



Agenda Date: 10/29/18  
Agenda Item: 8H

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF )	DOCKET NO. EO12090832V
<u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u> )	
)	
IN THE MATTER OF THE IMPLEMENTATION OF )	DOCKET NO. EO12090862V
<u>L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A PROCEEDING</u> )	
TO ESTABLISH A PROGRAM TO PROVIDE SRECS )	
TO CERTIFIED BROWNFIELD, HISTORIC FILL AND )	
LANDFILL FACILITIES )	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY )	
NATIONAL FREIGHT PENNSAUKEN BROWNFIELD )	DOCKET NO. QO18040431

**Party of Record:**

**Robert Pollock, Public Service Electric and Gas Company**

BY THE BOARD:<sup>1</sup>

This Order concerns an application by Public Service Electric and Gas Company (“PSE&G” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). PSE&G seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SRECs”) for the proposed solar electric generation facility to be located at the National Freight Pennsauken site at Block 201, Lots 8 and 17, in Pennsauken Township, Camden County, New Jersey (“National Freight Pennsauken Brownfield”). PSE&G submitted the required documentation to enable a determination by the New Jersey Department of Environmental Protection (“NJDEP”) as to whether the proposed project is located on a brownfield as defined in the Solar Act.

**BACKGROUND**

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 New Jersey Board of Public Utilities (“Board”) to

<sup>1</sup> Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

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.<sup>2</sup>

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 . . . ." *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 Department of Environmental Protection . . . ." *Ibid.*

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority 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 L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

<sup>2</sup> [I/M/O 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; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87\(e\)\(4\) – Net Metering Aggregation Standards; I/M/O 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; 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 Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O 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 \(Oct. 10, 2012\).](#)

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.<sup>3</sup> The certification process for projects seeking approval pursuant to Subsection (t) provides three (3) 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 that the 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. 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. 2013 N.J. PUC LEXIS 27 at 31-33.

The January 24, 2013 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 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.

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, projects must comply with the rules at N.J.A.C. 14:8-2.4 and applicable Board orders concerning registration with the SREC Registration Program ("SRP"). The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On November 19, 2015, Vineland Construction Company submitted an application to the Board with supporting documentation to enable an NJDEP determination that its proposed 12.8 MWdc solar electric generation facility – at the National Freight Pennsauken site, 3905 River Road, at Block 201, Lots 8 & 17, in Pennsauken Township, Camden County – was proposed to be located on a brownfield. On the basis of NJDEP's determination that the 39.2 acre area on which the solar electric power generation facility was to be located constituted a "brownfield" as defined by the Solar Act and required remediation, the Board granted conditional certification of the proposed project in an Order dated May 25, 2016.<sup>4</sup> Due to an increase in system size

<sup>3</sup> I/M/O 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 I/M/O 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).

<sup>4</sup> I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012; and 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 – Vineland Construction Company, National Freight Pennsauken, BPU Docket Nos. EO12090832V, EO12090862V, QO15111315 (May 25, 2016).

proposed, it was determined that a new application would be submitted. As discussed in the next section, the project is now proposed to be a 15.7296 MWdc solar electric power generation facility on thirty-two (32) acres.

**STAFF RECOMMENDATIONS**

**Project Description**

As stated above, at issue is the request by PSE&G that its proposed solar facility, to be located in Pennsauken Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). PSE&G filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a brownfield. NJDEP reviewed the application and supplied an advisory memorandum to Staff on September 6, 2018 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 certified by PSE&G in its application, and the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Developer	Docket Number	Project/Designation	Location/Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
PSE&G	Q018040431	National Freight Pennsauken Brownfield	Block 201, Lots 8 & 17, 3905 River Road, Pennsauken Township, NJ 08110	Camden	Brownfield	15.7296	PSE&G

**PSE&G – National Freight Pennsauken Brownfield – Docket No. QO18040431**

On April 13, 2018, PSE&G submitted its application to the Board to have its project certified as being located on a brownfield pursuant to Subsection (t) of the Solar Act. Applicant's 15.7296 MWdc project is proposed to be located on thirty-two (32) acres of Block 201, Lots 8 & 17, owned by Vineland Construction Company, at 3905 River Road in Pennsauken, New Jersey.

Staff forwarded the application to NJDEP on or around April 13, 2018, for review and a recommendation as described above. NJDEP indicated that the proposed site appears on the NJDEP Known Contaminated Site List as National Freight Pennsauken. NJDEP advised that operations at the site began in the 1920's under the Rundle Manufacturing Company/Universal Rundle Corporation where porcelain enameled cast iron bathroom fixtures were manufactured. NJDEP noted that, since 1973, Vineland Construction Company has owned and operated the site as a warehouse and a distribution location for durable goods. NJDEP confirmed that site investigations identified contamination at the site.

