



Agenda Date: 7/19/13
Agenda Item: 8G

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
Standard Alternative Brick Township Landfill)	DOCKET NO. EO13050389V
Syncarpha Capital Bernards Township Landfill)	DOCKET NO. EO13050388V

Parties of Record:

Samuel N. Faivus, Standard Alternative
Cliff Chapman, Syncarpha Capital

BY THE BOARD:

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. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities ("Board or BPU") to conduct proceedings to establish new standards and to develop new programs to implement the 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. Dkt. No. EO12090832V ("October 4 Order"). Subsection (t) of the Solar Act 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 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 has met with staff of the New Jersey Economic Development Authority ("NJEDA") and the Department of Environmental Protection ("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 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 Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfills was necessary in order 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. This order considers two applications that were filed with the BPU.

The Board further found that the Solar Act requires the development of an incentive to offset the increased costs of siting solar generation facilities on the areas covered by subsection (t) and directed Staff to continue working with the NJDEP, the NJEDA, and the stakeholders to develop a process to determine appropriate incentives. Ibid. The Board further directed Staff to coordinate any incentive developed with the incentives to be provided to solar projects located on landfills pursuant to the Electric Distribution Companies' ("EDC") SREC financing programs. Ibid.

Financial incentives for projects developed under subsection (t) are found in the programs developed by the EDCs in response to the Board's Order of May 23, 2012, Docket EO11050311V. The EDCs continue to maintain EDC SREC financing programs. For example, on May 29, 2013, the Board approved a settlement stipulation for Public Service Electric & Gas's ("PSE&G") Solar 4 All Extension program and its Solar Loan III program. I/M/O Petition of PSE&G for Approval of an Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1, Docket No. EO12080721 (May 31, 2013); I/M/O Petition of PSE&G for Approval of a Stipulation Solar Loan III Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, Dkt. No. EO12080726 (May 31, 2013). The Solar 4 All program provides an incentive for PSE&G to invest over \$200 million for 42 megawatts ("MW") of solar on properly closed landfills and brownfields. The Solar Loan III program includes a carve-out for landfills and brownfields from the program's total capacity with the goal of facilitating private sector ownership of solar on landfills and brownfields. In addition, the other three EDCs have filed petitions for extensions of their SREC-based finance programs which each contain provisions for solar projects on landfills and brownfields.

Given the existing solar market conditions where the supply of SRECs significantly exceeds the demand created by the solar RPS, Staff sees no valid reason to create additional incentives to be funded by the ratepayer. At the Board's Agenda meeting of June 21, 2013, Staff recommended that no funding be provided for any solar rebates through the New Jersey Clean Energy Program ("NJCEP").¹

STAFF RECOMMENDATIONS

As noted above, the Board has fulfilled the mandate of subsection (t) of the Solar Act to "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[.]" N.J.S.A. 48:3-87(t). After several months of

¹ I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Years 2014 through 2017 Clean Energy Program Docket No. EO11050324V (June 21, 2013)

experience with the process established, Staff has some further recommendations on the process.

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.

Staff notes that projects certified under subsection (t) of the Solar Act will be 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 will need to be registered in the Board's SREC Registration Program ("SRP") within ten days. The size and location of the subject project would then be reflected in the public reporting of solar development pipeline data.

SREC Registration

Staff notes that 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 prerequisite to consideration for acceptance into the SRP. However, Staff has determined that this requirement is in conflict with the Board's SREC Registration rules at N.J.A.C. 14:8-2.4, which require a solar electric generation project to submit a registration within 10 days of executing a contract to install a solar system or to purchase panels for solar system. Staff believes it is important for the Board to maintain the requirement that an applicant submit a registration for a project within 10 days of contract execution. Therefore, Staff recommends that applicants comply with the requirements of the SREC Registration rules at N.J.A.C. 14:8-2.4 and the deadlines set forth therein. Staff strongly encourages those who are fully certified to investigate the opportunities provided by the EDC programs described above.

Project Descriptions

This Order deals with Staff's recommendation on two projects: Standard Alternative, LLC and Syncarpha EFGI, LLC. The applicants seeking certification submitted the required 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 each application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of each proposed site. On the basis of the NJDEP's determination, information contained in the application, and the January 23 Order, Staff is recommending conditional approval, as explained further below.

Application Date	Submitted by	Contact Address	Developer	Project/ Designation Address	Location Town	County	Applicant's Characterization of Site: Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	DEP Recommendation	EDC	Staff Recommendation	Docket Number
4/29/2013	Samuel N. Falvus	235 Hudson Street, Suite 1 Hoboken, NJ 07030	Standard Alternative	Brick Township Landfill	1120 Sally Ika Road Brick, NJ 08723	Ocean	Landfill	6.103	"Properly Closed Landfill"	JCP&L	Conditional Approval	EO13050389V
4/24/2013	Cliff Chapman	645 Madison Ave, 14th Fl New York, NY 10022	Syncarpha Capital	Bernards Township Landfill	PH Hill Rd Bernardsville, NJ 07924	Somerset	Landfill	3.39	"Properly Closed Landfill", "issued necessary approvals"	JCP&L	Conditional Approval	EO13050388V

Standard Alternative, LLC – (Brick Township) – Dkt. No. EO13050389V

On May 6, 2013, Standard Alternative, LLC ("Brick") 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 6.1 MW project is proposed for the Brick Township landfill in Brick Township, New Jersey.

