



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
MARINA ENERGY WARREN COUNTY REGIONAL LANDFILL)	
)	DOCKET NO. EO13050390V
PENNONI ASSOCIATES, INC. 1845 DELSEA DRIVE)	
)	DOCKET NO. EO13050387V
MILLENNIUM LAND DEVELOPMENT, LLC LOVE LAND)	
)	DOCKET NO. EO13050429V

Parties of Record:

Brandon Murdock, Marina Energy
James Maddoni, Pennoni Associates, Inc.
Bruce Martin-Manmem, Millennium Land Development, LLC.

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 or BPU") 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. Dkt. 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 Solar Act defines the terms "brownfield", "area of historic fill," and "properly closed landfill. 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[.]" Ibid. 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 [DEP.]" Ibid.

The October 4 Order directed Staff to initiate 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 ("NJDEP"). On November 9, 2012, consistent with the requirements of the Solar Act, 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.

In an Order dated January 23, 2013, Dkt. No. EO12090862V ("January 23 Order"), the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and landfills. 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 will be granted 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 granted for projects located on sites for which the 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. January 23 Order, at 12-13.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfills was necessary in order to initiate the certification process and directed Staff to work with NJDEP to develop an application. January 23 Order at 13. On or about April 10, 2013, Staff distributed via the public renewable energy stakeholder email distribution list and posted to the NJCEP and BPU websites a subsection (t) application form.

STAFF RECOMMENDATIONS

As noted above, the Board has fulfilled the mandate of subsection (t) of the Solar Act to "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). After several months of experience with the process established, Staff has some further recommendations on the process.

The January 23 Order states that certification would be limited to those areas delineated by the 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 the NJDEP reviewed this material in making its recommendation.

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 conditional certification, once a contract for facility installation has been executed, these projects will need to be registered in the Board's SREC Registration Program ("SRP") within ten days. The size and location of the subject project would then be reflected in the public reporting of solar development pipeline data.

Finally, Staff notes that in the January 23 Order the Board ruled that only those projects that have received a full certification would be eligible to register in the SRP; full certification is a pre-requisite to consideration for acceptance into the SRP. However, Staff has determined that this requirement is in conflict with the Board's SREC Registration rules at N.J.A.C. 14:8-2.4 which requires a solar electric generation project to submit a registration within 10 days of executing a contract to install a solar system or to purchase panels for solar system. Staff believes it is important for the Board to maintain the requirement of an applicant to submit a registration for a project within 10 days of contract execution. Therefore, Staff recommends

that the Board allow projects which are conditionally approved by the Board pursuant to subsection (t) to submit an SRP registration and require them to do so within 10 days of execution of a contract to install a system or purchase panels.

This Order deals with Staff's recommendation on three projects. The applicants seeking certification submitted the required documentation to enable an NJDEP determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed landfill. The NJDEP reviewed each application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of each proposed site. On the basis of the NJDEP's determination, information contained in the application, and the January 23 Order, Staff is recommending denial of certification, as explained further below.

Application Date	Submitted by	Contact Address	Developer	Project/ Designation Address	Location Town	County	Applicant's Characterization of Site: Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	DEP Recommendation	EDC	Staff Recommendation	Docket Number
4/15/2013	Brandon Murdock	5429 Harding Highway Bldg 500 Landing, NJ 08037	Marina Energy	Warren County Regional Landfill	500 Mount Pisgah Ave. White Township, NJ 07863	Warren	Landfill	1.174	"landfill has not been properly closed as required by regulation"...Solar already installed on buffer area outside the boundaries of solid waste landfilling	JCP&L	Deny request for certification	EO13050 390V
4/17/2013	James Maddonn	515 Grove Street Hadden Heights, NJ 08035	Pennoni Associates, Inc.	1845 Delsea Drive	1845 Delsea Drive Deptford, NJ 08096	Gloucester	Brownfield	5	"site does not meet the definition of a brownfield"	PSE&G	Deny request for certification	EO13050 387V
5/29/2013	Bruce Martin-Mannem	PO Box 1339 Marlon, NJ 08053	Millenium Land Development, LLC	Love Lane	Love Lane & Old Deerfield Pike	Cumberland	Brownfield	10	"does not meet the definition of a brownfield"	ACE	Deny request for certification	EO13050 429V

PROJECT DESCRIPTIONS

Marina Energy - (White Township) – Dkt. No. EO13050390V

On April 15, 2013, Marina Energy, LLC ("Marina") submitted an application to the Board to have its project certified as located on a properly closed landfill pursuant to subsection (t) of the Solar Act. Applicant's 1.174 MW project is located on the Warren County Regional Landfill in White Township, New Jersey.

