



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF)	
<u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE SOLAR TRANSITION)	
PURSUANT TO <u>P.L.</u> 2018, <u>C.</u> 17 – APPLICATION FOR)	
CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE)	
FOR TRECS PURSUANT TO SUBSECTION (T) OF)	DOCKET NO. QO19010068
THE SOLAR ACT OF 2012)	
)	
ACTIVE SOLAR DEVELOPMENT’S PHILLIPSBURG)	
SOLAR II, LLC – PHILLIPSBURG ASSOCIATES III /)	
INGERSOLL RAND OLD LANDFILL)	DOCKET NO. QO20040307

Parties of Record:

Brian O. Lipman, Esq., Interim Director, New Jersey Division of Rate Counsel
Frank McCleneghen, Active Solar Development, LLC

BY THE BOARD:

This Order concerns an application by Active Solar Development, LLC (“Active Solar” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). Active Solar seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located at the Phillipsburg Associates III Landfill in Phillipsburg in Warren County, New Jersey (“the site”). Applicant alleges that a portion of the proposed site is a “properly closed sanitary landfill facility” and a portion is a “brownfield” as those terms are defined in the Solar Act.

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.¹

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” Id. 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” Id.

¹ In re 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; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; In re 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; In re 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 In re 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 then-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.² 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 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 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.³

The January 24, 2013 Order states that certification would be limited to those areas delineated by 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 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 New Jersey Clean Energy Program and BPU websites a Subsection (t) application form.

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law (“Clean Energy Act” or “CEA” or “Act”), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the Solar Renewable Energy Certificate (“SREC”) program by no later than June 2021, reducing the SREC term or “qualification life” to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandated that the Board close the SREC Registration Program (“SRP”) once it determined that 5.1% of the kilowatt-hours sold in the state had been generated by solar electric power generators connected to the distribution system (“5.1% Milestone”) or, in the alternative, by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication in the New Jersey Register on January 22,

² In re 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 In re 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, Order dated January 24, 2013 (January 24, 2013 Order).

³ January 24, 2013 Order at 31-33.

2019.⁴ Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

On December 6, 2019, the Board established a Transition Incentive (“TI”) Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.⁵ The Transition Incentive Program provides eligible projects with Transition Renewable Energy Certificates (“TRECs”) for each megawatt hour of electricity produced. Incentives are tailored to specific project types by the use of factors, which are applied to a base incentive rate to provide a particular project type with the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects certified pursuant to Subsection (t) receive a factor of 1.0 and thus the full amount of the base incentive.

At a Special Agenda Meeting held on April 27, 2020, the Board approved a Transition Incentive rule proposal⁶ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁷ On September 10, 2020, the Board adopted the rule proposal, and the rules became effective on October 5, 2020 when published in the New Jersey Register.⁸ The rule provides that the transition incentive “shall be available to projects that submitted a complete SREC Registration Program registration or a complete Subsection (t) application after October 29, 2018” (emphasis added) but that have not received a Permission to Operate at the time that the 5.1% Milestone is achieved.⁹ The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Orders, and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹⁰ Moreover, the Transition Incentive rules require compliance with all rules and regulations of the SREC registration program at N.J.A.C. 14:8-2.4.¹¹

Projects certified under Subsection (t) are subject to all of the Board’s SRP and TI 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 seeking TREC eligibility must comply with the TI rules at N.J.A.C. 14:8-10, and applicable Board orders concerning registration with the Transition Incentive Program.¹² The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 (“December 2019 Order”).

⁶ In re a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QX20030253 (“TI Rule Proposal”).

⁷ 52 N.J.R. 1048(a) (May 18, 2020).

⁸ 52. N.J.R. 1850(a) (October 5, 2020).

⁹ N.J.A.C. 14:8-10.4(a).

¹⁰ N.J.A.C. 14:8-10.4(h).

¹¹ N.J.A.C. 14:8-10.4(i).

¹² December 2019 Order at 33.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by Active Solar that its proposed solar facility, to be located in Phillipsburg, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). Active Solar filed an application with supporting documentation to enable a NJDEP determination as to whether 4.55 acres of the proposed site is a properly closed sanitary landfill facility and whether 8.14 acres are a brownfield.¹³ NJDEP reviewed the application and supplied an advisory memorandum to Staff on July 7, 2021, on the land use classification and on the closure or remediation status, as applicable, of the proposed site. On the basis of NJDEP’s determination, the information certified by Active Solar in its application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Applicant’s 2.974 MWdc project is comprised of 1.0076 MWdc proposed for 4.55 acres on the landfill and 1.9668 MWdc proposed for 8.14 acres on the brownfield. The project is proposed to be located on a total of 12.69 acres owned by I-78 Logistics Park Phillipsburg Commerce Park Urban Renewal, LLC, (“I-78 Logistics”) at Block 3201, Lot 7.04 at 6 Rand Boulevard.¹⁴

