



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

ORDER

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| IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012 |) | DOCKET NO. EO12090832V |
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| IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO P. <u>L.</u> 2018, <u>C.</u> 17 – APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012 |) | DOCKET NO. QO19010068 |
| |) | |
| ACTIVE SOLAR I DEVELOPMENT, LLC INGERSOLL RAND OLD LANDFILL |) | DOCKET NO. QO20040306 |

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Frank McCleneghen, Active Solar Development, LLC

BY THE BOARD:

This Order concerns an application by Active Solar Development, LLC (“Active Solar” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). Active Solar seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located on the Ingersoll Rand Old Landfill in Phillipsburg in Warren County, New Jersey (“the site”). Applicant alleges that the proposed site is a “properly closed sanitary landfill facility” as defined in the Solar Act.

BACKGROUND

On July 23, 2012, the Solar Act was signed into law. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities (“Board”) to conduct

proceedings to establish new standards and to develop new programs to implement the statute's directives. By Order dated October 10, 2012, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act.¹

The Solar Act – specifically, Subsection (t) – provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered "connected to the distribution system" [and] shall not require such designation by the board[.]

[N.J.S.A. 48:3-87(t).]

The Solar Act defines the terms "brownfield," "area of historic fill," and "properly closed sanitary landfill facility." A "brownfield" is "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant." N.J.S.A. 48:3-51. "Historic fill" is "generally large volumes of non-indigenous material, no matter what date they were placed on the site, used to raise the topographic elevation of a site" Id. A "properly closed sanitary landfill facility" means "a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection" Id.

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the New Jersey Department of Environmental Protection ("NJDEP" or "Department"). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by then-Commissioner Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

¹ In re the Implementation of L. 2012, C. 24, The Solar Act of 2012; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(W) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

In an Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities.² The certification process for projects seeking approval pursuant to Subsection (t) provides three potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which NJDEP has determined no further remedial or protective action is necessary. The process incorporates the expertise of the NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site.³

The January 24, 2013 Order states that certification would be limited to those areas delineated by NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited, and NJDEP reviews this material in making its recommendation.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfill facilities was necessary to initiate the certification process and directed Staff to work with NJDEP to develop an application. Id. at 33. On or about April 10, 2013, Staff distributed, via the public renewable energy stakeholder email distribution list, and posted to the New Jersey Clean Energy Program and BPU websites a Subsection (t) application form.

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the Solar Renewable Energy Certificate ("SREC") program by no later than June 2021, reducing the SREC term or "qualification life" to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandated that the Board close the SREC Registration Program ("SRP") once it determined that 5.1% of the kilowatt-hours sold in the state had been generated by solar electric power generators connected to the distribution system ("5.1% Milestone") or, in the alternative, by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication in the New Jersey Register on January 22, 2019.⁴ Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

² In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L.2012, c.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L.2012, c.24, N.J.S.A 48:3-87(U) – A Proceeding to Establish a Registration Program for Solar Power Generation Facilities, 2013 N.J. PUC LEXIS 27, Order dated January 24, 2013 (January 24, 2013 Order).

³ January 24, 2013 Order at 31-33.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

On December 6, 2019, the Board established a Transition Incentive (“TI”) Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.⁵ The Transition Incentive Program provides eligible projects with Transition Renewable Energy Certificates (“TRECs”) for each megawatt hour of electricity produced. Incentives are tailored to specific project types by the use of factors, which are applied to a base incentive rate to provide a particular project type with the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects certified pursuant to Subsection (t) receive a factor of 1.0 and thus the full amount of the base incentive.

At a Special Agenda Meeting held on April 27, 2020, the Board approved a Transition Incentive rule proposal⁶ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁷ On September 10, 2020, the Board adopted the rule proposal, and the rules became effective on October 5, 2020 when published in the New Jersey Register.⁸ The rule provides that the transition incentive “shall be available to projects that submitted a complete SREC Registration Program registration or a complete Subsection (t) application after October 29, 2018” (emphasis added) but that have not received a Permission to Operate at the time that the 5.1% Milestone is achieved.⁹ The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Orders, and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹⁰ Moreover, the Transition Incentive rules require compliance with all rules and regulations of the SREC registration program at N.J.A.C. 14:8-2.4.¹¹

Projects certified under Subsection (t) are subject to all of the Board’s SRP and TI rules; the statutory language exempts such projects from the need for further Board designation as “connected to the distribution system” but does not remove any of the Board’s oversight authority. For example, projects seeking TREC eligibility must comply with the TI rules at N.J.A.C. 14:8-10, and applicable Board orders concerning registration with the Transition Incentive Program.¹² The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by Active Solar that its proposed solar facility, to be located in Phillipsburg, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). Active Solar filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“December 2019 Order”).

⁶ In re a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QX20030253 (“TI Rule Proposal”).

