



Agenda Date: 2/11/15
Agenda Item: 8A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

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
FWCC, LLC CLAY PITS – OLD BRIDGE)))	DOCKET NO. QO14060631

Party of Record:

Steven P. Gouin, Esq., Giordano, Halleran & Ciesla, P.C. on behalf of FWCC, LLC

BY THE BOARD:

This Order concerns the Clay Pits solar electric generation facility proposed to be located in Old Bridge, New Jersey. FWCC, LLC ("FWCC"), seeking certification to be eligible for Solar Renewable Energy Certificates, 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, as set forth in statute.

BACKGROUND

On July 23, 2012, L. 2012, c. 24 ("the 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 to establish new standards and to develop new programs to implement 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 as follows:

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 "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 "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" is defined as "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.

The October 4 Order directed Staff to initiate a proceeding to fulfill the mandate of the Solar Act. Staff met with Staff of the New Jersey Economic Development Authority and the NJDEP. Consistent with the requirements of the Solar Act, on November 9, 2012, Commissioner Joseph Fiordaliso presided over a public hearing and 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 proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and landfills. 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. See January 23 Order at 12-13. Conditional certification may be granted for projects located on sites which the NJDEP determined require further remedial action or, in the case of properly sanitary closed landfills, additional protective measures. Ibid. 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. Ibid.

The January 23 Order that certification is limited to those areas designated 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.

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, these 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 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 FWCC that the Clay Pits solar facility, proposed to be located in Old Bridge, New Jersey, be certified as eligible for SRECs pursuant to Subsection t. FWCC filed an application with supporting documentation 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 memorandum 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, the information contained in the application, and the January 23 Order, Staff is recommending that the Board deny certification, as explained further below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
FWCC, LLC	QO14060631	Clay Pits	14 Industrial Drive Old Bridge, NJ 08857	Middlesex	Brownfield	10	JCP&L

FWCC, LLC. (Clay Pits - Old Bridge) – Dkt. No. QO14060631

On June 25, 2014, FWCC submitted its application to the Board to have its project certified as located on a brownfield pursuant to Subsection t of the Solar Act. FWCC's 10 MW dc project referred to as "Clay Pits" is located at 14 Industrial Drive in Old Bridge, New Jersey. In its application, FWCC described the site as a former clay mining, brick manufacturing and debris disposal site. FWCC also represented that no remediation activities are required prior to redevelopment per a No Further Action (NFA) letter from NJDEP, dated October 13, 2010.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised Board Staff that FWCC identified the site as a former clay mining and brick manufacturing site. Samples taken at the site indicated the presence of nickel and arsenic that were above NJDEP's Direct Residential Soil Remediation Standards. Following remediation of the site, NJDEP issued an unrestricted use NFA letter for the entire site on October 13, 2010. NJDEP stated that the NFA acknowledged the completion of the Preliminary Assessment, Site Investigation, and Remedial Action for the site pursuant to the NJDEP's applicable regulations. NJDEP advised that an unrestricted use NFA means that a remedial action has been implemented at the site which does not require the continued use of engineering or institutional controls to meet the applicable minimum remediation standards. NJDEP also advised that, accordingly, there are no restrictions under the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 through -31, and the regulations promulgated thereunder, on the use and redevelopment of the site. NJDEP further noted that it does not consider a site a brownfield if future use is entirely unrestricted. Accordingly, NJDEP concluded that this site is not a brownfield as it has been remediated to unrestricted use under the NJDEP's Site Remediation Program.

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.

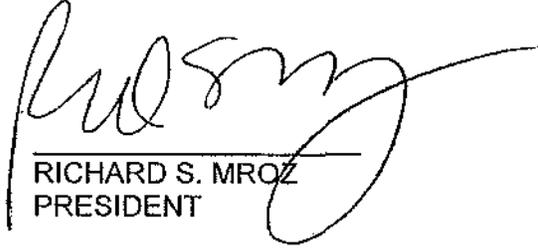
Based on information provided by FWCC as well as the analysis provided by NJDEP, the Board **FINDS** that the NJDEP determined that the application for certification of the potential solar generation facility as "Clay Pits" submitted by FWCC is not located on property defined as a "brownfield" because the area has been completely remediated and there are no further restrictions upon its use.

For these reasons the Board **FINDS** that the project does not qualify for certification under Subsection t and, as such, the Board **DENIES** the request for certification of the project identified as "Clay Pits."

This Order shall be effective on February 23, 2015.

DATED: 2/11/15

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



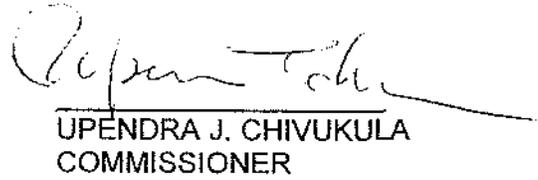
JOSEPH L. FIORDALISO
COMMISSIONER



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
as the filed 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
BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES

FWCC, LLC CLAY PITS - OLD BRIDGE

DOCKET NOS. EO12090832V, EO12090862V & QO14060631

SERVICE LIST

Steven P. Gouin, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
sgouin@ghclaw.com

Michael A. Bruno, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
mbruno@ghclaw.com

Kenneth J. Sheehan, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
kenneth.sheehan@bpu.state.nj.us

Elizabeth Ackerman, Director
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
elizabeth.ackerman@bpu.state.nj.us

Marisa Slaten, Esq.
Assistant Director
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
marisa.slaten@bpu.state.nj.us

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Felicia Thomas-Friel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
fthomas@rpa.state.nj.us

Sarah Steindel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
ssteindel@rpa.state.nj.us

Caroline Vachier, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
caroline.vachier@dol.lps.state.nj.us

Benjamin S. Hunter
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
benjamin.hunter@bpu.state.nj.us

Rachel Boylan, Esq.
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
rachel.boylan@bpu.state.nj.us

Allison E. Mitchell
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
allison.mitchell@bpu.state.nj.us