



Agenda Date: 1/21/15
Agenda Item: 8A

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
)	
PRO-TECH ENERGY SOLUTIONS, LLC FLORENCE LAND RECONTOURING LANDFILL)	DOCKET NO. QO14070714

Party of Record:

Richard Cooper, Pro-Tech Energy Solutions, LLC.

BY THE BOARD:

This Order concerns the Florence Land Recontouring (“FLR”) Landfill solar electric generation facility proposed to be located in Florence Township, New Jersey. The applicant seeking certification submitted the required documentation to enable a New Jersey Department of Environmental Protection (“NJDEP”) determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed sanitary landfill.

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. The Solar Act requires the New Jersey Board of Public Utilities (“Board”) to conduct proceedings, establish standards, and develop programs consistent with the statute’s 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. Docket No. EO12090832V (“October 4 Order”).

The Solar Act, specifically, N.J.S.A. 48:3-87(t) ("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[.] . . . [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 as "brownfield" as "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 defined as "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. Furthermore, "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.

As per the October 4 Order, Staff met with the New Jersey Economic Development Authority ("NJEDA") and the NJDEP. On November 9, 2012, 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, Docket. No. EO12090862V ("January 23 Order"), the Board approved Staff's process for certifying solar generation projects located on brownfields, areas of historic fill, and landfills. The certification process for Subsection t projects pursuant to Subsection t or the Solar Act, N.J.S.A. 48:3-87(t) provides three potential recommendations from Staff: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites the NJDEP determined require further remedial action or additional protective measures, and full certification may be granted for projects located on sites for which the NJDEP determined no further remedial or protective action is necessary. See January 23 Order at 12-13. 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. Ibid.

The January 23 Order also provides that certification is limited to those areas delineated by the NJDEP. In compliance with this directive, applicants must delineate the precise section(s) of

the location where the solar facility is proposed, and the NJDEP must review 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 landfills is necessary to initiate the certification process, and directed Staff to work with NJDEP to develop an application. *Id.* 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.

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, following receipt of conditional certification, once a contract for facility installation has been executed, those projects need to be registered in the Board's SRP within ten days. N.J.A.C. 14:8-2.4. The size and location of the subject project will subsequently be reflected in the public reporting of solar development pipeline data.

SREC REGISTRATION

In the January 23 Order, the Board held that only those projects which received a full certification would be eligible to register in the SREC Registration Program ("SRP"). However, because this requirement is in conflict with the SREC Registration rules, N.J.A.C. (14:8-2.4, which requires a solar electric generation project to submit a registration within ten days of executing a contract to install a solar system or to purchase panels for solar system), on July 19, 2013 the Board reversed that portion of the January 23 Order and thereafter required compliance with the SREC Registration rules, at N.J.A.C.14:8-2.4. See Docket Nos. EO12090862V, EO13050389V, EO13050388V ("July 19 Order"). By maintaining the requirement that an applicant submit a SRP registration for a project within ten days of contract execution, the Board ensured transparency of the SREC registration process.

Staff concludes, based upon feedback from several conditionally approved Subsection t applicants that the existing rules for SREC registration provide a disincentive for project developers to expeditiously execute a solar installation contract. If developers execute contracts upon receipt of the Board's conditional certification under Subsection t, they are then required to register. Under the SRP rule N.J.A.C. 14:8-2.4 (f), the registration expires after one year, with only one six month extension. N.J.A.C. 14:8-2.4 (g). Construction of solar facilities on properly closed sanitary landfills, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer completion periods. Therefore, compliance with the SRP process may result in an inability for developers to complete the construction process prior to the expiration of their registrations.

Staff's experience with implementing the Board's directives with respect to the conditionally approved projects of N.J.S.A. 48:3-87(q) ("Subsection q") applicants supports applying a similar process for the registration of a Subsection t applicant. I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012 Docket No. EO12090832V and I/M/O the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(Q)(R) & (S) - Proceedings to Establish the Processes for Designation of Certain Grid Supply Projects as Connected to the Distribution System – Subsection (Q) Approvals, Docket No. 2090880V (August 21, 2013). The purpose for submission of a timely SRP registration is transparency to the pipeline, and providing notice of the capacity and number of proposed new market entrants to all New Jersey SREC participants. Staff believes that the Board's conditional certification of an application pursuant to Subsection t provides a

reasonable and logical substitute for the project development milestone that is currently served by the execution of a contract and subsequent SRP registration.