⁷ 52 N.J.R. 1048(a) (May 18, 2020).

⁸ 52. N.J.R. 1850(a) (October 5, 2020).

⁹ N.J.A.C. 14:8-10.4(a).

¹⁰ N.J.A.C. 14:8-10.4(h).

¹¹ N.J.A.C. 14:8-10.4(i).

¹² December 2019 Order at 33.

application and supplied an advisory memorandum to Staff on June 22, 2021, on the land use classification and the closure or remediation status of the proposed site. On the basis of NJDEP's determination, the information certified by Active Solar in its application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

| Developer | Docket Number | Project/ Designation Address | Location Town | County | Landfill, Brownfield, or Historic Fill | Proposed Array Size (MWdc) | EDC |
|-------------------------------|---------------|--|--|--------|--|----------------------------|-------|
| Active Solar Development, LLC | QO20040306 | Phillipsburg Solar I / Ingersoll Rand Old Landfill (AOC-29) - Facility ID-332106 | 6 Rand Blvd Phillipsburg, Township, NJ 08865 | Warren | Landfill | 4.32 | JCP&L |

Active Solar Development, LLC – Phillipsburg Solar I LLC / Ingersoll Rand Old Landfill – Docket No. QO20040306

On April 21, 2020, Active Solar submitted its revised application to the Board to have its project certified as being located on a properly closed sanitary landfill facility pursuant to Subsection (t) of the Solar Act. Applicant's 4.32 MWdc project is proposed to be located on 9.4 acres owned by I-78 Logistics Park Phillipsburg Commerce Park Urban Renewal, LLC, ("I-78 Logistics") at Block 3201, Lot 7.02 at 6 Rand Boulevard in Phillipsburg Township in Warren County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised in a June 22, 2021 memorandum that the proposed site for the solar array described in the application comprises 9.4 acres. The Ingersoll Rand Old Landfill (Area of Concern 29) is situated within the designated Block 3201, Lot 7.02 on a segment of land southeast of the former Ingersoll Rand Main Facility area and is approximately 18 acres in size. Not long after the construction of the Ingersoll Rand iron foundry around 1904, the Old Landfill routinely began receiving spent foundry sand fill material. Besides spent foundry sand, other plant waste materials and construction debris were disposed in the landfill on a regular basis. Routine landfilling of most spent foundry sand fill material continued until around 1977. After 1977, spent foundry sand fill material was disposed off-site. Other construction debris, bulky materials, and dust from the plant's dust collections continued to be disposed in the Old Landfill until 1981 when the Ingersoll Rand Old Landfill ceased operation.

The Department's Bureau of Landfill and Hazardous Waste Permitting (BLHWP) issued a Closure Plan Approval to Ingersoll Rand Company for the Old Landfill on October 24, 2007, and the Department's Office of Brownfields Reuse issued an approval of the Remedial Action Workplan for the Old Landfill on March 20, 2008. A Remedial Action Report, including a professional engineer's as-built certification of closure, describing the remediation and closure of the Old Landfill was submitted to the Department on July 17, 2009. The BLHWP acknowledged and accepted the closure certification in a letter dated October 1, 2010.

During a site visit in November 2019, the Department found that the site owner had failed to perform and submit monitoring reports; maintain the site as approved per the Closure and Post Closure Plan Permits; maintain facility access and access control; notify the Department and obtain approval for disruption activities; and maintain stormwater control. Additionally, there was damage to the final landfill cover, as well as runoff and erosion controls caused by the

unauthorized removal of a drainage swale and by vehicles and heavy machinery accessing and driving across the landfill.

A more recent inspection in June 2020 and corresponding Settlement Agreement with I-78 Logistics, dated February 19, 2021, have indicated that the site now meets the requirements of a "Properly Closed Sanitary Landfill Facility".

NJDEP determined that the 9.4-acre area identified as the proposed location for the solar array constitutes a "properly closed sanitary landfill" pursuant to the Solar Act.

NJDEP advises that the solar installation will constitute the construction of improvements on a closed landfill, pursuant to the law, and accordingly the property owner will need to obtain an Approval from the NJDEP Division of Solid and Hazardous Waste, as well as any other permits identified by the NJDEP, prior to construction of the solar electric power generation facility. Such permits may include those for Land Use permits and for compliance with the stormwater management rules (N.J.A.C. 7:8 et seq). In addition, the Approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site. These include the protection and/or re-establishment of the final cap and/or cover, leachate collection, gas collection and stormwater collection systems, settlement, slope stability, and control of erosion, in addition to on-going maintenance and monitoring during the post-closure period. Consistent with the above requirements, the property owner and operator of the solar facility must ensure that all future operations continue to protect the integrity of the cap.

