



Agenda Date: 1/23/13
Agenda Item: 8J

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, THE SOLAR ACT OF 2012)))	DOCKET NO. EO12090832V
IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, <u>N.J.S.A. 48:3-87(T)</u> – A PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SRECS TO CERTIFIED BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES)))))))	DOCKET NO. EO12090862V
IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, <u>N.J.S.A. 48:3-87(U)</u> – A PROCEEDING TO ESTABLISH A REGISTRATION PROGRAM FOR SOLAR POWER GENERATION FACILITIES)))))	DOCKET NO. EO13010009V

Parties of Record:

Stefanie A. Brand, Esq., Director, Division of Rate Counsel

BY THE BOARD:

BACKGROUND

On July 23, 2012, L. 2012, c. 24 (“Solar Act”) was signed into law by Governor Chris Christie. 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 directives. On October 4, 2012, the Board directed Board staff (“Staff”) to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act (Docket. No. EO12090832V) (“October 4 Order”).

Subsection (t) of the Solar Act 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[.] [F]or projects certified under this subsection, the board shall establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility.

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

The October 4 Order directed Staff to initiated a proceeding to fulfill the mandate of the Solar Act. Staff has met with staff of the New Jersey Economic Development Authority ("NJEDA") and the Department of Environmental Protection ("DEP"). On November 9, 2012, consistent with the legislation, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012. Board Staff did not circulate a straw proposal for comment.

The Solar Act also provides that "[n]o more than 180 days after [the effective date of the Solar Act] the board shall complete a proceeding to establish a registration program. . . . [which will require] owners of solar . . . projects . . . to make periodic milestone filings with the board[.]" Id. at 48:3-87(u). Implementation of this requirement will be discussed below.

SUMMARY OF COMMENTS FROM PUBLIC STAKEHOLDERS

The following summarizes the comments provided regarding the implementation of subsection (t), as well as the written comments submitted to the Board. The comments have been organized according to whether they address the development of an incentive, the nature of eligible costs, the certification process, or net metering versus grid-supply projects. The Office of Clean Energy's ("OCE's") responses are also included.

The following persons testified at the November 10, 2010 public hearing: Katie Rever, Solar Energy Industries Association ("SEIA"); Justin Murphy, Comet Land Development and American Energy and Utility Consultants ("Justin Murphy"); Dennis Wilson, Mid-Atlantic Solar Energy Industries Association ("MSEIA"); Larry Barth, Clean Energy Ventures, New Jersey Natural Resources ("NJR"); Jim Calore, Public Service Electric & Gas ("PSE&G"); Andrew Scher, Greenberg, Traurig; Tom Tuffey, Community Energy; Elliott Shanley, PV One ("PV One"); Pin Su, Blue Sky Technologies ("Blue Sky"); Fred Zalcmán, SEIA; Hugh DeFazio; Lyle Rawlings, MSEIA; Paul Raducha, Savannah Energy and Providence Energy Group; Sean Jackson, Bellmawr Borough ("Bellmawr"); Henry King, Reed Smith ("Reed Smith"); Rick Ragan,

Solar Wind Energy; Thad Culley, Interstate Renewable Energy Council, Inc. ("IREC"); Jim McAleer, Solar Electric NJ, LLC ("Jim McAleer"); Lance Miller; Greg Handshy, South Toms River.