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Proposed Array Size (MWdc)	EDC
Active Solar Development, LLC	Q020040307	Phillipsburg II Solar / Phillipsburg Associates III Landfill	6 Rand Blvd Phillipsburg, Township, NJ 08865	Warren	Landfill / Brownfield	2.974	JCP&L

Active Solar Development, LLC – Phillipsburg Solar II LLC / Ingersoll Rand Old Landfill – Docket No. QO20040307

On April 21, 2020, Active Solar submitted its revised 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. On January 21, 2021, the Applicant submitted supplemental information to the Board which amended and updated the original application and provided material primarily regarding the portion of the site the applicant designates as brownfield, as well as a site map. Applicant’s 2.974 MWdc project is comprised of 1.0076 MWdc proposed for 4.55 acres on the landfill and 1.9668 MWdc proposed for 8.14 acres on the brownfield. The project is proposed to be located on a total of 12.69 acres owned by I-78 Logistics at Block 3201, Lot 7.04 at 6 Rand Boulevard in Phillipsburg Township in Warren County, New Jersey.

¹³ As originally filed on April 21, 2020, the application designated the site of the proposed array as “landfill,” and did not identify how many acres were to be attributable to “landfill” and how many to “brownfield”. On January 21, 2021, the Applicant submitted supplemental information to the BPU which amended and updated the original application.

¹⁴ Pursuant to the Town of Phillipsburg’s July 25, 2019 Resolution For Approval Of Major Subdivision, the designation of Block 3201, Lot 7.04 has been changed to Block 3401, Lot 4. However, for the purposes of this Order the former designation of Block 3201, Lot 7.04 will be used.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised in a July 7, 2021 memorandum that the proposed site for the solar array described in the application comprises 12.69 acres.

On July 26, 1991, the Department issued a solid waste facility permit to the Ingersoll Rand Company to operate a sanitary landfill on what is currently designated as Block 3201, Lot 7.04 in Phillipsburg, Warren County. The landfill was originally constructed for the disposal of construction and demolition waste (Type ID13C) and foundry sand waste (Type ID27) generated on-site by the Ingersoll-Rand Company. No other waste types or commercial wastes were accepted for disposal at this landfill. The permit was subsequently renewed on September 6, 2001 and simultaneously reissued and transferred to Phillipsburg Associates III, LP on August 30, 2007.

In November 2012, the Department received a professional engineer's certification of completion of closure of the landfill. The Department approved the closure certification and transferred responsibility for post-closure of the landfill from Phillipsburg Associates III, LP to the Town of Phillipsburg in a modified Closure and Post-Closure Plan Approval dated July 31, 2013. On January 30, 2019 the Department issued another modification of the Closure and Post-Closure Plan Approval to again transfer responsibility for the post-closure of the landfill from the Town of Phillipsburg to I-78 Logistics and to authorize activities associated with redevelopment of the site.

During site visits in November and December 2019, the Department found the site owner had failed to do the following: maintain required fencing; perform monitoring or maintenance; maintain facility access and access control; maintain stormwater (run-on/run-off) control; and notify the Department and obtain approval for disruption activities. The owner has also allowed unauthorized heavy equipment and vehicle use of the facility, thus damaging the final cover.

A February 10, 2021 Settlement Agreement between the Department and I-78 Logistics satisfactorily addresses the violations as I-78 Logistics continues to implement the maintenance and monitoring requirements in their Closure and Post Closure Plan.

NJDEP determined that the 2.974 MWdc facility would be located on 12.69 acres, of which 4.55 acres include a portion of a properly closed sanitary landfill facility and 8.14 acres are a brownfield. The project is divided into four subarrays. A portion of subarray 2 will be located on what has been identified as a "properly closed sanitary landfill facility" and the remaining portion of subarray 2, as well as subarray 1, 3, and 4 will be located on what has been identified as a brownfield.

NJDEP advises that the solar installation will constitute the construction of improvements on a closed landfill, pursuant to the law, and accordingly the property owner will need to obtain an Approval from the NJDEP Division of Solid and Hazardous Waste, as well as any other permits identified by the NJDEP, prior to construction of the solar electric power generation facility. The approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site including, but not limited to 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.

