

Headquarters U.S. Air Force

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Appeal of Honeywell International, Inc. ASBCA No. 57779



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Case Background

- **In July 2008, Ft Dix awarded a Delivery Order (DO) under the DoE “Super ESPC”**
- **DO included installation of solar array (“Phase I”)**
- **Modification 01 (18 Sep 08) characterized the Solar RECs (SRECs) as “savings” and fixed the price at \$0.3825/kwh for “at least 5 years”**
- **In Mar 2009 the Army contracting officer requested that Honeywell “facilitate” sales of the SRECs generated by the first array and authorized a 10% “management fee” for such actions**
- **Modification 04 (2009) added additional solar arrays, and anticipated expected “savings” from the SRECs at \$0.405/kwh for first five years, followed by “savings” of \$0.20205/kwh for years six through ten. (“Phase II”)**



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Background, cont'd

- **On Oct 1, 2009, administrative authority for Ft Dix transferred to Dept of Air Force, as part of Joint Base McGuire Dix Lakehurst (JBMDL)**
- **Prior to transfer, payment was made by Army for Phase I array**
- **Phase II array completed in 2010, questions raised about interconnection to ULFSC**
- **At this point, SRECs sales issue discovered, in addition to interconnection questions.**
- **ULFSC issued legal opinion that SREC sale was impermissible, jeopardizing financial basis of array ECMs**
- **Contracting officer began negotiation with Honeywell to remedy illegal provision, Honeywell subsequently filed claim and appeal**



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Air Force Concern

- **ULFSC concern focused on SREC sale requirement**
 - **SRECs are personal property which belong to the Govt if arrays transfer to the Govt**
 - **Property disposal regulations govern disposition of personal property**
 - **Can property be used elsewhere in govt?**
 - **If it is “excess” can it be donated?**
 - **If it is not selected for donation, THEN eligible for competitive sale**
- **Air Force position was that DO provisions involving sale of SRECs were invalid**
- **Discussion of SRECs as “savings” generated by Honeywell cross-motion for partial summary judgment**