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**Board of Public Utilities**  
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**CLEAN ENERGY**

IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012	)	ORDER
	)	DOCKET NO. EO12090832V
IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> 2012, <u>C.</u> 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	)	DOCKET NO. EO12090862V
	)	
SYNCARPHA GEMS, LLC GEMS LANDFILL – PETITION FOR EXTENSION OF EXPIRATION DATE UNDER TRANSITION INCENTIVE PROGRAM	)	DOCKET NO. QO18010052
	)	

**Parties of Record:**

**Jim Laskey, Esq.**, Norris McLaughlin, for Syncarpha GEMS, LLC  
**Brian O. Lipman, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

This Order concerns the September 10, 2021 petition by Syncarpha GEMS LLC (“Syncarpha” or “Petitioner”) to the New Jersey Board of Public Utilities (“Board” or “BPU”) for a further extension of its conditional approval within the Transition Incentive (“TI”) Program.

**BACKGROUND**

**Subsection t**

On July 23, 2012, the Solar Act was signed into law. The Solar Act amended certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act required the Board to conduct proceedings to establish new standards and to develop new programs to implement the statute’s directives.

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[.]

[N.J.S.A. 48:3-87(t) (emphasis added)]

The Solar Act also added specific definitions for the term “connected to the distribution system.”<sup>1</sup> These definitions emphasized the special status of facilities approved pursuant to Subsection t. The only definition that turned upon the type of land on which a solar facility was located dealt with the types of properties identified in that subsection: “Connected to the distribution system” means, for a solar electric power generation facility, that the facility: . . . (6) is 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. 48:3-51.

The Board approved a certification process for projects seeking approval pursuant to Subsection t that provided for full certification, conditional certification, or denial of certification.<sup>2</sup> Conditional certification may be granted for projects located on sites that the New Jersey Department of Environmental Protection (“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 the NJDEP has determined no further remedial or protective action is necessary.

#### Subsection t Application

On January 17, 2018, Syncarpha submitted an 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. Applicant’s 4.2 MWdc project was proposed to be located on 21 acres of land owned by Gloucester Township at Block 14003, Lots 25 and 26 at 0 Dixon Lane in Gloucester Township, Camden County, New Jersey (“Project”). On November 13, 2019, on the basis of NJDEP’s

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<sup>1</sup> The Board has made connection to the distribution system a prerequisite for eligibility to SRECs. N.J.A.C. 14:8-2.4.

<sup>2</sup> In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; 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 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 (Jan. 24, 2013).

determination and the information certified by Syncarpha in its application, the Board granted conditional certification of eligibility for Solar Renewable Energy Certificates ("SRECs") to Syncarpha.<sup>3</sup> The Syncarpha Order directed Petitioner to demonstrate that it had satisfied all outstanding NJDEP requirements.

During the pendency of the Petitioner's application for SREC eligibility, 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", "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 SREC program no later than June 2021 and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandates that the Board close the SREC Registration Program ("SRP") to new applications once it determines that 5.1% of the kilowatt-hours sold in the State have 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, 2019.<sup>4</sup> On January 8, 2020, the Board adopted N.J.A.C. 14:8-2.4(b)(7)(ii), which clarified that solar facilities that submitted a complete registration or application for designation or conditional certification on or before October 29, 2018, but had not commenced commercial operations prior to the 5.1% Milestone, will be eligible for a 15-year SREC qualification life subject to its maintaining all other eligibility requirements. These rules took effect upon publication in the New Jersey Register on February 3, 2020.<sup>5</sup>

On November 21, 2019, the Board issued a Revised Order clarifying that full certification for the solar project for SREC eligibility was not conditioned upon Syncarpha's achievement of commercial operations prior to the Board's closure of the SREC program upon attainment by the State of 5.1% of its retail electricity sales from solar electric generation facilities ("5.1% Milestone"). Syncarpha's acceptance letter from the SRP set a deadline to submit a final as-built registration package of December 20, 2021.

