



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u>)	ORDER GRANTING IN PART AND DENYING IN PART REQUESTS FOR WAIVERS
IN THE MATTER OF THE IMPLEMENTATION OF <u>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</u>)	DOCKET NO. EO12090832V
)	DOCKET NO. EO12090862V
EPP RENEWABLE ENERGY, LLC)	
PENNSAUKEN TOWNSHIP LANDFILL)	DOCKET NO. QO16100958

Party of Record:

Steven A. Gabrielle, Chief Operating Officer, EPP Renewable Energy, LLC

BY THE BOARD:

This Order concerns an application by EPP Renewable Energy, LLC (“EPPRE” or “Petitioner”) for a waiver of N.J.A.C. 14:8-2.4(c)(1), which includes, in part, the requirement that a solar electric generating facility shall submit an initial registration package within fourteen (14) business days from the effective date of an order granting approval, conditional certification, or designation. EPPRE requests an extension of time to register its grid-supply 3 MWdc solar project in the Solar Renewable Energy Credit (“SREC”) Registration Program (“SRP”).

BACKGROUND

On July 23, 2012, the Solar Act was signed into law. The Solar Act amended certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act required 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

¹ I/M/O 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; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation

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” *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 Department of Environmental Protection” *Ibid.*

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the NJDEP. On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by 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 (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 that the NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full

Standards; I/M/O 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; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(t) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O 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 I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(t) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O 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 (Jan. 24, 2013).

certification may be 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. 2013 N.J. PUC LEXIS 27 at 31–33.

The January 24, 2013 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 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.

Projects certified under Subsection (t) of the Solar Act are 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, projects must comply with the rules at N.J.A.C. 14:8-2.4 and applicable Board orders concerning registration with the SRP. The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On or about October 14, 2016, EPPRE submitted an application to the Board to have its 3 MWdc project certified as being located on a properly closed sanitary landfill pursuant to Subsection (t) of the Solar Act. EPPRE's project was proposed to be constructed on the Pennsauken Township Landfill, Block 1904, Lot 1, which is owned by the Pollution Control Financing Authority of Camden County and located at 9600 River Road in Pennsauken Township, Camden County, New Jersey.

After consultation with NJDEP, Staff recommended and the Board granted conditional certification to the Pennsauken Township Landfill project in its June 30, 2017 Order, with an effective date of July 10, 2017. At the time of the June 2017 Order, the Board's SRP rules required a solar electric generation project to submit a registration package within fourteen (14) business days from the effective date of an order granting approval, conditional certification, or designation of the project.³ EPPRE, however, did not timely file a registration package with the SRP – that is, by July 24, 2017 – and, thus, did not comply with the Board's rules governing SREC eligibility, which precludes Staff from issuing a New Jersey Certification Number for the project.

EPPRE noted that it received permission to operate ("PTO") on December 19, 2017, submitted documents to NJDEP for approval in April 2018, and received final, as-built approval from NJDEP on January 9, 2019. EPPRE stated that it submitted its online SRP application on January 14, 2019 and received notice on February 4, 2019 of its failure to timely file its SRP application.

On February 11, 2019, EPPRE submitted a letter to the Board in which it requested a waiver of the Board's requirement that it file an SRP application within fourteen (14) business days of the effective date of the Board's order, so that the project may move forward to receive its full certification and generate fifteen (15) years of SRECs from its PTO date for the benefit of Camden County and the public. In support of its request, EPPRE stated that the Board's June 2017 Order did not either explicitly (1) waive the 10-day SRP submittal timeline and allow for a 14-day submission or (2) direct

³ 48 N.J.R. 383(a) (Mar. 7, 2016); 49 N.J.R. 809(a) (Apr. 17, 2017); N.J.A.C. 14:8-2.4(c).