STAFF RECOMMENDATIONS

Project Description

As stated above, Pro-Tech Energy Solutions, LLC (“Pro-Tech” or “Applicant”) requests that the FLR Landfill solar facility, to be located in Florence Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection t. The Applicant submitted the required documentation identifying five solar arrays within the proposed project to enable a NJDEP determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed landfill. The NJDEP reviewed the application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP’s determination, information contained in the application, and the requirements of the January 23 Order, Staff is recommending conditional certification for portions of the FLR Landfill, as explained further below.

Date Submitted	Submitted by	Contact Address	Date Application (s) Submitted to DEP	Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
7/14/2014	Richard Cooper	215 Executive Drive Moorestown, NJ 08057	8/1/2014	Pro-Tech Energy Solutions, LLC	Q014070714	Florence Land Recontouring Landfill	Recovery Road Florence Township, NJ 08518	Burlington	Landfill	9.2	PSE&G

FLR Landfill – (Florence Township) – Docket No. Q014070714

On July 14, 2014, Pro-Tech submitted an application to the Board to have its project certified as being located on a properly closed landfill pursuant to Subsection t of the Solar Act. Applicant’s 9.2 MW dc project is proposed to be constructed on the FLR Landfill owned by A & S Transportation Company in Florence Township, Burlington County, New Jersey. In its application, Pro-Tech represented that the FLR Landfill ceased operations in approximately 1981.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised Board Staff that it reviewed the application and found that only 29 acres within the proposed 60-acre site meet the definition of a “properly closed sanitary landfill facility” pursuant to Subsection t and N.J.S.A. 48:3-51. NJDEP noted that the former operator of the landfill installed a cap in 1982. However, NJDEP subsequently discovered leachate seeps at the banks of a nearby creek and landfill gases in manholes and monitoring wells. And, in 1984, the United States Environmental Protection Agency (“USEPA”) designated the FLR Landfill site as a Superfund site and added the site to the National Priorities List (“NPL”). Thereafter, the USEPA, with NJDEP’s consent, selected a remedy at the site that included installation of a new cap and a new leachate collection system. In 2004, the USEPA deleted the landfill site from the NPL.

NJDEP also advised that three of the five solar arrays proposed in the application are located within the portion that is properly closed. Specifically, the applicant referenced the five arrays as arrays A to E. NJDEP identified arrays B, C, and D as located within the portion of the proposed site that constitutes a properly closed landfill. NJDEP identified arrays A and E as outside of the boundaries of the properly closed landfill.

NJDEP further indicated that the proposed solar installation “will constitute the construction of improvements on a closed landfill,” and therefore will require additional NJDEP approvals and permits prior to the construction of the solar electric power generation facility. NJDEP noted that the approvals must “address impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to on-going maintenance and monitoring during the post-closure period.” Additionally, NJDEP advised that, because it operates and maintains the engineering controls at the landfill site pursuant to a 2008 consent decree, NJDEP will need to revisit the issue of operation and maintenance of the 29-acre landfill site if the applicant moves forward with the proposed solar project.

Based on the information provided in the application and NJDEP’s indication that additional approvals are necessary as modifications may need to be made to the current closure plan, Staff recommends that the Board grant conditional certification of a portion of the proposed project limited to those solar arrays specified within the application identified by the NJDEP as located on the “properly closed landfill”. Full certification is conditioned upon the project developers satisfying NJDEP permit requirements for the construction of the solar facility. Staff further recommends that should the applicant proceed with construction of a solar facility with the reduced acreage, the Board authorize the applicant to submit a Subsection t application package consistent with the recommendations from the NJDEP within thirty days of the effective date of this Order.

