate rating of 10.6 MW and was anticipated to produce slightly less than that because of a potential parasitic load of approximately 1.7 MW needed to operate the facility; that

CCL had entered into a 20-year power purchase agreement with NV Energy by which NV Energy would purchase all the power produced by the CCL facility; that the CCL facility was anticipated to be completed and operational in November 2011; that CCL had not, as of the date of the hearing, selected a general contractor for the project, but that it appeared that almost all of the construction employees would be Nevada residents; that the new construction cost estimates derived since the submittal of the application show that the capital investment of the project will be approximately \$35,000,000.00; and that the project did not include the construction and installation of a transmission line by which the facility would be connected to the power distribution grid because a transmission line already crossed through the middle of the project's land.

6. The Acting Commissioner took notice that the statewide average hourly rate as determined by the Department of Employment, Training, and Rehabilitation (hereinafter "DETR") for fiscal year 2011 was \$19.93. Thus 110% of the wage for fiscal year 2011 was \$21.92, and 150% of the wage for fiscal year 2011 was \$29.90.

7. The Fiscal Impact statement produced on January 20, 2011 by the Department of Taxation shows the following estimated figures regarding the property taxes related to the CCL facility:

Total Taxable Value of the Project in 2011	\$32,316,800.00
Total Property Taxes Due Over Abatement Period	\$4,877,732.00
Total Property Taxes Abated Over Abatement Period	\$2,682,753.00
Total Taxes to Local Government Over Abatement Period	\$1,207,240.00
Total Taxes to Renewable Energy Fund Over Abatement Period	\$987,740.00
Total Taxes to Local Government and Renewable Energy Fund Over Abatement Period	\$2,194,980.00

8. The Fiscal Impact statement produced on January 20, 2011 by the Department of Taxation shows the following estimated figures regarding the sales and uses taxes related to the CCL facility:

Total Amount Abated (Year 1)	\$1,048,300.00
Total Amount Abated (Year 2)	\$92,921.79
Total Amount Abated (Years 3)	\$0.00
TOTAL AMOUNT ABATED	\$1,141,221.79

Total Impact on Local Government (Year 1)	\$667,100.00
Total Impact on Local Government (Year 2)	\$59,132.05
Total Impact on Local Government (Year 3)	\$0.00

TOTAL IMPACT ON LOCAL GOVERNMENT	\$726,232.05
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Total Local School Support Tax Gain	\$533,573.46
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9. The Fiscal Note produced by the Budget Division shows that the State General Fund will be impacted for a total of \$414,990.00 in sales and use taxes abated over the period of the abatement (2010 through 2013) and that the State's Debt fund will be impacted for a total \$181,440.00 in property taxes abated over the period of the abatement (20 years).

10. Synthesizing the figures in evidence in this matter, the total estimated benefit pursuant to NRS 701A.365(1)(f) to the state and local governments in Nevada is \$285,702,694.00 and the total estimated amount of sales and use taxes and property taxes abated in this matter is \$41,431,430.00. Thus, the benefits to the state and local governments in Nevada exceed the total amount of abated taxes. The estimated benefits and amounts abated over the applicable periods of abatement are calculated as follows:

Financial Benefits

Capital Investment in the Facility	\$35,000,000.00
Total Property Taxes That Will Be Received by State Governments After the Abatements	\$2,194,980.00

Total Property Taxes That Will Be Received by Local Governments After the Abatements	\$1,207,240.00
Sales and Use Taxes Collected After Abatement (Local School Support Tax)	\$533,573.46
Modified Business Taxes Paid (20 years)	\$21,721.00
Construction Payroll (37.70/hr. @ 20,000 hrs.)	\$754,000.00
Operational Payroll for 2 FTE (20 years @ \$172,300 per year):	\$3,446,000.00
TOTAL BENEFITS OVER ABATEMENT PERIODS	\$43,157,514.46
<u>Amounts Abated</u>	
Total Property Taxes Abated (20 Years)	\$2,682,753.00
Total Sales and Use Taxes Abated (3 Years)	\$1,141,221.79
TOTAL TAXES ABATED	\$3,823,974.79

11. That all of the evidence discussed in the preceding paragraphs was supported by the substantial, reliable, and probative evidence taken from the record as a whole produced at the hearing of this matter.