### Transition Incentive

On December 6, 2019, the Board established the TI Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.<sup>6</sup> The TI Program provides eligible projects with Transition Renewable Energy Certificates ("TRECs") for each megawatt hour of electricity produced. Incentives are tailored to specific

<sup>3</sup> In re 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, Syncarpha Gems, LLC Gems Landfill, BPU Docket No. Q018010052, Order dated November 13, 2019 ("Syncarpha Order"), revised November 21, 2019.

<sup>4</sup> 51 N.J.R. 138(e).

<sup>5</sup> 52 N.J.R. 146(b).

<sup>6</sup> In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019.

project types by the use of factors, which are applied to a base incentive rate to provide a particular project type 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.

On March 27, 2020 the Board issued an Order addressing additional aspects of the SRP closure and the transfer of solar projects to the TI Program.<sup>7</sup> The SRP Closure Order provided that projects that had applied on or before October 29, 2018 and received a conditional registration for two (2) years retained their SREC eligibility regardless of the date of attainment of the 5.1% Milestone, so long as they submit post-construction certification packages within two (2) years of their SRP conditional registration. The SRP Closure Order also stated that projects that had applied for SRECs after October 29, 2018 and had yet to commence commercial operations by the date the 5.1% Milestone would not be eligible for SRECs, but would be able to transfer their registration to the TI Program. However, this Order was silent on the ability of projects that applied prior to October 29, 2018 to transfer to the TI Program.

At a Special Agenda Meeting held on April 27, 2020, the Board approved an amended TI rule proposal<sup>8</sup> that codified this treatment and which was published on May 18, 2020.<sup>9</sup> N.J.A.C. 14:8-10.4(a). The rule proposal provided an estimate of economic impact from the program at “\$980 million in investments through the installation of approximately 430 Megawatt dc (MWdc) of new solar electricity generating capacity...approximately 20 percent of this capacity will be installed on residential rooftops, 60 percent on non-residential rooftops or adjacent land, and the remainder on landfills or brownfields. The projects are anticipated to be installed over the next year and a half and result in average annual direct expenditures of approximately \$60 million per year for 15 years, after an initial ramp-up period.”

The rule proposal, like the SRP Closure Order, was silent as to the ability projects that had submitted a complete Subsection t application before October 29, 2018 to transfer to the Transition Incentive program.<sup>10</sup>

On May 28, 2020, Syncarpha submitted a petition seeking an Order stating that its 4.5 MWdc project (“the Project”) is eligible to transfer to the TI Program and qualifies for TRECs. Additionally, on June 2, 2020, Syncarpha submitted a revised Subsection (t) application seeking to increase the capacity of the Project while remaining on the same footprint identified in the original application.

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<sup>7</sup> In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated March 27, 2020 (“SRP Closure Order”).

<sup>8</sup> In re the Matter of 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”).

<sup>9</sup> 52 N.J.R. 1048(a).

<sup>10</sup> The Board subsequently adopted this amendment. 52 N.J.R. 1850(a), October 5, 2020.

On July 15, 2020, the Board issued an Order clarifying that the Project was eligible to transfer to the TI program and qualify for TRECs.<sup>11</sup> In the same Order the Board approved Syncarpha's revised Subsection (t) application seeking an increase the system size of the Project to 4.5 MWdc, based on Petitioner's representation that there would be no increase in the Project's footprint. The Board directed Petitioner to commence commercial operations on the later of the date set by the Board Order granting the project conditional certification, plus any extensions granted, or April 30, 2021, in accordance with N.J.A.C. 14:8-10.4(d). Syncarpha received a project acceptance letter on December 20, 2019 with a two (2) year project completion deadline of December 20, 2021.

On June 24, 2021, the Board granted a blanket extension to all projects that had submitted a complete registration to the TI Program on or before the effective date of the Order.<sup>12</sup> Projects that had submitted an application pursuant to Subsection (t) received an extension to the later of April 30, 2022 or the date set by the Board Order granting the project's conditional certification.