In addition, written comments were received from Justin Murphy; Michael Torpey, A.F.T. Associations ("A.F.T."); PV One; SEIA; Ralph Laks, Day Four Solar, LLC; Felicia Thomas-Friel, Division of Rate Counsel ("Rate Counsel"); Michael Maynard, NJ Land, LLC ("NJ Land"); Anthony Favorito, Pittsgrove Solar, LLC ("Pittsgrove"); James J. Dixon, ConEdison Development ("Con-Ed"); Keissler Wong, Rock Solid Realty, Inc. ("Rock Solid"); John Jenks, Quantum Solar ("Quantum"); KDC Solar, LLC ("KDC"); MSEIA; David G. Gil, NextEra Energy Resources, LLC ("NextEra"); Lawrence D. Neuman, EffiSolar ("EffiSolar"); Brian Fratus and Tim Ferguson, Garden Solar, LLC ("Garden Solar"); Brent Beerley, Community Energy Solar, LLC ("Community Solar"); Scott Lewis, Green Energy Solar, LLC ("Green Energy"); Lou Weber, Mohawk Associates, LLC ("Mohawk"); David Van Camp; IREC; Trevan J. Houser, Land Resource Solutions, LLC ("LRS"); Henry King, Reed Smith ("Reed Smith"); Kenneth Bob, RenewTricity; Michael Bruno, EAI Investments ("EAI"); Blue Sky; NJR; T&M Associates; PSE&G; Gary N. Weisman, New Jersey Solar Energy Coalition ("NJSEC"); Michael Bruno, Esq., on behalf of Holmdel Road Solar Project and Elmer Road Solar Project ("Holmdel"); Stephen Pearlman, Gabel Associates and Inglesino, Pearlman, Wyciskala & Taylor ("Pearlman"); George Piper; David Reiss; Jim McAleer, Solar Electric NJ, LLC; Stephen R. Jaffe, Brownfield Coalition of the Northeast ("BCONE"); Ryan J. Scerbo, Esq., on behalf of Beaver Run Solar Project ("BRSP"); Janice S. Miranov, New Jersey State League of Municipalities ("League"); Thomas and Mary Van Windergarden ("Windergarden"); Heather Rek, Pro-Tech Energy Solutions ("Pro-Tech"); and Harlan Vermes, Absolutely Energized Solar Electric ("Absolutely Energized"); Jim Baye.¹

The majority of the comments pertain to the type and structure of the supplemental incentive. As discussed below, however, Staff has decided to continue discussions with NJEDA, NJDEP, and the stakeholders on this issue, and postpone making a recommendation on the incentive. Staff will consider the stakeholder's comments as it works to propose an incentive program.

I Incentives

a) Type of Incentive

Comment: Jim McAleer is a small solar photovoltaic integrator whose business has fallen off sharply due to the drop in SREC prices. He states that if it is proven that an incentive is needed for projects on brownfields, landfills, or areas of historic fill that incentive should come from either the NJDEP or the NJEDA.

Response: The Legislature has directed the Board to develop a supplemental incentive for projects certified under this subsection to cover the additional costs, if any, incurred because of the construction or maintenance of a facility on these locations. The Legislature has not authorized the Board to utilize the funding of sister agencies.

¹ Only the comments pertaining to subsections (t) are described in this order.

Comment: Pittsgrove Solar comments that financial incentives for brownfields, historic fill areas, and properly closed landfills should be undertaken in such a way as to not dilute the SREC market; no "bonus" SRECs should be added unless the Board increases the SREC requirements of BGS providers and third party suppliers by an equivalent amount.

Response: Board Staff is engaged in ongoing consultation with NJDEP and NJEDA regarding the possibility of development of an appropriate incentive for those projects. The Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA and stakeholders to develop an appropriate incentive.

Comment: NJSEC argues in favor of maintaining the current design basis of one credit for each megawatt hour of solar production, alleging that the creation of a "super credit" based upon a higher factor or the creation of a credit based upon less than one hour of produced capacity would lead to significant market turmoil, introduce additional supply to an already oversupplied SREC market, and lead to an unending line of projects seeking special treatment. To fund solar development on brownfields, historic fill, or landfills, the commenter proposes alternatives such as "gap funding" in which revenues can be obtained through a competitive bidding process where developers could bid the amount of additional funding required to complete the project and the municipality would award bids on a low bid basis. The winning bidder could then sell its tax credits. NJSEC also suggests Property Assessed Clean Energy ("PACE") financing which, as described by the commenter, effectively allows property owners to borrow money from a local government to pay for renewable energy and/or energy-efficiency improvements. The amount borrowed is typically repaid via a special assessment on property taxes, or another locally collected tax or bill, such as utility bills, or water or sewer bills.