CONCLUSIONS OF LAW

1. The Acting Commissioner has the jurisdiction and authority to adjudicate this matter because the Application is within the scope of NRS 701A.300 through 701A.390 and the Acting Commissioner is required by law to hold the hearing in this matter pursuant to NRS 701A.360(5).

2. The substantial, reliable, and probative evidence in the record of this matter shows that CCL's Application for the construction and operation of the CCL facility satisfies the following statutory requisites:

(a) NRS 701A.320(1)(a) – The primary source of energy to operate the CCL facility will be the facility itself, thus meeting the statutory standard.

(b) NRS 701A.320(1)(b) – The CCL facility will generate 10.6 MW nameplate, thus exceeding the statutory standard.

(c) NRS 701A.320(2) – The CCL facility is not located on residential property, thus meeting the statutory standard.

(d) NRS 701A.360(2) – The CCL facility is not owned, operated, leased, or controlled by a government agency, thus meeting the statutory standard.

(e) NRS 701A.365(1)(a)(1) – The CCL facility is anticipated to be operational for at least 20 years, thus exceeding the statutory standard.

(f) NRS 701A.365(1)(b) – The CCL facility has all the necessary state and local permits and licenses to operate, thus meeting the statutory standard.

(g) NRS 701A.365(1)(c) - No funding for the CCL facility is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the acquisition of any land therefore, except any private activity bonds as defined in 26 U.S.C. §141, thus meeting the statutory standard.

(h) NRS 701A.365(1)(e)(1) – The construction of the CCL facility will employ 27 full-time employees during the second quarter of construction of which most or all will be Nevada residents, thus failing to meet the statutory standard. Pursuant to NRS 701A.365(3), the Acting Commissioner made an express finding that the size and scope of the construction of the facility was such that having 75 employees on the job site might be detrimental to the construction of the project and that the project was of a type consistent with the Legislature's intent in creating the partial abatement process, so the Acting Commissioner expressly stated that she would allow variance from the 75-employee requirement solely for the CCL project. The Acting Commissioner also expressly required that of the 27 construction employees, at least 50% would be required to be Nevada residents, and pursuant to the testimony of Mr. Butler, it appears that most or all of the 27 employees will, in fact, be Nevada residents, thus meeting the additional requirement articulated by the Acting Commissioner.

(i) NRS 701A.365(1)(e)(2) – The capital investment in the CCL facility is estimated to be \$35,000,000.00, thus exceeding the statutory standard.

(j) NRS 701A.365(1)(e)(3) – The average hourly wage paid to the operational employees of the CCL facility will be approximately \$41.42, which is more than 110% of the average hourly wage set by DETR of \$21.92, thus exceeding the statutory standard.

(k) NRS 701A.365(1)(e)(4) – The average hourly wage paid to the construction employees on the CCL facility will be approximately \$37.70, which is more than 150% of the average hourly wage set by DETR of \$29.90, thus exceeding the statutory standard.

(l) NRS 701A.365(1)(e)(4)(I) and (II) – The health insurance provided to the construction employees on the CCL facility was represented to allow for the coverage of the dependents of the employees and will meet or exceed the standards established by the Acting Commissioner, thus meeting the statutory standard.

(m) NRS 701A.365(1)(f) – The benefits that will result to this State from the employment by the facility of the residents of this State and from capital investments by the CCL facility in this State exceeds the loss of tax revenue that will result from the abatement, thus meeting the statutory standard.