Based current statistics for installed capacity, pipeline capacity and capacity from Subsection (t) applications received before the August 27, 2021 closure date, the TI Program is on pace to potentially double the program size originally forecast in May 2020. From program inception through October 31, 2021, the TI Program has reported over 407 MWdc of installed capacity including 44 MWdc of Subsection (t) capacity. The pipeline of registered projects exceeds 1,500 MWdc, including 95 MWdc of Subsection (t) capacity. Additionally, almost 400 MWdc of Subsection (t) capacity was received immediately prior to the August 27, 2021 TI Program closure date and remains under review for eligibility with Board Staff and/or the NJDEP.

## **THE PETITION**

On September 10, 2021, Petitioner moved for an extension of its conditional approval in the TI Program to October 30, 2022 ("Petition"). According to Petitioner, permitting and other delays directly associated with the COVID-19 pandemic have made it impossible for Petitioner to meet the April 30, 2022 deadline established in the June 2021 Order. Specifically, Petitioner describes a six-month delay in the receipt of a wetlands approval due to furloughs and restrictions on field work implemented by the NJDEP in response to State directives regarding the pandemic. Petition at paragraphs 19-34. Petitioner represents that it moved as quickly as possible to start construction following receipt of the final NJDEP approval but states that it still faces delays arising from the State permitting process for wholesale generator projects that will not allow it to achieve completion by the existing April 2022 deadline. "Obtaining building and electrical permits from the DCA is far more time-consuming than the normal process associated with permitting at the municipal level." Petition at Par. 38. In addition, Petitioner alleges anticipated delays due to supply chain issues and seasonal conditions. Petition at Pars. 39-40.

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<sup>11</sup> In re 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, Syncarpha Gems, LLC Gems Landfill, BPU Docket No. Q018010052, Order dated July 15, 2020 ("July 15 Order").

<sup>12</sup> In The Matter Of A New Jersey Solar Transition Pursuant To P.L. 2018, C.17 – Order Addressing Requests For Extension For Projects In The Solar Transition Incentive Program, BPU Docket Nos. QO19010068 & QO21060883, Order dated June 24, 2021 ("June 2021 Order").

Petitioner argues that a six-month extension is reasonable given the six-month delay in receipt of its NJDEP approval and that it has expended significant effort and financial resources to develop the GEMS Landfill site. Petitioner requested expedited review of the Petition with a response no later than the Board's agenda meeting on November 17, 2021.

### **STAFF RECOMMENDATION**

Staff recommends the Board deny the Petitioner's request to further extend the deadline for completion of the Project to retain eligibility in the TI Program. Staff notes that the Project has already been granted more time to complete than any other Subsection (t) application. The Project is the oldest Subsection (t) application that has not reached commercial operation. Syncarpha originally applied under the SRP, which the Legislature subsequently directed the Board to close in order to reduce incentive costs for ratepayers. The Board allowed Petitioner to transfer the application to the TI Program, and Syncarpha had the full time allotted under that program. As Petitioner acknowledges, it also benefitted from the additional six month extension granted by the June 2021 Order. The TI Program was designed as an interim measure, pending the development and accessibility of a Successor Incentive Program. The Successor program is now available to Petitioner. The Administratively Determined Incentive Program ("ADIP") was opened to registrations on August 28, 2021, and includes an Interim Subsection (t) market segment available to 75 MWdc of total capacity. Additionally, Staff notes that TI Program is now expected to be double its anticipated size, and the Board's decisions on applications pursuant to Subsection (t) will impact both the cost of the TI Program and the Renewable Portfolio Standard cost cap.

Staff recommends that the Petitioner be given the opportunity to submit an application for eligibility in the ADIP using the Interim Subsection (t) application form available on the New Jersey Clean Energy Program website. Staff further recommends that Petitioner be granted the ability to submit an affidavit stating that the site conditions have not changed materially from those that existed when the NJDEP did its review and issued its 2019 memorandum in lieu of requiring additional review by the NJDEP.