Response: The Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: Rate Counsel opposes the creation of an SREC carve-out for generation from facilities located on landfills as Rate Counsel believes that such a carve-out could also lead to indirect subsidization of site remediation.

Response: The Board thanks the commenter for its suggestions and they will be taken into consideration as Board staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: T&M suggests as one funding mechanism requiring the SRECs associated with these facilities to be sold in strips extending the life of the Power Purchase Agreement to twenty years, which the commenter believes would provide finality on the revenue from the SRECs for solar facility costs. The commenter notes that historically building solar on landfills has been 25-35% more expensive than on greenfield sites and therefore, in the commenter's view; it would not be unreasonable that the SREC multiplier mechanism should reward solar developers.

Response: The Board thanks the commenter for his suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: Reed Smith asserts that solar projects approved under subsection t should receive an increased SREC for each Mwh of energy delivered because the use of SRECs as a basis to finance solar projects is well established, and the introduction of a different type of incentive could introduce unnecessary complications. For projects that have already been placed into service, the commenter suggests that such an enhanced SREC could apply for the remaining energy years in which the project is eligible to receive SRECs. According to the commenter, the most beneficial incentive for all solar projects would be to have a long-term contract for the sale of SRECs over the term of the period that the project is eligible to generate SRECS. Another incentive would be to require that the EDCs purchase the power generated from the landfill projects at the retail rate.

Response: The Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: A.F.T. asks that the rules provide that its client, the owner and developer of a 20 MW solar farm which had received all necessary agreements and approvals prior to July 23, 2012, is entitled to apply for what the commenter terms "the enhanced SREC," on the grounds that the client incurred significant costs and has remediation work ongoing at the present time.

Response: Since the commenter states that its client had already obtained all necessary approvals and agreements prior to passage of the Solar Act, as noted above, the client appears to have made the determination to proceed without the need of an additional incentive to cover remediation costs. The Board does not concur that financial incentives under Subsection (t) should be applied retroactively.

Comment: With respect to the development of a financial incentive, SEIA supports a "two-pronged" approach: incremental funding through the OCE budget or other appropriate funding source, modeled on the EDA's remediation program; and a set-aside for additional capacity within the EDC programs for these projects (not a portion of the already-prescribed 180 MW over three years). SEIA opposes any "super-SREC" approach to a supplemental incentive.

Response: The Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: KDC is supportive of incentivizing landfill/brownfields/historic fill projects as these projects fulfill express public policy goals beyond Clean Energy goals. The commenter argues that once projects pass through the criteria that are developed by the DEP and qualify for an incentive, the incentive should be competitive in nature, thereby ensuring that only the most cost efficient projects are developed and ratepayers are protected.

Response: The Board notes the commenter's support for the legislative policy of incentivizing solar on brownfields/landfills/historic fill. With respect to the commenter's suggestions for such an incentive, the Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: Quantum contends that because of economies of scale, grid supply projects, even if located on landfills, need very little SREC support to make the project viable and provide an IRR of 9.6%. The commenter has supplied a spreadsheet showing large grid supply projects with a \$20 SREC, an IRR of 6.8%, and a 17% profit margin. According to the commenter, a \$60 value SREC provides an IRR of 9.6% with 17% profit.

Response: The Board appreciates the commenter's economic analysis and it will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: Land Resource Solutions asks that the financial incentive provided for projects under section (t) remain flexible, within constraints determined by the Board, and allow for a percentage of costs to provide the required certainty to allow the project to proceed.

Response: The Board thanks the commenter for its suggestions and they will be taken into consideration as Board staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: BCONE states that the remediation and redevelopment of brownfields and sanitary landfills is critical to the implementation of the "State Plan" and that identification of the costs of projects on these sites early in project development is critical to ensure financing. BCONE suggests that a percentage of the costs needed to develop solar on landfills be issued as a grant and approved at the beginning of a project.