On its application, Marina represented that its project is located on vacant land owned by the landfill and directly adjacent to the capped portion of the landfill. DEP has advised that the records of this landfill indicate that while a portion of it is capped, the landfill is still operating and does not meet the statutory definition of "properly closed landfill." Moreover, as acknowledged by Marina in its application, the solar project is not located on the landfill but rather on adjacent land.

Since, based on the information provided, Marina's project was not located on a "properly closed landfill," Staff recommends that the Board deny this application to be certified as located on a properly closed landfill.

Pennoni Associates – (Deptford) – Dkt. No. EO13050387V

On April 17, 2013, Pennoni Associates (“Pennoni”) submitted an application to the Board to have its project certified as located on a brownfield pursuant to subsection (t) of the Solar Act. Applicant's 5 MW project referred to as “1845 Delsea Drive” is located in Deptford, New Jersey.

On its application, Pennoni represented that its project was not located in an area in need of rehabilitation but that food wastes, comingled with non-food wastes, were often improperly disposed of on the property where Pennoni intends to site its solar project. Review of the records of this site revealed that that this site is a former pig farm and that inedible solid waste was, in fact, improperly disposed of on-site. However, inedible food waste is not classified as hazardous waste or hazardous substance by the NJDEP. Additionally, the site is zoned light-density residential and according to the applicant was used as farmland until Penonni's purchase of the property two years ago.

Since, based on the information provided, the site has never been commercial or industrial and the waste on the site that needs to be addressed is not a hazardous waste or hazardous substance, Pennoni's project is not located on a “brownfield. Staff recommends that the Board deny certification of this application.

Millenium Land Development, LLC – (Upper Deerfield Township) – Dkt. No. EO13050429V

On May 29, 2013, Millenium Land Development, LLC (“Millenium”) submitted an application to the Board to have its project certified as located on a brownfield pursuant to subsection (t) of the Solar Act. Applicant's approximately 12.5 MW project referred to as “Love Lane” is located in Upper Deerfield Township, New Jersey.

On its application, Millenium represented that its project is located on the site of a former orchard. Review of the records of this location show elevated levels of arsenic and lead, contaminants are not present on the site as the result of discharge of a contaminant and, therefore, the site does not meet the definition of “brownfield.”

Since Millenium's project is not located on a “brownfield” as defined by the Solar Act, Staff recommends that the Board deny certification of this application.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that Staff has consulted with the NJDEP with regard to the development of an application for certification of solar generation as being located on brownfields, areas of historic fill, and properly closed sanitary landfills. The Board **FINDS** that the applications for certification pursuant to subsection (t) have been submitted to Staff and subsequently transmitted by Staff to the NJDEP for a determination of eligible land use type and status of remediation on the proposed sites.

The Board **FINDS** that the NJDEP has determined that two applications for certification of potential solar generation facilities – referred to as “1845 Delsea Drive” and “Love Lane” submitted by Pennoni and Millenium respectively – are not located on property defined as a “brownfield”; and Marina’s project at the Warren County Regional Landfill is located on property outside of the geographic boundaries of an operating landfill. For these reasons the Board **FINDS** that the projects do not qualify for certification under subsection (t). For these reasons, the Board **DENIES** the request for certification of the projects identified as 1845 Delsea Drive, Love Lane and the Warren County Regional Landfill.

DATED: 7/19/13


BOARD OF PUBLIC UTILITIES
BY:

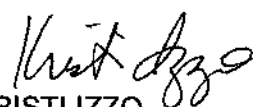

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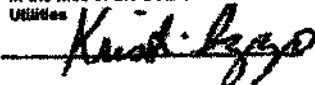

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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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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
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PENENNONI ASSOCIATES, INC. - 1845 DELSEA DRIVE
MILLENNIUM LAND DEVELOPMENT, LLC - LOVE LAND

DOCKET NOS. EO12090832V, EO12090862V, EO13050390V, EO13050387V, EO13050429V

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