### **DISCUSSION AND FINDINGS**

The Board recognizes the public policy preference for solar development on properly closed landfills and other compromised lands. The Board repeatedly affirmed this preference in its orders addressing the treatment of Subsection (t) applications with respect to the closure of the SRP and the opening of the TI Program. The Board allowed Petitioner to transfer this application to the TI Program in part because of this policy. Petitioner received the full two (2) years available to Subsection (t) applications under the TI Program and an additional six (6) months pursuant to the June 2021 Order to meet the TI Program deadlines. Thus, the Board **FINDS** that Petitioner received as much or more time to meet TI Program deadlines than any other similarly situated project.

The general purpose of the TI Rules, as well as the timelines contained therein, is to provide a smooth transition to the Successor Program and support to New Jersey's thriving solar market while safeguarding the interest of the State's ratepayers by doing so at the lowest possible cost. The Successor Program, including the Interim Subsection (t) market segment within the ADIP, is

now open. Prior to the opening of the Successor Program the Board found good cause to waive the timelines at N.J.A.C. 14:8-10.4(d) and (e) to permit an extension of time to all projects in the TI Program, and it did so partly in recognition of delays encountered by developers as a result of the continuing impact of the COVID-19 pandemic, including issues related to the global supply chain.<sup>13</sup> While the Board is sympathetic to the delays encountered by Petitioner and acknowledges that some may have been beyond Petitioner's control, the Board **FINDS** that Petitioner already received additional time to compensate for these delays in the form of the six-month extension granted in June of this year.

Further, the Petitioner's request to extend the TI Program deadlines for its project would necessitate an additional waiver of the TI Rules. The Board is authorized to relax or waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions. In considering whether to grant a request for a waiver, the Board looks to the standards provided in this rule. In special cases upon a showing of good cause the board may relax or permit deviations from the rule. N.J.A.C. 14:1-1.2(b). Additionally, the board shall waive sections of the rule if it adversely affects ratepayers, hinders safe, adequate and proper service, or is in the interest of the general public. N.J.A.C. 14:1-1.2(b)(1). The Board must balance Petitioner's interests as a solar developer with the public's interest in timely completion of projects and the ratepayers' interest in controlling the cost of solar subsidies. The TI Program was designed to be a bridge between the SRP and the now-open Successor Incentive Program. N.J.A.C. 14:8-10.1. Having found that the June 2021 Order accounted for the general delays described in the Petition and finding no further evidence of a special case or good cause to deviate from the rules, the Board **DECLINES** to waive the TI Rules to extend deadlines again for the Project.

After careful consideration of Syncarpha's moving papers, the Board **DENIES** the Petition. If Petitioner expects to be unable to complete the Project prior to the April 30, 2022 deadline, the Board then encourages Petitioner to pursue an incentive through the Interim Subsection (t) market segment within the ADIP and to submit an application to the Board's Secretary for that program. In recognition of Petitioner's previous progress through the administrative process, the Board **HEREBY ORDERS** that Petitioner may be exempted from an additional review by the NJDEP if Project site conditions remain the same as those that existed in October/November 2019, and Petitioner files an affidavit, satisfactory to Staff, attesting to the present site conditions in relation to those existing in October/November 2019.

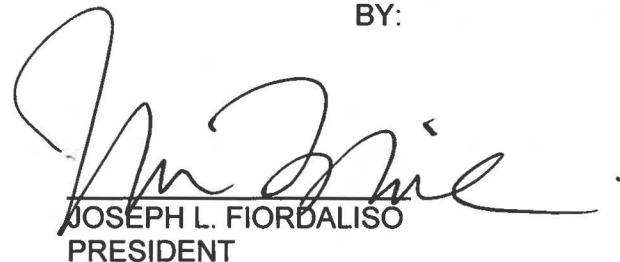
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<sup>13</sup> June 2021 Order at 5-6.

This Order shall be effective on December 22, 2021.

DATED: December 15, 2021

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNE HOLDEN

COMMISSIONER



DIANNE SOLOMON

COMMISSIONER



UPENDRA J. CHIVUKULA

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ROBERT M. GORDON

COMMISSIONER

ATTEST:



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 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,  
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SYNCARPHA GEMS, LLC  
GEMS LANDFILL

DOCKET NOS. EO12090832V, EO12090862V & QO18010052

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