EPPRE to submit an initial SRP registration package within fourteen (14) days of the effective date of the order. EPPRE argued that, as listed on the website for Subsection (t), the Board's June 2017 Order is the only Order granting conditional certification since 2015 that does not include explicit guidance about a 14-day submission requirement.⁴ EPPRE also asserted that, in multiple communications with Staff and NJDEP staff between June 30, 2017 and September 1, 2017, there was no specific mention of the 14-day requirement. In particular, EPPRE describes email communications with NJDEP on July 6 and August 28, 2017 and with Staff on September 1, 2017 in which EPPRE sought clarity about the SREC approval process and received no specific direction about the 14-day requirement.

STAFF RECOMMENDATIONS

The Board's prior SRP rules required a solar electric generation project to submit a registration within ten (10) days of executing a contract to install a solar system or purchase panels for the system. The SRP also required the project to construct within one year because the SRP registration number expired, with only one six-month extension. In an Order dated June 18, 2014, the Board waived those requirements and set an amended schedule for Subsection (t) applications.⁵ Accordingly, the Board directed Subsection (t) applicants to register with the SRP within fourteen (14) days of the Board's order approving conditional or full certification of a project. In addition, the Board extended the construction period from one to two years.

Effective April 17, 2017, the Board adopted rule amendments, including amendments to the SRP registration process. N.J.A.C. 14:8-2.4(c) states that the "registration process includes three important deadlines." N.J.A.C. 14:8-2.4(c)(1) sets the first deadline, which is that "submittal of an initial registration package . . . shall occur . . . within 14 business days from the effective date of an order granting approval, conditional certification or designation for projects requiring Board approval, designation, or certification[.]" Also contained in the rule amendments, at N.J.A.C. 14:8-2.4(h) and (i), are the provisions that a solar facility that is issued conditional registration has twenty-four (24) months to complete construction, prior to expiration of the conditional registration.

The June 2017 Order was the first Board Order that granted conditional certification to a Subsection (t) project following adoption of the amended SRP rules. In that Order, the Board stated that, to obtain full certification, EPPRE was required to demonstrate to Staff that all NJDEP requirements were satisfied. The Board directed Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation after the Applicant satisfied all SRP requirements and received full certification, provided that all requirements of N.J.A.C. 14:8-2.4 were met. Subsequent Board Orders granting conditional certification to Subsection (t) projects, starting in May 2018, continued to refer to the SRP requirements at N.J.A.C. 14:8-2.4 but more explicitly noted that the applicant was required to submit an initial SRP registration package within fourteen (14) days of the effective date of the order and to complete construction within two years.

EPPRE's submission details a series of regulatory compliance actions that evidence its pursuit of full certification of its solar generation Subsection (t) project. Staff recommends that, in this case, the Board waive the 14-day registration deadline and grant Petitioner five (5) days from the effective

⁴ The archived documents of interest related to Subsection (t) of the Solar Act are available at www.njcleanenergy.com/renewable-energy/program-updates/solar-act/solar-act-proceedings-archive#t

⁵ I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012, Docket No. EO12090832V; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECs to Certified Brownfield, Historic Fill and Landfill Facilities, Docket No. EO12090862V; and I/M/O PVNavigator, LLC – Somerdale Road (Owens Corning) Landfill, 2014 N.J. PUC LEXIS 170 (Jun. 18, 2014).

date of this Order, or by May 3, 2019, to submit a complete registration package to the Board's SRP team.

Staff recommends that any extension for the registration deadline recognize that Petitioner failed to fulfill an obligation set forth in a Board Order – the satisfaction of all SRP requirements prior to receiving a New Jersey Certification Number. Pursuant to N.J.S.A. 48:2-42, the Board can impose a penalty of up to \$100 per day for the violation of a Board Order. In this case, Staff believes that lesser amount would be appropriate and recommends that the penalty be set at \$10 per day for the 539 days between when the SRP registration should have occurred and the date Petitioner submitted its online SRP application. This results in a proposed penalty of \$5,390 and represents a balance between the societal benefits inherent in the proposed project, the need for parties to respect and abide by Board Orders, and the need for transparency in the solar market. Given these considerations, Staff suggests that the reduction from \$100 per day to \$10 per day is a fair approach.