Response: The Board recognizes the legislative policy in favor of developing solar generation on landfills/brownfields/historic fill as embodied in subsection (t) of the Solar Act. With respect to the commenter's suggestions for such an incentive, the Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: Jim Baye submitted a spreadsheet titled "Solar Power Cost Analysis" which sets out varying sets of data involving SREC price and payback period.

Response: The Board thanks the commenter for his suggestions and they will be taken into consideration as Board Staff works with NJDEP and NJEDA to develop an appropriate incentive.

b) Eligible Costs

Comment: NJ Land urges the Board to act quickly to implement a supplemental incentive and to interpret liberally the costs for which such an incentive should be given, listing such items as extra engineering, legal, and remediation costs, environmental assessment, and monitoring costs. NJ Land further suggests that the Board consider a wide array of potential incentives, including EDA-backed financing, EDA guarantees of solar construction costs, additional or extended-life SRECs, and waiver of state taxes among others.

Response: The Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive. Board staff has been instructed to develop a supplemental incentive proposal without undue delay.

Comment: PSE&G states that projects built on brownfields, historic fill areas, and properly closed landfills often have higher interconnection costs than other projects and that these costs should be properly reflected in any financial incentives developed.

Response: The Board thanks the commenter for its suggestions and they will be taken into consideration as Board Staff works with NJDEP, NJEDA, and stakeholders to develop an appropriate incentive.

Comment: Rate Counsel expresses concern that any supplemental incentive developed not result in the indirect subsidization of site remediation by ratepayers and states that incentives should be awarded strictly for solar project development and operation.

Response: The statutory language explicitly identifies “the additional cost of constructing and operating a solar electric generation facility” as the category of cost for which any supplemental incentive would be available. The Board believes that this language addresses Rate Counsel’s concern about eligible costs.

Comment: T&M Associates states that brownfields, landfills and areas of historic fill will require non-traditional construction methods and that in addition to the cost of the solar generation system there will be costs associated with the closure of the landfills, brownfields and historic fill areas. In the commenter’s opinion, the cost of cleanup of the sites should be separate from the solar generation construction and operation costs and the free market should adjust rents to compensate for landfill modifications.

Response: As noted above, the statutory language expressly “the additional cost of constructing and operating a solar electric generation facility” as the costs eligible for any supplemental incentive.

Comment: Reed Smith argues for additional incentives for solar projects located on a brownfield or properly closed landfill regardless of whether the project has started commercial operations prior to the date of the Solar Act. In support of this position, Reed Smith points out that unlike subsections q, r and s, subsection t does not specifically limit the application of the statute to projects placed into service during a particular energy year; in addition, increased costs for both construction and operation of a solar project located on a brownfield or a properly closed sanitary landfill are to be covered. An existing project will incur increased costs to operate the project over the life of the project, and will also pay back its construction loan over the life of the project. The commenter represents that based on discussions with developers of solar projects, the average amount of increased operational costs is approximately 15% greater compared to a ground-mounted project, while decommissioning is approximately 10% more costly.

Response: Subsection (t) of the Solar Act seeks to motivate construction of solar generation facilities on brownfields, landfills, and areas of historic fill through certification and, where appropriate, an additional incentive. Projects which were constructed and operational prior to the passage of the Solar Act have by definition determined that the economics of their project(s) did not require an additional incentive. The Board does not concur that financial incentives under Subsection (t) should be applied retroactively.

Comment: Quantum states that landfills and areas of historic fill may not be appropriate locations on which to install a rigid structure with attached large PV crystalline modules because these locations have an unstable geological base. The commenter urges Staff to review the energy production, performance, and operation and maintenance at landfills where solar is currently installed prior to a determination to support this program.

