



STATE OF NEW JERSEY
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CLEAN ENERGY

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| IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> |) | ORDER |
| 2012, C. 24, THE SOLAR ACT OF 2012 |) | |
| |) | DOCKET NO. EO12090832V |
| IN THE MATTER OF THE SOLAR TRANSITION |) | |
| PURSUANT TO L. 2018, C. 17 – ORDER TO PROVIDE |) | |
| CONDITIONAL CERTIFICATION FOR TRECS TO A |) | |
| PROPERLY CLOSED SANITARY LANDFILL |) | DOCKET NO. QO19010068 |
| |) | |
| SMART CITIZENS, LLC |) | |
| DEERFIELD TOWNSHIP SANITARY LANDFILL |) | DOCKET NO. QO20110699 |

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Michael Tarr, Smart Citizens, LLC

BY THE BOARD:

This Order concerns an application by Smart Citizens, LLC (“Smart Citizens” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). Smart Citizens seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located on the Deerfield Township Sanitary Landfill, which is located in Deerfield Township in Cumberland County, New Jersey (“site”). Applicant claims that a portion of the proposed site is a “properly closed sanitary landfill facility” and a portion is a “brownfield,” as those terms are 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” or “BPU”) to conduct proceedings to establish new standards and 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

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

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” is “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.

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

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).

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).

Subsection (t) provides three (3) 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 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 stated 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"), 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.

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 TI Program provides eligible projects with TREC's 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.

³ January 24, 2013 Order at 31-33.

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").

At a Special Agenda Meeting held on April 27, 2020, the Board approved a TI 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 rules provide 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 permission to operate (“PTO”) at the time that the 5.1% Milestone is achieved.⁹ The rules also incorporate the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Orders, and require developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹⁰ Moreover, the TI rules require compliance with all rules and regulations of the SRP 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 TI 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

Smart Citizens, LLC – Deerfield Township Sanitary Landfill – Docket No. QO20110699

On June 14, 2021, Smart Citizens submitted a revised application to the Board to have its project certified as being located in part on a properly closed sanitary landfill facility and in part on a brownfield, pursuant to Subsection (t). Applicant’s 18.44 MWdc project is proposed to be located on 27.325 acres, with 9.345 MWdc located on a 16.48 acre tract described as a properly closed sanitary landfill and 9.1047 MWdc on a 10.845 acre area alleged to be a brownfield. The project is proposed to be constructed on the Deerfield Township Sanitary Landfill, owned by Applicant and located at Block 61, Lot 10 on Vineland Avenue in Deerfield Township in Cumberland County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised in a memorandum dated October 27, 2021 that the proposed site for the solar array described in the application is located in Deerfield Township, New Jersey. NJDEP further stated that Deerfield Township operated the sanitary landfill for over 40 years for the disposal of municipal, bulky, and vegetative waste. Landfill operations terminated in 1986 or 1987. A Closure and Post-Closure Plan dated March 1989 was prepared for Deerfield Township by Albert A. Fralinger Consulting Engineers; revisions to this plan were made in September 1989, September 1997, and February 1998. The Department issued a Closure and Post-Closure Plan Approval for the landfill on December 30, 1998, and a New Jersey licensed professional engineer certified

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.

completion of closure on April 10, 2000. The landfill is currently in its 30-year post-closure care period, requiring ongoing maintenance and monitoring in accordance with the Solid Waste Rules at N.J.A.C. 7:26-2A.9 and the Closure and Post-Closure Plan Approval.

With respect to the landfill portion of the application package, and consistent with its longstanding treatment of undisturbed land areas adjoining a landfill facility, the Department estimated that only 10 to 11 acres of the 16.48 acres requested for Subsection (t) certification at the Deerfield Township Sanitary Landfill facility constitute a “properly closed sanitary landfill facility” as defined by the Solar Act. NJDEP further included a landfill extent map as part of its memorandum that indicated that 10.9 acres of the 16.48 acres constitute a “properly closed sanitary landfill facility.” NJDEP advised that the remaining acres do not constitute a “properly closed sanitary landfill facility,” as the boundary of the site extends into a forested area with no documentation of contamination. The Department does not support solar development on forested lands.

NJDEP advised 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 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, including, but not limited to, 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 ongoing 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.