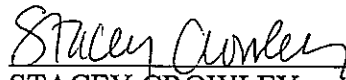
(n) NRS 701A.370(1)(a)(3) – The abatement granted by this Order will not apply during any period in which the facility is receiving another abatement or exemption from property taxes imposed pursuant to chapter 361 of NRS, other than any partial abatement provided pursuant to NRS 361.4722, thus meeting the statutory standard.

(o) NRS 701A.370(1)(b)(1)(III) – The abatement granted by this Order will not apply during any period in which the CCL facility is receiving another abatement or exemption from local sales and use taxes, thus meeting the requirement of the statute.

ORDER

Based upon the foregoing, the Acting Commissioner orders that CCL's Application Filing No. 10-10007B related to the construction and operation of the CCL facility is hereby **GRANTED**. CCL and the Acting Commissioner may execute an Abatement Agreement as soon as practicable that will satisfy the requisites of NRS 701A.300 through NRS 701A.390. CCL's sales and use tax abatement will terminate three years from the effective date of the Abatement Agreement. CCL's property tax abatement will terminate 20 years from the effective date of the Abatement Agreement.

SIGNED this 18 day of March, 2011.



STACEY CROWLEY
Acting Nevada Energy Commissioner
Nevada Office of Energy

of County Commissioners of Clark County in which the project or facility will be located; (5) The County Assessor of Clark County in which the project or facility will be located; (6) The County Treasurer of Clark County in which the project or facility will be located; and (7) The

Nevada Commission on Economic Development. Any person or entity that desires to participate as a party in the hearing of this matter must file with the Commissioner a notice of its intention to participate in a form as described in Section 23 of LCB File No. R094-10.

If the person or entity is a **state entity**, it must file the notice of intent to participate in a form with the Commissioner, Re: **AFN 10-10007B** by e-mail to at lwalser@energy.nv.gov and provide a copy of the notice of intent to participate in a form to the applicant's legal counsel, Brent Keele at bkeele@mcdonaldcarano.com **within five business days** from the date of this notice of hearing but no later than Friday, March 11, 2011.

If the person or entity is or represents a **county, city, or township**, it must file the notice of intent in a form to participate with the Commissioner, Re: **AFN 10-10007B** by e-mail to at lwalser@energy.nv.gov and provide a copy of the notice of intent to participate in a form to the applicant's legal counsel, Brent Keele at bkeele@mcdonaldcarano.com **within fifteen business days** from the date of this notice of hearing, but no later than Friday, March 11, 2011.

The Commissioner shall also allow public comment at a time appropriate to the conduct of the hearing.

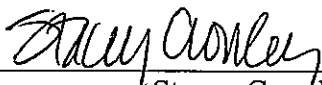
To facilitate the expeditious and efficient consideration of CC Landfill's application, the Commissioner directs **CC Landfill and any party wishing** to participate in the hearing to file any written testimony they would like the Commissioner to consider to be received by the Commissioner at lwalser@energy.nv.gov **no later than 5:00 p.m. on Thursday, March 10, 2011**. CC Landfill and participating parties wishing to **respond** to the written testimony must file any responsive testimony with the Commissioner at lwalser@energy.nv.gov **no later than 5:00 p.m. on Friday, March 11, 2011**.

The notice of intent to participate in a form and all written testimonies will be made available on the Commissioner's website.

Copies of the public records related to CC Landfill's application are available upon request to the Commissioner by fax at (775) 687-1869, by e-mail addressed to lwalser@energy.nv.gov , or by mail addressed to: Renewable Energy and Energy Efficiency Authority, 755 North Rook Street, Suite 202, Carson City, Nevada 89701.

Members of the public who are disabled and require special accommodations or assistance at the hearing should notify the Commissioner in writing by mail addressed to: Renewable Energy and Energy Efficiency Authority, State Capitol Annex 101 N Carson Street, Carson City, NV 89701, by fax at (775) 684-5648, or by e-mail addressed to energy@renewable.nv.gov, no later than 7 business days prior to the hearing.

By the Acting Nevada Energy Commissioner,



Stacey Crowley

Dated: Carson City, Nevada
March 7, 2011