Response: The Solar Act incentivizes solar generation on landfills and areas of historic fill and the Board will implement the legislative directive. The Board anticipates that as projects go through the various regulatory approvals and permitting processes required for construction of a solar generation facility on a landfill or area of historic fill, the structural soundness of each project will be evaluated and that only projects which are structurally sound will be approved.

Comment: Pro-Tech states its belief that the Solar Act does not apply to it because it is not "farmland-accessed" and requests that the Market Manager approve an increase in the size of its project to 9.7 MW so that it can "operate under the system size requirements for a grid supplied project and stay below the 10 MW limit."

Response: The comment does not appear to relate to subsection (t). The Market Manager's consideration of the commenter's request to increase its project size will be considered by the Market Manager in the normal course of business but any approval of a change in size should not be considered as granting a waiver from the requirements of any of the subsections of the Solar Act.

II Certification

a) Definition of Brownfield/Landfill/Area of Historic Fill

Comment: Justin Murphy, Esq., a development attorney for several solar developers, asks whether a site that was assessed as farmland when operating commercially will be able to obtain designation as a brownfield, arguing that no distinction should be made between a contaminated site located in a rural area and one located in an urban area.

Response: The Solar Act includes a specific definition of "brownfield." See N.J.S.A. 48:3-51. The Board will consider projects proposed for certification under the subsection according to the statutory criteria.

Comment: A.F.T. comments on behalf of one of its clients, described as the owner and developer of a 20 MW solar farm in Tinton Falls. According to the commenter, all of the necessary approvals and agreements for construction and operation from any agency or entity having jurisdiction over same were obtained and executed before the adoption of the Solar Act. Similarly, the client had obtained the PJM System Impact Study before June 30 2011, signed a Wholesale Market Participant Agreement with the PJM, and had its application to the SRP accepted before the adoption of the Solar Act. The commenter claims that the project would have been energized by the time these comments were submitted had it not been for the advent of Hurricane Sandy. Further, the commenter contends that it is not clear that the Solar Act applies to a project so close to completion. A.F.T. urges that any rules adopted include an exception for projects that had reached this level of development as of the date of the signature of the Solar Act.

Response: It is unclear from the comment whether the commenter's client seeks to apply under subsection (s) or (t) of the Solar Act. If the commenter has applied under (s), its application is under review with all of the applications received pursuant to that subsection. If the commenter's client contemplates applying under (t), as noted above, that subsection is intended to incentivize solar development upon landfills and other environmentally compromised sites. Since the commenter states that its client had already obtained all necessary approvals and agreements prior to passage of the Solar Act, as noted above, the client appears to have made the determination to proceed without the need of an incentive. The Board does not concur that financial incentives under Subsection (t) should be applied retroactively.

Comment: Land Resource Solutions, a New Jersey-based brownfield and landfill redevelopment company, asks that the certification process allow for a conditional certification for solar generation located upon landfills, upon approval of a Landfill Closure Plan by the NJDEP. In addition, the commenter suggests that the Board work with DEP to determine the program under which sanitary landfill closures will be certified – Site Remediation Program or the Solid and Hazardous Waste Management Program.

Response: The conditional certification proposed by Staff is discussed more fully below. Staff will work with NJDEP to determine the most appropriate program(s) under which landfills will be closed. Staff agrees that a conditional certification is appropriate for sites that require additional remediation.

Comment: SEIA, a national trade association for the U.S. solar industry, claims to include the entities responsible for over 60% of the solar MW currently operating in New Jersey. SEIA urges that development of a draft certification process and application for public comment is of critical importance in order that developers may know how to identify sites that will qualify for the program; SEIA asks for "straightforward" criteria, a simple process, and speedy certification for most if not all qualifying sites. SEIA hopes for a broad definition of qualifying sites, arguing that this will tend to produce lower-cost solar.