DISCUSSION AND FINDINGS

EPPRE requests a waiver of the Board's requirement that Petitioner file a registration package with the SRP within a set time period, as set forth at N.J.A.C. 14:8-2.4(c)(1). In considering whether to grant a request for a waiver, the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1) and determines (1) whether the request is in accord with the general purposes and intent of the rules; and (2) whether full compliance with the rules would adversely affect ratepayers, a utility or other regulated entity, or the public interest. To determine the general purpose and intent of its rules, the Board looks to the policy underlying the rule(s) in question, as well as the rule's history.

The SRP registration rules promote the development of renewable sources of electricity. To ensure transparency, provide advance notice to solar market participants of new renewable energy generation entering the market, and protect ratepayers who bear the SREC costs, N.J.A.C. 14:8-2.4 identifies the prerequisites that must be met before solar generation is eligible to earn SRECs. One requirement, codified at N.J.A.C. 14:8-2.4(c)(1)(i), is that the facility register within fourteen (14) days of obtaining conditional certification. There is no dispute that EPPRE has not met this important requirement, but EPPRE notes that its project will further the State's general goal of siting solar facilities on properly closed sanitary landfill.

The Board also considers whether full compliance with the 14-day registration requirement would adversely affect the ratepayers' interest or public interest. Petitioner states that this solar project has been built to provide the following public benefits to Camden County: the sharing of energy and SREC revenues for fifteen (15) years, an improvement to the closed portion of the landfill, and providing many jobs through project construction with local union labor. Petitioner argues that the waiver will allow the project to move forward to receive its full certification and generate fifteen (15) years of SRECs from its PTO date for the benefit of Camden County and the public.

The Board **FINDS** that notwithstanding EPPRE's failure to comply with the SRP registration requirements allowing the late registration of the Subsection (t) project will further the State's general goal of siting solar facilities on properly closed sanitary landfill facilities. Given that EPPRE has complied with other Board rules, has received final, as built approval from NJDEP, and given the uniquely beneficial purpose of the solar installation for which a waiver is sought, the Board **FINDS** that strict adherence to the fourteen (14) day requirement in this case would adversely affect the public interest.

EPPRE implies that the Board's waiver would be in the interest of justice because Petitioner did not receive explicit direction to submit an initial registration package within fourteen (14) business days of the effective date of the Order, either via the June 2017 Order or in communications with NJDEP staff and Staff. While the June 2017 Order did not contain explicit guidance to register within fourteen (14) days, as other Orders may have, the 14-day registration requirement is not a new requirement. Since its June 18, 2014 Order, the Board amended the schedule for Subsection (t) applications, requiring applicants to register with the SRP within fourteen (14) days of the Board's order approving conditional or full certification of a project. In addition, following a rulemaking process, in April 2017, the Board promulgated N.J.A.C. 14:8-2.4(c)(1), which contained the 14-day registration requirement. Moreover, the June 2017 Order clearly directed EPPRE to meet all of the SRP requirements at N.J.A.C. 14:8-2.4.

The Board also notes that, while the Pennsauken Landfill project was the first Subsection (t) project that EPPRE submitted to the Board for certification, EPPRE acknowledges that it has worked with the Board and Staff and participated in the state's renewable energy program for more than fifteen years. In light of EPPRE's many years of experience with the SRP program and familiarity with the SRP registration process, the fact that the June 2017 Order did not specifically articulate the 14-day deadline does not sufficiently explain the 539 days that elapsed before EPPRE attempted to register.