SRP Registration

In addition, the Board has the power to relax its administrative rules if doing so permits the Board to effectively carry out its statutory functions. N.J.A.C. 14:1-1.2. As noted above, based on experience working with several of the initial Subsection t applicants which received conditional approval from the Board, Staff concludes that the existing rules for SREC registration provide a disincentive for the project developers to execute a contract for the installation of the solar facility, and submit the initial registration in the SRP, on a timely basis. Developers have expressed wariness toward timely execution of a contract and SRP participation after receiving the Board’s conditional certification under Subsection t due to the SRP rules at N.J.A.C. 14:8-2.4 (f) which limit the registration length to one year and at N.J.A.C. 14:8-2.4 (g) which provide only one six month extension. Because construction of solar facilities on properly closed sanitary landfills, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer completion periods, Staff has noticed that the project developers under Subsection t are waiting to execute engineering, procurement and construction contracts because doing so triggers the ten day rule for SRP registration and starts the clock on the one year plus six months extension registration length. The goal of the SRP is transparency to all market participants of each project’s capacity and likelihood of completion, and Staff’s experience with implementing the Board’s directives pursuant to Subsection q applicants provides an apt model.

Therefore, Staff recommends that should the Board accept Staff’s recommendation, the applicants should be directed to submit the SRP registration package to the Board within fourteen days of the effective date of an Order granting conditional certification and that the SREC registration period for this project be modified from the one year provided in the current RPS rules to two years to accommodate the longer construction periods for Subsection t projects. Accordingly, Pro-Tech must submit the SRP registration package within fourteen (14) days of submitting its amended application.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that, as required by Subsection t, Staff transmitted Pro-Tech's application above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site.

Based on information provided by NJDEP, the Board **FINDS** that portions of the FLR Landfill project, specifically arrays B, C, and D, are located on land meeting the definition of a "properly closed landfill." Therefore, the Board **LIMITS** the conditional approval to those portions of the proposed project that lay within the area qualifying for certification under Subsection t. The Board **FURTHER DIRECTS** the Applicant to revise its application such that all proposed capacity is located upon the 29 acres which constitute a properly closed landfill within thirty days of the effective date of this Order, and to submit the appropriate SRP materials reflecting the reduction in capacity within fourteen days after submitting the revised application, or forego the conditional approval.

The Board also **FINDS** that NJDEP has determined that "environmental controls at the site, such as the protection or re-establishment of the final cap, leachate collection, gas collection and storm water collection systems, settlement, slope stability, control of erosion, on-going maintenance, monitoring and source of funding" must be accounted for to construct the solar project. The Board **FINDS** that the applicant must satisfy NJDEP requirements and **DIRECTS** the applicant to demonstrate to Staff that it has satisfied all NJDEP requirements for full certification. The Board **DIRECTS** Staff to issue full certification to the project upon the applicant's demonstration that it has satisfied all requirements for full certification. After the applicant receives full certification and satisfies 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.

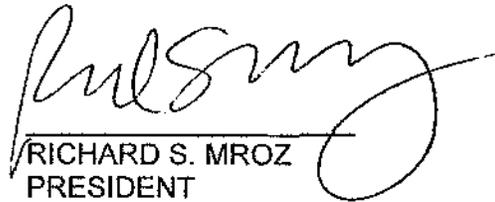
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten days of installation contract execution at N.J.A.C. 14:8-2.4 (c) and the registration length of one year at N.J.A.C. 14:8-2.4 (f) for the Florence Land Recontouring Landfill project. The Board **FURTHER GRANTS** a modification of one year provided in the current SRP to two years for construction to accommodate the longer construction period for Subsection t projects. The Board **HEREBY DIRECTS** Staff to begin the process of amending the SREC registration rules to conform to the requirements of the Solar Act and this Board Order.

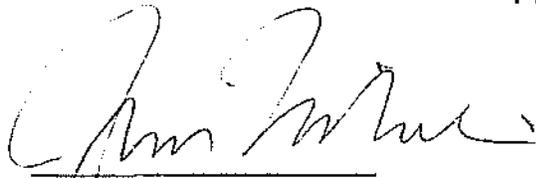
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans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

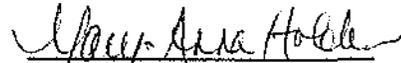
This Order shall be effective on February 2, 2015.

DATED: 1/21/15

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

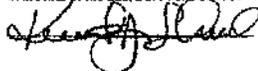

DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


KENNETH J. SHEEHAN
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; Pro-Tech Energy Solutions, LLC Florence Land Recontouring Landfill

Docket Nos. EO12090832V, EO12090862V and QO14070714

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