



Agenda Date: 2/28/18  
Agenda Item: 8A

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

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF )	
<u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u> )	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF )	
<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 )	DOCKET NO. EO12090862V
LANDFILL FACILITIES )	
)	
CONTI ENTERPRISES, INC. )	
WAYSIDE AREA, NAVAL WEAPONS STATION )	
EARLE )	DOCKET NO. QO15010030

**Party of Record:**

**Eric Millard, Conti Enterprises, Inc.**

**BY THE BOARD:**

This Order concerns an application by Conti Enterprises, Inc. ("Conti" or "Applicant") for certification pursuant to L. 2012, c. 24, ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection t"). Conti seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located in Tinton Falls, Monmouth County, New Jersey. Conti submitted the required documentation to enable a New Jersey Department of Environmental Protection ("NJDEP") determination as to whether the proposed site is a brownfield as set forth in the Solar Act.

**BACKGROUND**

On July 23, 2012, 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") 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.<sup>1</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 [DEP]." Ibid.

The October 10 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 and NJDEP. On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by President Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

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<sup>1</sup> I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090860V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards, Docket No. EO12090861V; 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, Docket No. EO12090880V; 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, Docket No. EO12090862V; 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, Docket No. EO12090863V (October 10, 2012) ("October 10 Order").

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>2</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 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. (January 24 Order at 12-13). The process incorporates the expertise of 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 24 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 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, 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.

## **STAFF RECOMMENDATIONS**

### **Project Description**

As stated above, at issue is the request by Conti that its proposed solar facility, to be located in Tinton Falls, New Jersey, be certified as eligible for SRECs pursuant to Subsection t. Conti filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a brownfield, area of historic fill, or properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on the land

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<sup>2</sup> I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; 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, Docket No. EO13010009V (January 24, 2013) ("January 24 Order").

use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP's determination, the information certified by Conti in its application and the January 24 Order, Staff recommends that the Board deny certification, as explained further below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MW dc)	EDC
Conti Enterprises, Inc.	QO15010030	Wayside Area Naval Weapons Station Earle	Block 121.03, Lot 1 Tinton Falls, NJ 07724	Monmouth	Brownfield	28	JCP&L

**Naval Weapons Station Earle – (Tinton Falls) – Docket No. QO15010030**

On April 5, 2017, Conti submitted its application to the Board to have its twenty-eight (28) megawatt ("MW dc") project certified as being located on a brownfield pursuant to Subsection t of the Solar Act. Specifically, the application identified the name of the site as Wayside Area, Naval Weapons Station Earle ("Station"), the owner of the site as the United States Navy, and the location as Block 121.03, Lot 1, on the tax maps of the Borough of Tinton Falls, County of Monmouth, and State of New Jersey, 07724.<sup>3</sup> Conti indicated that it has a thirty-seven (37) year lease with the United States Navy; however, it did not supply the lease.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated the Applicant has identified that the United States Navy is the present owner of the Station, which has owned the Station since 1943. NJDEP stated the Applicant also indicated that in July 2016, it entered into a lease with the United States Navy to develop, construct, own, and operate a solar facility at a 162-acre portion of the Wayside Area of the Station. According to documents submitted by Conti, the Wayside Area covers approximately 440 acres in the northeast part of the Station. The documents further reflect that, pursuant to an agreement between the United States Navy and the United States Army, the United States Army has used some of the Wayside Area for military training, equipment testing, and firearms target practice from approximately 1943 to 1991.

NJDEP noted that Conti's solar project is proposed on a federal military installation. NJDEP advised that it does not consider a federal military installation to be "a commercial or industrial site," as that phrase is used in the Solar Act's definition of "brownfield," where the installation is under the ownership or jurisdiction of a department or agency of the United States. NJDEP concluded, therefore, that the location for this project is not a "former or current commercial or industrial site," within the requirements for classification as a "brownfield." NJDEP also advised that this determination is consistent with the language and intent of the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., which contains a definition for "brownfield site" that is identical to the Solar Act's definition of "brownfield" at N.J.S.A. 48:3-51. NJDEP stated that its determination is further supported by the Comprehensive Environmental Response, Compensation, and Liability Act, because the term "brownfield site" excludes "a

<sup>3</sup> On January 5, 2015, the United States Department of Navy submitted a Subsection t application for the Station, which application was assigned Docket Number QO15010030. This application was later withdrawn.

facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe". 42 U.S.C. 9601(39)(B)(vii).

NJDEP also noted that in the application materials, Conti had stated that other military sites had been purportedly classified as brownfields. But when NJDEP provided Conti with opportunities to clarify and supplement its application, Conti failed to submit additional documentation to substantiate its claims. Moreover, NJDEP indicated that Conti's application had noted that the United States Navy had previously submitted a subsection t application for a project located at the Station, which application was subsequently withdrawn. NJDEP further indicated that although Conti has entered into a lease agreement with the United States Navy, Conti's application establishes that the Wayside Area is still under the ownership and jurisdiction of the United States Navy.

Furthermore, NJDEP concluded that because the location of the proposed solar facility is not a "former or current commercial or industrial site," it was not necessary to address whether the location satisfies the remaining prongs of the "brownfield" definition. In conclusion, the NJDEP advised that the 162-acre area for which Conti requested certification under Subsection t does not meet the definition of a brownfield.

Based on the information provided by Conti and NJDEP's determination that the solar project as proposed is not located on a brownfield under the Solar Act, Staff recommends that the Board deny 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 162 acres requested for Subsection t certification on the Wayside Area at the Station is not located on land meeting the Solar Act's definition of a brownfield. Based on information provided in Conti's application and the analysis supplied by NJDEP, the Board **FINDS** that the project as proposed is not located on land meeting the definition of a "brownfield" because it is not "a commercial or industrial site."

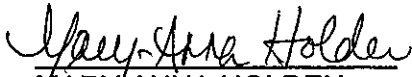
For these reasons the Board **FINDS** that the project does not qualify for certification under Subsection t and, as such, the Board **DENIES** the request for certification of the project

This Order shall be effective on March 10, 2018.

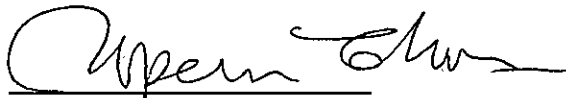
DATED: 2/28/18

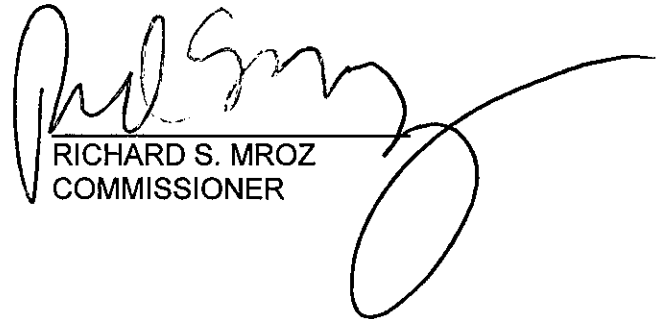
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SECRETARY

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 Conti Enterprises, Inc. – Wayside Area, Naval Weapons Station Earle

Docket Nos. EO12090832V, EO12090862V and QO15010030

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