



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24</u> , THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO <u>P.L. 2018, C. 17</u> – APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012)	DOCKET NO. QO19010068
)	
EPP RENEWABLE ENERGY, LLC PENNSAUKEN TWP LANDFILL)	DOCKET NO. QO20120764

Party of Record:

Brian O. Lipman, Esq., Interim Director, New Jersey Division of Rate Counsel
Steven Gabrielle, EPP Renewable Energy, LLC

BY THE BOARD:

This Order concerns an application by EPP Renewable Energy, LLC (“EPP” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). EPP seeks certification for eligibility to create Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located at the Pennsauken Township Landfill in Pennsauken Township, Camden County, New Jersey.

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.

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).

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.

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%

² In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; 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 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.

Milestone. The new rules took effect upon publication in the New Jersey Register on January 22, 2019.⁴

On December 6, 2019, the Board established a Transition Incentive (“TI”) Program to bridge 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 either 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 (“TI Rule Proposal”) that codified this treatment and that was published on May 18, 2020.⁷ On September 10, 2020, the Board adopted the rule proposal, and the rule 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 compliances 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 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.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

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. 14:10.4(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.

STAFF RECOMMENDATIONS

Project Description

As stated above, EPP seeks to have its proposed solar facility in Pennsauken Township, New Jersey certified as eligible for TRECs pursuant to Subsection (t). EPP 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 application and has supplied an advisory memorandum to Staff on July 7, 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 EPP in its application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board deny conditional certification, as explained further below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
EPP Renewable Energy	QO20120764	Pollution Control Financing Authority of Camden County Pennsauken Twp. Landfill (Phase 4)	Block 1904, Lot 1 9600 River Road Pennsauken Township, NJ 08110	Camden	Landfill	3.5	PSE&G

EPP Renewable Energy, LLC – Pennsauken Township Landfill – Docket No. QO20120764

This Subsection (t) application represents the fourth phase of solar development for this site. With its current Subsection (t) application, EPP seeks Conditional Certification for an additional 3.5 MWdc on a 10-acre portion of “Area A” of the Pollution Control Financing Authority of Camden County Landfill at 9600 River Road. Area A is the original unlined waste disposal area.

The remediation of Area A is the subject of a December 1988 Administrative Consent Order signed between the Pennsauken Solid Waste Management Authority and the NJDEP. As part of the remediation of Area A, the area was capped with a geosynthetic capping system for which the Department approved the construction certification on April 17, 2006. In addition, Area A is equipped with landfill gas collection systems. The remediation of Area A also required the installation of a ground water treatment and injection system.

The Licensed Site Remediation Professional (“LSRP”) submitted a certified Remedial Action Report and Response Action Outcome (“RAO”) on March 16, 2017. Pursuant to N.J.S.A. 58:10C-25, the Department may audit a RAO and associated documentation up to three years following issuance. Based on a finding by the NJDEP that a Response Action Outcome is not protective of public health, safety and the environment, the NJDEP can invalidate the Response Action Outcome.

After reviewing the reports, the NJDEP determined that the ground water remedial action is not protective of human health and safety and of the environment pursuant to N.J.A.C. 7:26C-7.9. On April 15, 2020, the NJDEP issued a Notice of Technical Deficiency documenting the deficiencies in the report and noting the requirement to properly delineate the contamination and provide information regarding the contribution of off-site contamination. Along with the Notice, the NJDEP recommended that the LSRP withdraw the RAO. In response, the LSRP withdrew the aforementioned documents on June 11, 2021. Therefore, the NJDEP has determined the remediation of Area A is ongoing and is not considered a “properly closed sanitary landfill.”

Based on the information provided in the application and NJDEP’s determination that the proposed solar array is not located on a “properly closed sanitary landfill facility” under the Solar Act, Staff recommends that the Board deny conditional certification of the proposed project.

DISCUSSION AND FINDINGS

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 has determined that the solar array proposed for Block 1904, Lot 1 – as depicted in the map attached to EPP’s application – is not located on land meeting the Solar Act’s definition of a “properly closed sanitary landfill facility.” Based on information provided by NJDEP, the Board **FINDS** that the RAO submitted by the LSRP for Area A did not include ground water remedial action protective of human health and safety and of the environment, pursuant to N.J.A.C. 7:26C-7.9. Thus, the Board **FINDS** that the proposed solar facility is not located on land meeting the definition of a “properly closed sanitary landfill facility.”

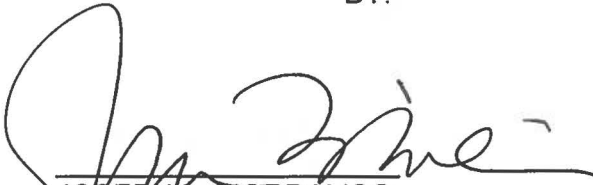
The Board thus **DENIES** conditional certification of Applicant’s proposed solar electric generation facility for Area A of the Pennsauken Landfill in Pennsauken Township, Camden County, New Jersey.

This Order is issued in reliance on the information certified in the application.


This Order shall be effective on September 21, 2021.

DATED: September 14, 2021

BOARD OF PUBLIC UTILITIES
BY:




JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

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In the Matter of the Solar Transition Pursuant to L. 2012, c. 17 – Application for Certification of
Solar Facility as Eligible for TRECs Pursuant to Subsection (t) of the Solar Act of 2012; EPP
Renewable Energy, LLC – Pennsauken Township Landfill

Docket Nos. EO12090832V, QO20060460 and QO20120764

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