For the portion of the facility planned to be sited on a brownfield, all identified brownfield areas are slated to be capped as part of the remediation of the site. These caps will function as one of the engineering controls associated with the final remedy. As such, the installation of subarrays 1, 3, and 4 will need to be coordinated with any planned capping activities and the necessary precautions will need to be taken so as not to adversely affect the viability of engineering controls that are already in place. Although a Soil Remedial Action Permit (RAP) has not yet been issued for these specific brownfield areas, a Soil RAP will be required as part of the remedy and to receive full certification.

Consistent with the above requirements, the property owner and operator of the solar facility must ensure that all future operations continue to protect the integrity of the cap. In addition, all outstanding environmental issues shall be resolved as agreed in the negotiated Settlement Agreement (NEA200001-132755) between the Bureau of Solid Waste Compliance & Enforcement and I-78 Logistics.

Based on the information contained in the application and other documentation, Staff recommends that the Board conditionally certify 1.0078 MWdc of the Applicant's project as being located on 4.55 acres of a "properly closed sanitary landfill" and 1.9668 MWdc as being located on 8.14 of a "brownfield," as those terms are defined pursuant to Subsection (t). Applicant's 2.974 MWdc project is comprised of 1.0076 MWdc proposed for 4.55 acres on the landfill and 1.9668 MWdc proposed for 8.14 acres on the brownfield. The project is proposed to be located on a total of 12.69 acres. Staff also recommends that the Board authorize Staff to require that the conditions for certification provided by the NJDEP be fully documented as satisfied by the Applicant prior to Staff's issuance of full certification of the project's eligibility for TRECs. In addition, Staff recommends that the Board direct the Applicant to file its TREC registration within fourteen (14) days of the date of the Order and explicitly grant conditional certification.

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. NJDEP determined that the solar array proposed for Block 3201, Lot 7.04, as shown on the tax map of the Town of Phillipsburg, is located in part on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility" and in part on land meeting the Solar Act's definition of a "brownfield." To be eligible for the creation of TRECs, one part of the facility must not exceed 1.0076 MWdc and must be placed within four point fifty-five (4.55) acres of properly closed sanitary landfill facility depicted on the site map attached to the April 21, 2020 application package. The other portion of the facility must not exceed 1.9668 MWdc and must be placed within the eight point fourteen (8.14) acres of brownfield depicted in the CP-1 Conceptual Plan Map. In total, the facility must not exceed 2.974 MWdc or the aggregate 12.69 acres shown on this map. Based on information provided by NJDEP, the Board **FINDS** that the Phillipsburg Associates III Landfill project is located in part on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility" and in part on land meeting the Solar Act's definition of a "brownfield."

The Board also **FINDS** that NJDEP determined that the property owner will need to obtain an Approval from the NJDEP Division of Solid and Hazardous Waste, as well as any other permits identified by the NJDEP, prior to construction of the solar electric power generation facility. The Board **FINDS** that the NJDEP has stated that the Approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site including, but not limited to 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. The Board **FINDS** that NJDEP requires that all outstanding environmental issues shall be resolved as agreed in the negotiated Settlement Agreement between the Bureau of Solid Waste Compliance & Enforcement and I-78 Logistics Park.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of Applicant's proposed solar electric generation facility, to be located on 12.69 acres at the Phillipsburg Associates III Landfill at Block 3201, Lot 7.04 in Phillipsburg Township, Warren County, New Jersey, with an array size not to exceed 1.0076 MWdc on 4.55 acres on the landfill portion and not to exceed 1.9668 MWdc on 8.14 acres on the brownfield portion. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

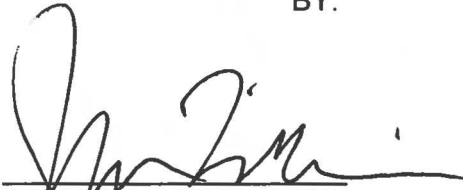
In addition, to obtain full certification, the Board **DIRECTS** Active Solar to submit an initial Transition Incentive program registration package within 14 days of the effective date of this order, and to complete construction within two years in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all TREC eligibility requirements at N.J.A.C. 14:8-10, et seq. – have been satisfied. After the Applicant receives full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of TREC creation for a 15-year Qualification Life.

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 site plans filed with the application, and the TREC registration.

This Order shall be effective on September 21, 2021.

DATED: September 14, 2021

BOARD OF PUBLIC UTILITIES
BY:



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PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

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AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012;

**IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO L. 2018, C. 17 –
APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS
PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012; AND**

**ACTIVE SOLAR DEVELOPMENT'S PHILLIPSBURG SOLAR II, LLC
PHILLIPSBURG ASSOCIATES III / INGERSOLL RAND OLD LANDFILL.**

DOCKET NOS. EO12090832V, QO19010068, AND QO20040307

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