On its application, Brick represented that its project is located on a sanitary landfill which ceased operations in 1979. DEP has advised that this site is a Superfund site for which the United States Environmental Protection Agency has completed the remediation activities associated with the capping of the landfill. The DEP has informed Board Staff that the project is located on a Superfund site and it is required to obtain permit equivalents for the following: Solid Waste Closure/Post Closure Plan Modification approval, Coastal Area Facility Review Act Permit, and Flood Hazard Area Permit. Permit equivalents are issued when a site is under federal jurisdiction and must comply with the substance of state permitting requirements but does not need actual permits.

Based on the information provided in the application and DEP's indication that additional protective measures are necessary, Staff recommends conditional certification. Full certification is conditioned upon Brick satisfying DEP permit requirements for construction of the solar facility. Staff further recommends that Brick comply with the requirements and time limits established in the SREC Registration Program.

Syncarpha EFGI, LLC – (Bernards Township) – Dkt. No. EO13050388V

On May 6, 2013, Syncarpha EFGI ("Syncarpha") submitted an application to the Board to have its project certified as located on a properly closed landfill pursuant to subsection (t) of the Solar Act. Syncarpha's 3.39 MW project is proposed to be located on Bernard's Township landfill in Bernards Township, New Jersey.

On its application, Syncarpha represented that its project was located on a portion of a properly closed landfill. DEP has advised that the records of this landfill indicate that the Bernards Township Landfill was properly closed in October 1993. NJDEP received subsequent requests to modify the closure plan, most recently approving a modification to the closure plan for a solar installation project on the landfill. Additionally, NJDEP has issued the necessary approvals, specifically a Letter of Interpretation (for wetlands) and a Wetlands Delineation Buffer Zone Determination, that would allow for the solar installation project to be constructed as outlined within those approvals. The applicant must comply with any conditions or requirements contained in the DEP permits and any other conditions that may be imposed.

Based on the information provided in the application and DEP's review, Staff recommends conditional certification. To satisfy the conditions for full certification Syncarpha must fulfill all applicable NJDEP permit requirements for construction of the solar facility. Staff further recommends that Syncarpha comply with the requirements and time limits established in the SREC Registration Program.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that Staff has consulted with the DEP with regard to the development of an application for certification of solar generation as being located on brownfields, areas of historic fill, and properly closed sanitary landfills. The Board **FINDS** that Staff transmitted the two applications discussed above to the DEP for a determination of eligible land use type and status of remediation on the proposed sites.

Based on information provided by DEP the Board **FINDS** that both projects are located on land meeting the definition of a "properly closed landfill." The Board also **FINDS** that the DEP has identified these two applications as subject to permit requirements. DEP has represented that Syncarpha has obtained the necessary approvals to begin installation; Brick must obtain additional DEP permit equivalents to begin construction on the site, including a Solid Waste Closure/Post Closure Plan Modification approval, Coastal Area Facility Review Act Permit, and Flood Hazard Area Permit.

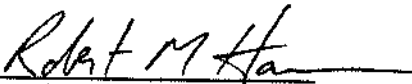
Pursuant to the January 23 Order, conditional certification may be granted when "specific action must be taken to protect the integrity of the closed landfill or otherwise prevent contamination and full certification will be recommended when the conditions imposed have been met." January 23 Order at 13. Because DEP has described additional permits or permit equivalents that must be obtained before Brick may begin construction, the Board **FINDS** that conditional certification is appropriate. Concerning Syncarpha, the Board **FINDS** that Syncarpha must fulfill all applicable NJDEP permit requirements for construction of the solar facility to be eligible for full certification.

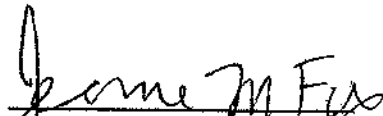
Regarding the SREC Registration Program, the Board accepts Staff's recommendation to require all applicants to comply with the requirements set forth in N.J.A.C. 14:8-2.4. This Order **HEREBY SUPERCEDES** the January 23 Order to the extent that it was inconsistent with the SREC Registration Program regulation. The Board **FINDS** that requiring compliance with the Board's SRP program will provide greater transparency and predictability to the solar market.

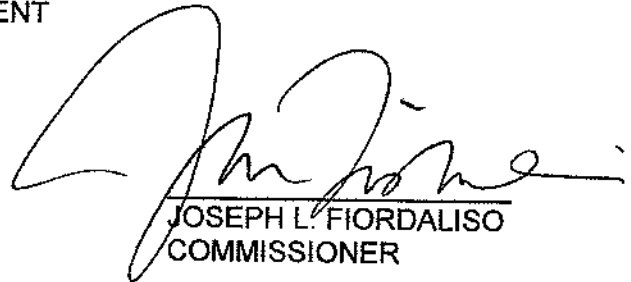
The Board **DIRECTS** Staff to issue full certification to each applicant upon the applicant's demonstration that it has satisfied all requirements for full certification. Finally, and after it has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to each applicant for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

DATED: 7/19/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
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ATTEST:

KRISTI IZZO
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 BROWNFIELD, HISTORIC FILL AND LANDFILL
FACILITIES

STANDARD ALTERNATIVE
BRICK TOWNSHIP LANDFILL

SYNCARPHA CAPITAL
BERNARDS TOWNSHIP LANDFILL

DOCKET NOS. EO12090832V, EO12090862V, EO13050389V & EO13050388V

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