In addition, NJDEP's memo states that all outstanding environmental issues shall be resolved as agreed in the negotiated Settlement Agreement (NEA200001-132755) between the Bureau of Solid Waste Compliance & Enforcement and I-78 Logistics. The Old Landfill Area of Concern 29 holds a Soil Remedial Action Permit (SRP Program Interest Number 012833, Soil RAP 120003) for soils that will require renewal following site development to detail any changes made to the landfill's final cover as a result of the installation of the solar arrays.

Based on the information contained in the application and other documentation, Staff recommends that the Board conditionally certify the Applicant's project as being located on a "properly closed sanitary landfill" pursuant to Subsection (t). Staff also recommends that the Board authorize Staff to require that the conditions for certification provided by the NJDEP be fully documented as satisfied by the Applicant prior to Staff's issuance of full certification of the project's eligibility for TRECs. In addition, Staff recommends that the Board direct the Applicant to file its TREC registration within fourteen (14) days of the date of the Order and explicitly grant conditional certification.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. NJDEP determined that the solar array proposed for Block 3201, Lot 7.02 as shown on the tax map of the Town of Phillipsburg, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." To be eligible for the creation of TRECs, the entire solar array must be placed within the nine point four (9.4) acres depicted in the CP-1 Conceptual Plan Site Map (Application Package, page 18). Based on information provided by NJDEP, the Board **FINDS** that the Ingersoll Rand Old Landfill project is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP determined that the property owner will need to obtain an Approval from the NJDEP Division of Solid and Hazardous Waste, as well as any other permits identified by the NJDEP, prior to construction of the solar electric power generation facility. The Board **FINDS** that the NJDEP has stated that the Approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site including, but not limited to the protection/ re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to on-going maintenance and monitoring during the post-closure period. The Board **FINDS** that NJDEP requires that all outstanding environmental issues shall be resolved as agreed in the negotiated Settlement Agreement between the Bureau of Solid Waste Compliance & Enforcement and I-78 Logistics Park.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of Applicant's proposed solar electric generation facility, to be located on 9.4 acres at the Ingersoll Rand Old Landfill at Block 3201, Lot 7.02 in Phillipsburg Township, Warren County, New Jersey, with an array size not to exceed 4.32 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

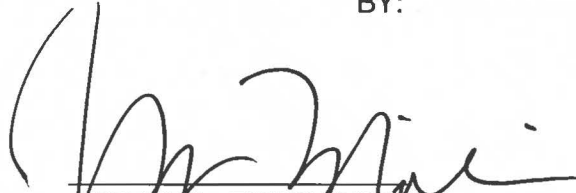
In addition, to obtain full certification, the Board **DIRECTS** Active Solar to submit an initial Transition Incentive program registration package within 14 days of the effective date of this order, and to complete construction within two years in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all TREC eligibility requirements at N.J.A.C. 14:8-10, et seq. – have been satisfied. After the Applicant receives full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of TREC creation for a 15-year Qualification Life.

This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection (t), provided that the facilities are constructed in accordance with NJDEP requirements, the site plans filed with the application, and the TREC registration.

This Order shall be effective on August 25, 2021.

DATED: 8/18/21

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT


MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012;

IN THE MATTER OF THE NEW JERSEY SOLAR TRANSITION PURSUANT TO P.L. 2018, C. 17 – APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012; AND

**ACTIVE SOLAR I DEVELOPMENT, LLC
INGERSOLL RAND OLD LANDFILL**

DOCKET NOS. EO12090832V, QO19010068, AND QO20040306

SERVICE LIST

Active Solar Development, LLC

Frank McCleneghen
2189 Cook Road
Galway, NY 12074
frankm@activesolarusa.com

Jeff Milanaik
I-78 Logisitics Park Phillipsburg Commerce
Park Urban Renewal, LLC
1 Gatehill Drive, Ste. 201
Parsippany, NJ 07054
jmilanaik@bridgedev.com

New Jersey Division of Rate Counsel

140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.state.nj.us

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel
ssteinde@rpa.state.nj.us

New Jersey Division of Law

Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street
Post Office Box 112
Trenton, NJ 08625-0112

David Apy, Assistant Attorney General
david.apy@law.njoag.gov

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch
Secretary of the Board
board.secretary@bpu.nj.gov

Division of Clean Energy

Kelly Mooij, Director
kelly.mooij@bpu.nj.gov

Stacy Richardson, Deputy Director
stacy.richardson@bpu.nj.gov

Benjamin S. Hunter, Manager
benjamin.hunter@bpu.nj.gov

Jamal Garner, Environmental Engineer
jamal.garner@bpu.nj.gov

Counsel's Office

Abe Silverman
Abraham.silverman@bpu.nj.gov

Rachel Boylan
Rachel.boyland@bpu.nj.gov

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Steven Chaplar, DAG
Steven.chaplar@law.njoag.gov

Michael Beck, DAG
michael.beck@law.njoag.gov