Response: The certification process recommended by Staff is more fully discussed below. Staff will continue to work with NJDEP and others to determine appropriate eligibility criteria and an efficient application process.

b) Net Metered versus Grid-Supply Projects

Comment: Absolutely Energized states that it has an existing customer that is interested in installing a solar field on an adjacent parcel of land and intends to use the generated capacity for their own demand, which is approximately 15,000,000 kWh per year. The commenter would like to know a means of certification, application requirements, and financial incentives available for this project.

Response: The commenter's issue appears to involve qualification as an "on-site generation" facility. On-site generation is the subject of a rulemaking proceeding pre-dating the Solar Act. The comment period for that rule has closed, but the commenter may contact Board Staff for information about available programs.

STAFF RECOMMENDATION

As noted above, subsection (t) of the Solar Act provides that the Board must, within 180 days, "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[.]" N.J.S.A. 48:3-87(t). In addition, and without adding a specific timeframe, the Solar Act requires the Board to establish a financial incentive "designed to . . . cover the additional cost of constructing and operating a solar electric power generation facility" on a brownfield, landfill, or area of historic fill. Ibid. Because the statute does not create a timeframe for the establishment of a supplemental incentive, Staff recommends that the Board address the Certification Program and the development of an incentive in two distinct processes.

Concerning the Certification Program, Staff has consulted with the NJDEP and has been made aware of the NJDEP's concerns regarding the development of solar generation on these environmentally sensitive sites. NJDEP's primary concern is that proper site remediation occurs prior to full certification of sites as brownfields, properly closed landfills or areas of historic fill – a designation which considers them "connected to the distribution system" for the purposes of SREC eligibility. The NJDEP's concern regarding brownfields and areas of historic fill is that any remediation which may be required is not hindered or neglected by the development of solar generation. With respect to properly closed landfills, the NJDEP's concerns include such things as assurance that the construction of solar generation will not compromise the closure of the landfill and that any leachate which might be caused or affected by the construction be properly contained.

To that end, NJDEP has proposed to review each application, determine the type of property, and advise the Board on the status of remediation at the proposed site. NJDEP will also recommend whether the Board should issue a conditional or full certification. NJDEP's review is an appropriate and non-burdensome way to ensure that both solar generation and environmental protection goals are met in developing solar facilities on each of the three types of location specified by the Solar Act.

Considering NJDEP's recommendation and other relevant factors, the Board may issue a full certification if remediation of the site has been completed. For those sites where the NJDEP determines that additional remediation is required, a conditional certification may be issued. This conditional certification may specify the additional remedial actions required in order to obtain full certification. Upon completion of those actions to the satisfaction of the NJDEP, and following review by the Board, a full certification may be issued.

To participate in the Certification Program, an applicant must first submit documentation that the proposed site is a brownfield, historic fill area, or landfill as defined by the Solar Act. The NJDEP will review the application, advise the BPU of the remediation status, and recommend either a full or conditional certification. On the basis of the NJDEP's determination, information contained in the application, and other relevant factors, the Board may issue a conditional or full certification.

Staff has engaged in discussions of the NJDEP's concerns and the proposals outlined above for addressing those concerns in the context of promoting the siting of solar generation facilities upon brownfields, areas of historic fill, and properly closed sanitary landfills. Based on these discussions and on consultation with the NJDEP, Staff agrees that these proposals will address the NJDEP's concerns without unduly delaying the construction of solar generation. Staff recommends that the Board approve a Certification Program including both conditional certification for projects located on sites which the NJDEP has determined require further remedial action or, in the case of properly closed landfills, additional protective measures, and full certification for projects located on sites for which the NJDEP has determined no further remedial or protective action is necessary. Staff notes that a conditional certification may contain within it a specific time period in which to comply with the conditions.

