



Agenda Date: 4/15/15
Agenda Item: 8I

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
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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)	DOCKET NO. EO12090862V
LANDFILL FACILITIES)	
)	
PUBLIC SERVICE ELECTRIC AND GAS (PSE&G))	
L&D LANDFILL)	DOCKET NO. QO14111330

Party of Record:

Robert Pollack, Public Service Electric and Gas

BY THE BOARD:¹

This Order concerns the L&D Landfill solar electric generation facility proposed to be located in Eastampton, Lumberton and Mt. Holly Townships, New Jersey. The applicant submitted the required documentation to enable a New Jersey Department of Environmental Protection (“NJDEP”) determination as to whether the proposed site was a properly closed sanitary landfill and whether additional considerations were required before obtaining full certification pursuant to Subsection t of the Solar Act.

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

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

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. 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 the terms “brownfield,” “area of historic fill,” and “properly closed sanitary landfill.” 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 [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 (“NJEDA”) 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 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 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. 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 sanitary closed landfills, 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. 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 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 reviewed 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 was 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 SREC Registration Program (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.

SREC REGISTRATION

In the January 23 Order, the Board ruled that only those projects that have received a full certification would be eligible to register in the SRP; "full certification is a pre-requisite to consideration for acceptance into the SRP." January 23 Order at 13. However, because this requirement is in conflict with the SREC Registration rules at N.J.A.C. 14:8-2.4, which require 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 Staff's recommendation, on July 19, 2013, the Board reversed that portion of the January 23 Order and required developers to comply with the SREC Registration rules at N.J.A.C. 14:8-2.4. 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 believed it was ensuring the continued transparency of the SREC registration process.

Staff concludes, based on feedback from several of the initial Subsection t applicants which received conditional approval from the Board, 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 in an expeditious manner. If developers execute contracts upon receipt of the Board's conditional certification under Subsection t, they are then required to register. Under the SRP rules at N.J.A.C. 14:8-2.4 (f), this 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. Strict compliance with the SRP process may mean the developers cannot complete the construction process prior

to the expiration of their registrations, thereby thwarting one of the goals of the Solar Act, that being to direct solar development to properly closed landfills, brownfields, and areas of historic fill.

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 of proposed solar facilities, providing notice of the capacity and number of proposed new market entrants to all participants in the New Jersey SREC market. 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 which triggers the requirement to register in the SRP.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by Public Service Electric and Gas ("PSE&G" or "applicant") that the L&D Landfill solar facility, proposed to be located in Eastampton, Lumberton and Mt. Holly Townships, New Jersey be certified as eligible for SRECs pursuant to Subsection t. The applicant seeking certification 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 the L&D Landfill, as explained further below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
Public Service Electric & Gas (PSE&G)	Q014111330	L&D Landfill	1700 State Highway Eastampton, Lumberton, and Mt. Holly Townships, NJ 08060	Burlington	Landfill	13	PSE&G

L&D Landfill – (Eastampton, Lumberton and Mt. Holly Townships) – No. Q014070714

On November 17, 2014, PSE&G 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 13 MW dc project is proposed to be constructed on the L&D Landfill owned by Waste Management, Inc. ("WMI") in Eastampton, Lumberton, and Mt. Holly Townships, Burlington County, New Jersey. In its application, PSE&G represented that the L&D Landfill ceased operations in approximately 1986.

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 the site, which the applicant identifies as 53 acres, meets the definition of a "properly closed sanitary landfill facility" pursuant to Subsection t and N.J.S.A. 48:3-51. On February 10, 1992, NJDEP issued a Closure and Post-Closure Plan Approval for L&D Landfill. On December 10, 1996, the NJDEP signed a revised Closure and Post-Closure Plan Approval requiring L&D, which is now a subsidiary of WMI, to implement and comply with certain conditions and identifying the 30-year closure period as ending in 2018.

NJDEP determined 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 noted that the landfill has elevated levels of methane gas at numerous locations, especially in the southern half of the landfill. Although, as per the drawing submitted by PSE&G in the Subsection t application, no panels will be located on the areas where additional measures to control methane migration may be necessary, the NJDEP reserves the right to direct WMI to take any additional measures to address any on-site landfill gas issues.

Based on the information provided in the application and NJDEP's determination 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 the proposed project limited to the 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.

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 applicant 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.

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 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, and on-going maintenance and monitoring must be accounted for in construction of 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 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.

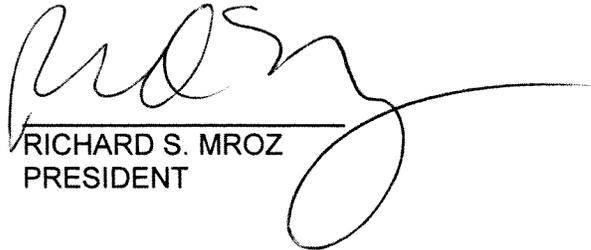
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten days of installation contract execution at N.J.A.C. 14:8-2.4 (c) and the registration length of one year at N.J.A.C. 14:8-2.4 (f) for the L&D 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.

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 April 25, 2015.

DATED: 4/15/15

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER



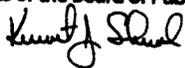
DIANNE SOLOMON
COMMISSIONER

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



Docket No. EO12090832V – In the Matter of the Implementation of L. 2012, C.24,
The Solar Act of 2012;

Docket No. EO12090862V – 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 Solar Renewable Energy
Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and

Docket No. QO14111330 – In the Matter of Public Service Electric and Gas Company –
L&D Landfill

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