After weighing all of these considerations, the Board **FINDS** that EPPRE must register in the SRP as required of all solar electric generation facilities seeking SREC eligibility pursuant to N.J.A.C. 14:8-2.4. The Board **ADOPTS** Staff's recommendation, **GRANTS** Petitioner's request for an extension of the 14-day registration requirement set forth at N.J.A.C. 14:8-2.4(c)(1)(i), and **DIRECTS** Petitioner to submit an initial registration package within five (5) business days of the effective date of this Order, by May 3, 2019. Although the Board is authorizing Petitioner to register its project by May 3, 2019, the Board agrees with Staff that a penalty is justified: Pursuant to N.J.S.A. 48:2-42, the Board **ADOPTS** Staff's recommendation and **IMPOSES** a penalty of \$5,390, based upon a \$10 per day penalty for the 539 days between when the SRP registration should have occurred and the date Petitioner submitted its online SRP application. Therefore, the Board **ORDERS** Petitioner to submit a check in the amount of \$5,390, payable to the Treasurer, State of New Jersey, by no later than May 3, 2019.

Payment must be sent by May 3, 2019 to:

Mike Greco, Chief Fiscal Officer
Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625

*You must include a copy of this order with your check.

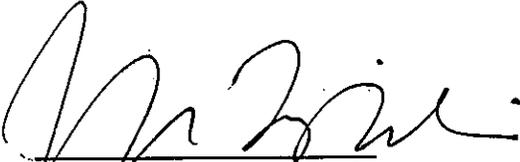
Following EPPRE's adherence to the directives in the preceding paragraph, the Board **DIRECTS** Staff to issue full certification to the project upon Petitioner's demonstration that all requirements for full certification – including all NJDEP requirements and all SRP requirements at N.J.A.C. 14:8-2.4 – have been satisfied. After Petitioner has received full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation for a fifteen (15) year Qualification Life.

This Order is issued in reliance on the information presented in the petition and does not grant any rights beyond an extension of time to file an SRP registration.

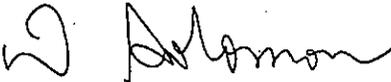
This Order shall be effective on April 28, 2018.

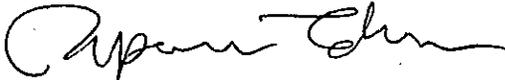
DATED: 4/18/19

BOARD OF PUBLIC UTILITIES
BY:

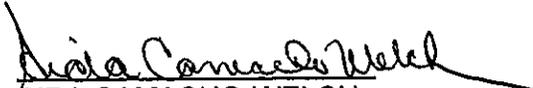

JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

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;
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 Brownfields, Historic Fill and Landfill
Facilities – EEP Renewable Energy, LLC – Pennsauken Township Landfill

Docket Nos. EO12090832V, EO12090862V, and QO16100958

SERVICE LIST

EPP Renewable Energy, LLC

Steven A. Gabrielle
Chief Operating Officer
1605 North Cedar Crest Boulevard
Suite 509
Allentown, PA 18104

New Jersey Division of Rate Counsel

Post Office Box 003
Trenton, NJ 08625-0003

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

Felicia Thomas-Friel, Esq.
ftomas@rpa.state.nj.us

Sarah Steindel, Esq.
ssteindel@rpa.state.nj.us

New Jersey Division of Law

Department of Law & Public Safety
Post Office Box 45029
Newark, NJ 07101-45029

Caroline Vachier, DAG
caroline.vachier@law.njoag.gov

Board of Public Utilities

Post Office Box 350
Trenton, NJ 08625-0350

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

Sara Bluhm, Director
Division of Clean Energy
sara.bluhm@bpu.nj.gov

Sherri Jones, Assistant Director
Division of Clean Energy
sheri.jones@bpu.nj.gov

Benjamin S. Hunter, Manager
Division of Clean Energy
benjamin.hunter@bpu.nj.gov

Jamal Garner, Environmental Engineer
Division of Clean Energy
jamal.garner@bpu.nj.gov

Stacy Ho Richardson, Esq.
Counsel's Office
stacy.richardson@bpu.nj.gov