While the process described above may serve as an interim step toward establishing the standards for conditional and full certification, Staff recommends that the Board direct Staff to initiate a rulemaking process that will amend the Renewable Portfolio Standard to incorporate and reflect the requirements of subsection (t) of the Solar Act. In addition, in order to initiate the Certification Program an application process will be necessary. Staff recommends that the Board direct Staff to work with NJDEP to develop an application. Among the items required in such an application should be: 1) the project specifications; 2) a map of the area for which the applicant is seeking certification; and 3) an NJDEP map of the portion of the relevant area that has been properly remediated or closed. Certification would be limited to those areas delineated by the NJDEP. Following Board approval of a project, a letter from Staff notifying the applicant whether its project has been certified, and whether that certification is conditional or full, would issue.

Staff notes that projects certified under subsection (t) of the Solar Act will be subject to all of the Board's 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, following receipt of full certification, within ten days of execution of a contract for facility installation, these projects will need to be registered in the Board's SREC Registration Program ("SRP"). The size and location of the subject project would then be reflected in the public reporting of solar development pipeline data. In conjunction with the reporting of solar development data, Staff recommends that the Board direct Staff to collect information on the amount of existing projects on landfills, on brownfields, and on areas of historic fill, and include that data in the public reporting of solar development. With respect to incentives, the Solar Act does not mandate that incentives be established contemporaneously with the Certification Program. Therefore, Staff requests additional time to explore and propose incentives including; type of incentive, source of funding, eligibility criteria and levels. Staff has initiated discussions with the NJEDA and the NJDEP but additional investigation and discussion is required to determine, for example, what types of additional costs should be eligible for an incentive, as well as potential sources for funding. In developing a recommendation for incentives, and subject to the Board's direction, the following principles should inform the process:

- 1) Remediation has been successfully completed

- 2) Incentives would only be paid following completion of remediation, receipt of authorization to energize, and satisfaction of all applicable Board rules
- 3) Incentive amount would be flexible, based upon the project's alignment with environmental review criteria, and
- 4) Incentive amount would also reflect the project's alignment with the goals of the Energy Master Plan

Staff proposes that the Board review its recommendations with these principles in mind. Staff also recommends that the Board direct Staff to continue discussions with the NJEDA, the NJDEP, and the stakeholders to develop appropriate incentives for the Board's consideration and approval. Staff further recommends that the Board direct Staff to take into consideration in these discussions the ongoing Electric Distribution Company ("EDC") SREC finance proceedings, which include a set-aside for solar generation on landfills. Staff asks that the Board direct Staff to coordinate any incentive developed, to the extent practical and desirable, with the incentives provided under the EDC SREC finance programs.

With respect to subsection (u) of the Solar Act and its directive to develop "a registration program [that] require[s] the owners of solar . . . projects . . . to make periodic milestone filings with the board . . .," Staff notes that on June 4, 2012, the Board codified the SRP in rules. N.J.A.C. 14:8-2.4. The Board's rules now require that in order to produce energy eligible to form the basis for SRECs, a project must be registered within ten days of the execution of the contract for purchase or installation of the photovoltaic panels to be used in the solar facility. N.J.A.C. 14:8-2.4(c)(1)(i). Detailed instructions for the initial registration package are found at N.J.A.C. 14:8-2.4(h), which also refers applicants to "the instructions found on the [NJCEP] website . . ." N.J.A.C. 14:8-2.4(h) expressly requires "[a] construction schedule for completing the solar facility, including significant milestones." The existing SRP rules, which contain a requirement for 'significant milestones,' satisfy the legislative directive expressed in subsection (u).

FINDINGS AND CONCLUSIONS

The Board **FINDS** that a public hearing was held on various sections of the Solar Act, including subsection (t), certifying solar generation facilities as being located on brownfields, areas of historic fill, and landfills, and that a subsequent request for comments was issued. The Board further **FINDS** that a sufficient period of time has been provided for the submittal of written comments upon this subject, that such comments have been received, and that responses have been provided. Therefore, the Board **FINDS** that there has been a public stakeholder process on the implementation of subsection (t) of the Solar Act, in accordance with the requirements of that subsection.