NJDEP described how the Case Inventory Document from the 2018 Remedial Action Report ("RAR") prepared by Ramboll US Corporation summarized areas of concern, including soils within the fenced areas contaminated with antimony, arsenic, and lead; and groundwater contaminated with antimony, arsenic, lead, and cadmium. NJDEP noted that, as described in the RAR, the soil remedy consists of capping as an engineering control. NJDEP indicated that a deed notice covering the entire property was filed with the Camden County Clerk's Office on January 30, 2018 and recorded February 9, 2018. NJDEP advised that the deed notice and a

Soil Remedial Action Permit Application were submitted to the Department, and that a Soil Remedial Action Permit was issued thereafter on April 20, 2018. NJDEP further stated that the ground water remedy consists of monitored natural attenuation, a Classification Exception Area ("CEA") was established for an indeterminate duration, and the Ground Water Remedial Action Permit was issued on May 1, 2018. Further, NJDEP noted that William Kraft, Licensed Site Remediation Professional (Ramboll) issued a restricted-use Remedial Action Order ("RAO") dated May 11, 2018.

NJDEP noted that the solar project will be installed on property that requires remediation. Accordingly, NJDEP emphasized that the property owner and owner/operator of the solar installation must – in addition to any other actions required by law, including, but not limited to, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., and any regulations promulgated pursuant thereto – ensure that the solar installation: (a) does not exacerbate the contamination at the property; (b) does not interfere with any necessary remediation of the property; (c) does not disrupt or change, without prior written permission from the NJDEP, any existing or future engineering or institutional control that is part of a remedial action for the property; and (d) is protective of public health and the environment.

Based on the information provided in the application and NJDEP's determination that the solar project as proposed is a "brownfield" under the Solar Act, Staff recommends that the Board grant conditional certification of the proposed project.

#### **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 has determined that the thirty-two (32) acres requested for Subsection (t) certification on Block 201, Lots 8 & 17, is located on land meeting the Solar Act's definition of a "brownfield." Based on information provided by NJDEP, the Board **FINDS** that the National Freight Pennsauken Brownfield project is located on land meeting the definition of a "brownfield."

The Board also **FINDS** that NJDEP has determined that the solar project will be installed on property that requires remediation. The Board also **FINDS** that, in addition to any other actions required by law, including, but not limited to, the Spill Compensation and Control Act, the Brownfield and Contaminated Site Remediation Act, and any regulations promulgated pursuant thereto, the property owner and owner/operator of the site must ensure that the solar installation: (a) does not exacerbate the contamination at the property; (b) does not interfere with any necessary remediation of the property; (c) does not disrupt or change, without prior written permission from the NJDEP, any existing or future engineering or institutional control that is part of a remedial action for the property; and (d) is protective of public health and the environment.

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 at the National Freight Pennsauken site at Block 201, Lots 8 and 17, in Pennsauken Township, Camden County, New Jersey, with an array size not to exceed 15.7296 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements for brownfield remediation have been satisfied.

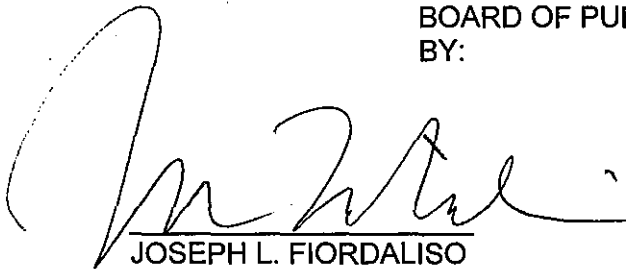
In addition, to obtain full certification, the Board **DIRECTS** PSE&G to submit an initial SRP registration package within fourteen (14) days of the effective date of this order in accordance with N.J.A.C. 14:8-2.4(c) and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-2.4(c), (i). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification have been satisfied. 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.

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 November 8, 2018.

DATED: 10/29/18

BOARD OF PUBLIC UTILITIES  
BY:



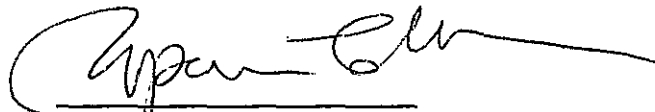
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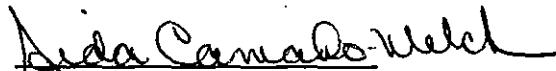
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ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

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 Brownfields, Historic Fill and Landfill  
Facilities – Public Service Electric & Gas Company, National Freight Pennsauken Brownfield

Docket Nos. EO12090832V, EO12090862V, and QO18040431

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