



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

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 IMPLEMENTATION OF <u>L. 2012, C. 24</u> , 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
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY HIGHLAND PARK BOROUGH LANDFILL)	
)	DOCKET NO. QO17050523

Party of Record:

Robert Pollock, Public Service Electric and Gas Company

BY THE BOARD:¹

This Order concerns an application by Public Service Electric and Gas Company ("PSE&G" or "Applicant") for certification pursuant to L. 2012, c. 24 ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection (t)"). PSE&G seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located at the Highland Park Borough Landfill ("Highland Park Landfill") in Highland Park Borough, Middlesex County, New Jersey. PSE&G alleges that the proposed site is a properly closed sanitary landfill facility as defined in the Solar Act.

¹ Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

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.²

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.*

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(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 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).

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 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.³ 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 which the 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 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 NJCEP 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 SREC Registration Program ("SRP"). The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by PSE&G that its proposed solar facility, to be located in Highland Park Borough, New Jersey, be certified as eligible for SRECs pursuant to

³ 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).

Subsection (t). PSE&G filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. The NJDEP reviewed the application and supplied an advisory memorandum to Staff on September 25, 2018 on the land use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP's determination, the information certified by PSE&G in its application, and the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Designation Developer	Docket Number	Project/ Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
PSEG, DP&C	QO17050523	Highland Park Borough Landfill.	Block 49, Lot 41-56 Borough of Highland Park, NJ 08904	Middlesex	Landfill	0.62016	PSE&G

PSE&G – Highland Park Borough Landfill – Docket No. QO17050523

On April 6, 2017, PSE&G submitted its application to the Board to have its project certified as being located on a properly closed sanitary landfill facility pursuant to Subsection (t) of the Solar Act. Applicant's 0.62016-MWdc project is proposed to be constructed on 1.74 acres of land owned by Highland Park Borough. The landfill is located on an approximately 3.8-acre site, specifically, Block 49, Lots 41–56, on Donaldson Street in Highland Park Borough, Middlesex County, New Jersey.

Staff forwarded the application to the NJDEP for review and a recommendation as described above. NJDEP indicated that the Highland Park Landfill was used to dispose of municipal waste and construction debris in the 1950s and 1960s. Additional unauthorized disposal of waste reportedly occurred into the 1970s, and the landfill ceased operations prior to 1982. Based on reports of the results of investigations of the landfill that have been conducted since it ceased operations, the NJDEP has determined that the only measure required to close the landfill is final cover to prevent direct human exposure to deposited waste. In addition, the NJDEP has determined that the portion of the landfill identified as the proposed solar footprint in Section Four, Figure 3, Conceptual Solar Layout, of the Subsection (t) application has adequate final cover in place.

NJDEP noted that the solar installation will constitute the construction of improvements on a closed landfill pursuant to the law, and, accordingly, the property owner and applicant must comply with the Sanitary Landfill Disruption Approval (PI # 536947; Approval # LCA170001) issued by the Bureau of Solid Waste Permitting on September 21, 2018, as well as any permits identified by the Department, and approval from any other applicable state or federal agency. The NJDEP stated that approval for construction of improvements on the closed portion of the landfill needs to address impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover.

Based on the information provided in the application and the NJDEP's determination that the solar project as proposed is located on a portion of the landfill that qualifies as a "properly closed sanitary landfill facility" under the Solar Act, Staff recommends that the Board grant conditional certification of the proposed project.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to the NJDEP for a determination of eligible land use type and status of remediation on the proposed site. The NJDEP has determined that the 1.74 acres requested for Subsection (t) certification on Block 49, Lots 41–56, as rendered on Section Four, Figure 3, Conceptual Solar Layout, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." Based on information provided by the NJDEP, the Board **FINDS** that the Highland Park Landfill project is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that the NJDEP has determined that the property owner and applicant must comply with the Sanitary Landfill Disruption Approval (PI # 536947; Approval # LCA170001) issued by the NJDEP's Bureau of Solid Waste Permitting on September 21, 2018, as well as any permits identified by the Department, and approval from any other applicable state or federal agency. The Board also **FINDS** that approval for construction of improvements on the closed portion of the landfill needs to address impacts on the environmental controls in place at the site, such as the protection/ re-establishment of the final cap/cover.

The Board **FINDS** that the NJDEP requirements must be addressed and thus **GRANTS** conditional certification of the Applicant's proposed solar electric generation facility, to be located at the Highland Park Borough Landfill at Block 49, Lots 41–56 in Highland Park Borough, Middlesex County, New Jersey, with an array size not to exceed 0.62016 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that there are no outstanding requirements under the Sanitary Landfill Disruption Approval and that all NJDEP or federal requirements have been satisfied.

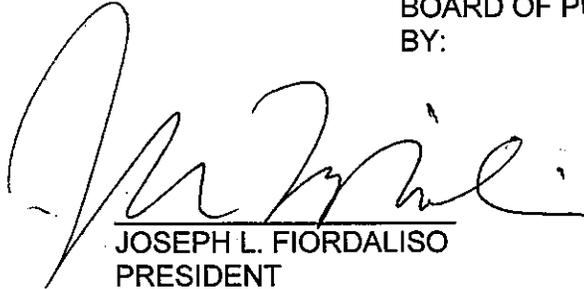
In addition, to obtain full certification, the Board **DIRECTS** PSE&G to submit an initial SRP registration package within fourteen (14) days of the effective date of this order in accordance with N.J.A.C. 14:8-2.4(c) and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-2.4(c), (i). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification have been satisfied. After the Applicant has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

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 plans as represented in the application, and the SRP registration.

This Order shall be effective on November 29, 2018.

DATED: 11/19/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



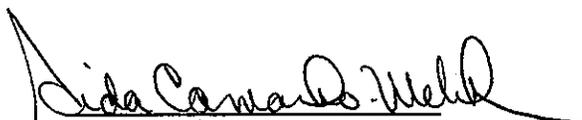
MARYANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
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; Public Service Electric and Gas Company – Highland Park Borough Landfill**

Docket Nos. EO12090832V, EO12090862V, and QO17050523

SERVICE LIST

PSE&G

Robert Pollock
4000 Hadley Rd
South Plainfield, NJ 07080

Division of Rate Counsel

140 Front Street, 4th Floor
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

Deputy Attorney General

Caroline Vachier, DAG
Division of Law
Department of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
caroline.vachier@law.njoag.gov

Josephine T. Jover, Borough Administrator
Borough of Highland Park
221 South Fifth Avenue
Highland Park, NJ 08904

Board of Public Utilities

44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350

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

Ken Sheehan, Esq., Director
Division of Clean Energy
ken.sheehan@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