With regard to the brownfield portion of the application package, the Department advised that all three (3) prongs of the “brownfield” definition, as laid out in N.J.S.A. 48:3-51, must be met for an applicant to qualify for TRECs on a brownfield. The burden is on the applicant to demonstrate that all three prongs have been met. In this instance, Applicant’s revised June 14, 2021 materials failed to make this demonstration. First, Applicant did not submit documentation to show that there is or was a commercial or industrial establishment located on the property. Additionally, the Applicant did not provide any information to cause the Department to modify its position that the undisturbed portions of landfill properties are not “vacant or underutilized” as required by the Solar Act. Finally, Applicant did not submit adequate documentation to show that there is or has been a discharge of a contaminant on the area alleged to be a brownfield.

NJDEP determined that the 10.845 acre area proposed as a “brownfield” does not meet the statutory definition of that term under N.J.S.A. 48:3-51.

On the basis of NJDEP’s determination, information contained in the application, and other relevant factors, Staff recommends that the Board conditionally certify only the portion of Applicant’s project identified by NJDEP as being located on a “properly closed sanitary landfill” – that is, 10.9 acres of the 16.48 acres requested. Staff recommends that the entire portion of the project (10.845 acres) sought for eligibility as a “brownfield” be denied.

Staff recommends that the Board authorize Staff to require that the conditions for certification provided by NJDEP be fully documented as satisfied by Applicant prior to Staff’s issuance of full certification of the project’s eligibility for TRECs. Staff recommends that the Board clarify that

these conditions include installation of the entire array within the 10.9 acres identified by NJDEP as being located on a properly closed sanitary landfill. Staff also recommends that the Board direct Applicant to file its TREC registration within 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.

The Board **FINDS** that NJDEP has determined that the solar array proposed for Block 61, Lot 10, as shown on the tax map of Deerfield Township, is located in part on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." The Board **FURTHER FINDS** that NJDEP determined that only 10.9 acres constitute a properly closed sanitary landfill. To be eligible for the creation of TRECs, the part of the facility proposed for a properly closed sanitary landfill facility must be placed within the 10.9 acres determined by NJDEP to be a properly closed sanitary landfill facility, as depicted on the map attached to the NJDEP memorandum of October 27, 2021, labeled as Landfill Extent Map.

The Board also **FINDS** that NJDEP determined that the property owner will need to obtain an approval from NJDEP's Division of Solid and Hazardous Waste, as well as any other permits identified by NJDEP, prior to construction of the solar electric power generation facility. The Board **FINDS** that 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 stormwater collection systems, settlement, slope stability, and control of erosion, in addition to ongoing maintenance and monitoring during the post-closure period.

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 10.9 acres of the properly closed sanitary landfill at the Smart Citizens Landfill at Block 61, Lot 10 in Deerfield Township, Cumberland County, New Jersey. The Board **DIRECTS** Applicant to submit an updated site plan specifying the capacity of the solar electric generation facility that is to be located on the 10.9 acres of the properly closed sanitary landfill within 14 days of the effective date of this order.

To obtain full certification, the Board **DIRECTS** Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

In addition, to obtain full certification, the Board **DIRECTS** Smart Citizens to submit an initial TI program registration package within 14 days of the effective date of this order and to complete construction within two (2) 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 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 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.

The Board **FINDS** that no part of the land proposed for the solar facility meets the Solar Act's definition of a "brownfield." The Board **DENIES** the petition with respect to the portion of the proposed solar facility to be placed on 10.845 acres designated in the application as "brownfield."

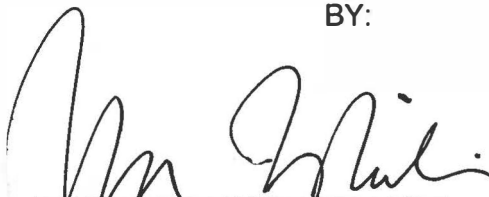
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection (t), provided that the facilities are constructed in accordance with NJDEP requirements, the site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

The effective date of this Order is November 24, 2021.

DATED: November 17, 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

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, THE SOLAR ACT OF 2012
IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO L. 2018, C. 17 – ORDER TO
PROVIDE CONDITIONAL CERTIFICATION FOR TRECS TO A PROPERLY CLOSED
SANITARY LANDFILL

SMART CITIZENS, LLC – DEERFIELD TOWNSHIP SANITARY LANDFILL

DOCKET NOS. EO12090832V, QO19010068 & QO20110699

SERVICE LIST

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