The Board **FINDS** that Staff has consulted with the NJDEP and NJEDA, as directed by the Solar Act, regarding certification of solar generation as being located on brownfields, areas of historic fill, and properly closed sanitary landfills. The Board **FINDS** that the NJDEP has raised concerns related to construction of solar generation on these locations. The Board **FINDS** that to address these concerns, Staff recommends two types of certifications. Staff may

recommend conditional certification to the Board for projects proposed for locations where the NJDEP has determined that remedial work is needed, assuming all other eligibility requirements are met. Full certification may be recommended for qualifying projects that are proposed for locations that do not require further remediation. NJDEP will advise the BPU whether additional site remediation is required. Only those projects that have received a full certification will be eligible to register in the SREC Registration Program; full certification is a pre-requisite to consideration for acceptance into the SRP.

For projects proposed to be located on properly closed landfills, conditional certification will be recommended by DEP when specific actions must be taken to protect the integrity of the closed landfill or otherwise prevent contamination and full certification will be recommended when the conditions imposed have been met. The Board will review these recommendations and if satisfied will approve either a conditional or full certification. Only those projects that have received a full certification will be eligible to register in the SREC Registration Program; full certification is a pre-requisite to consideration for acceptance into the SRP.

The Board **HEREBY APPROVES** the proposed certification process for certifying solar generation projects on brownfields, areas of historic fill, and landfills. The Board **FINDS** that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfills will be necessary in order to initiate the certification process. Therefore, the Board **DIRECTS** Staff to work with NJDEP to develop an application, which will include requirements for submittal of a NJDEP map of the portion of the relevant area which has been properly remediated or closed as well as a map of the area for which the applicant is seeking certification. The Board further **DIRECTS** Staff to collect information on the amount of solar generation located on brownfields, on landfills, and on areas of historic fill, and to include that information in the public reporting of solar development.

The Board **FINDS** that the Solar Act requires the development of an incentive to offset the increased costs of siting solar generation facilities on the areas covered by subsection (t). The Board **FINDS** that the process for determining appropriate incentives is not complete at this time. The Board **HEREBY DIRECTS** Staff to continue working with the NJDEP and the NJEDA and the stakeholders to develop a process to determine appropriate incentives for solar generation on properly closed landfills, brownfields, and areas of historic fill. The Board **FURTHER DIRECTS** Staff to coordinate any incentive developed with the incentives to be provided to solar projects located on landfills pursuant to the EDC SREC financing programs.

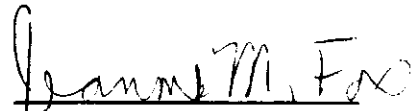
Having reviewed subsection (u) of the Solar Act and its own rules governing the SRP, the Board **FINDS** that the existing rules, in conjunction with the additional detail provided on the NJCEP website, satisfy the Legislature's directive in subsection (u) to develop a registration program containing "periodic milestone filings." Thus the Board **FINDS** that no further rulemaking is necessary to comply with subsection (u) at this time.

Lastly, the Board **DIRECTS** Staff to initiate rulemaking proceedings to culminate in the proposal and adoption of rules codifying the Certification Program. In addition, these proceedings shall include proposed amendments to the rules governing the SRP to incorporate provisions for identifying subsection (t) projects.

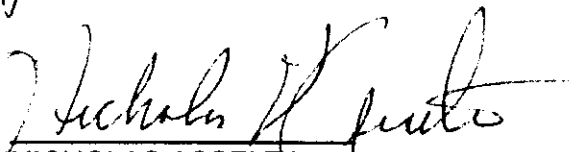
DATED: 1/24/13

BOARD OF PUBLIC UTILITIES
BY:


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PRESIDENT


JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER


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ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities


IN THE MATTER OF THE IMPLEMENTATION OF L.2012, C. 24, THE SOLAR ACT OF 2012 -
DOCKET NO. EO12090832V

IN THE MATTER OF 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 – Docket No. EO12090862V

IN THE MATTER OF 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 – Docket No. EO13010009V

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