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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>L.</u> 2018, <u>C.</u> 17 – APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012	) ) ) ) ) ) )	DOCKET NO. QO19010068
ADVANCED SOLAR PRODUCTS INC – BUCKEYE PENNSAUKEN TERMINAL LLC	) ) )	DOCKET NO. QO20090606

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Pete Sudano**, Advanced Solar Products, Inc.

BY THE BOARD:

This Order concerns an application by Advanced Solar Products, Inc. (“Advanced 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)”). Advanced Solar seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located at the Buckeye Pennsauken Terminal site (“Buckeye Terminal”) in Pennsauken, Camden County, New Jersey. Applicant alleges that the proposed site is “historic fill” as 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.<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 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 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.

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<sup>1</sup> 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).

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 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.<sup>3</sup>

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, 2019.<sup>4</sup> 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

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<sup>2</sup> 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).

<sup>3</sup> January 24, 2013 Order at 31-33.

<sup>4</sup> 51 N.J.R. 138(e) (Jan. 22, 2019).

efficient manner.<sup>5</sup> 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 proposal<sup>6</sup> that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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 Advanced Solar that its proposed solar facility, to be located in Pennsauken, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). Advanced Solar filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is an area of historic fill. NJDEP reviewed the application and supplied an advisory memorandum to Staff on May 4, 2021, on the land use classification and the closure or remediation status of the proposed site. On the basis of NJDEP’s determination, the information certified by Advanced 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.

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<sup>5</sup> 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”).

<sup>6</sup> 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”).

<sup>7</sup> 52 N.J.R. 1048(a) (May 18, 2020).

<sup>8</sup> 52. N.J.R. 1850(a) (October 5, 2020).

<sup>9</sup> N.J.A.C. 14:8-10.4(a).

<sup>10</sup> December 2019 Order at 33.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
Advanced Solar Products, Inc.	QO20090606	Buckeye Pennsauken Terminal, LLC.	Block 1003, Lot 1, 2, 3, 4, 5, 6, 8, 9, 10 123 Derosse Avenue Pennsauken TWP, NJ 08110	Camden	Historic Fill	27.881	PSE&G

**Advanced Solar Products, Inc. – Buckeye Pennsauken Terminal – Docket No. QO20090606**

On September 24, 2020, Advanced Solar submitted its application to the Board to have its project certified as being located on an area of historic fill pursuant to Subsection (t) of the Solar Act. Applicant’s 27.881 MWdc project is proposed to be located on 95.26 acres owned by Buckeye Pennsauken Terminal, LLC at Block 1003, Lots 1-6 and 8-10 at 123 Derosse Avenue in Pennsauken Township, Camden County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated that the Buckeye Pennsauken Terminal site has been identified as a Delaware River tidal flat that has historically been utilized as a dredge soil disposal area since the 1920s. Aerial photographs indicated that the site was exclusively used as a Dredge Spoil Parcel with no additional industrial uses. Soil sampling of the site confirmed no hazardous material or contaminate exceedances. NJDEP determined that this site, identified as a Dredge Spoil Parcel, meets the regulatory definition of Historic Fill. Based on the solar Site Plan annexed to the subsection (t) application, NJDEP further determined that all panels will be installed on areas that are historic fill. The Department concluded that the solar facility, as rendered in the solar Site Plan annexed to the subsection (t) application, is located on land meeting the definition of “historic fill” as defined by the Solar Act.

NJDEP noted that the solar installation will be installed on property that requires remediation. Accordingly, NJDEP stated that the solar facility owner, Buckeye Properties LP, and the property owner must perform all 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. In addition, these entities 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; and (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. Institutional, and engineering (as necessary), controls shall be implemented prior to achieving full certification under Subsection (t).

Based on the information provided in the application and NJDEP’s determination that the proposed solar array, as rendered in the solar Site Plan attached to the application, is located on an area of historic fill, the Board grants 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 determined that the solar array proposed for Block 1003, Lots 1-6 and 8-10 – as depicted in the solar Site Plan attached to the application – is located on land meeting the Solar Act’s definition of an “area of historic fill.” To be eligible for the creation of TRECs, the entire solar array must be placed solely within the 95.26 acres depicted in the solar Site Plan. Based on information provided by NJDEP, the Board **FINDS** that the Buckeye Terminal project is located on land meeting the definition of an “area of historic fill.”

The Board also **FINDS** that NJDEP determined that the facility owner and the property owner will need to perform all 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. The Board also **FINDS** that the facility owner and the property owner 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; and (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. Institutional, and engineering (as necessary), controls shall be implemented prior to achieving full certification under Subsection (t). The property owner and the owner of the solar facility must ensure that all future operations also conform to these conditions.

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 95.26 acres at Buckeye Terminal at Block 1003, Lots 1-6 and 8-10 in Pennsauken Township, Camden County, New Jersey, with an array size not to exceed 27.881 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP and/or federal requirements have been satisfied.

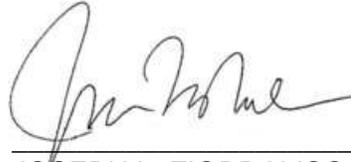
In addition, to obtain full certification, the Board **DIRECTS** Advanced Solar to submit an initial Transition Incentive program registration package within 14 days of the effective date of this order, and to complete construction within two years in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3). 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 – have been satisfied. After the Applicant has received 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 plans as represented in the application, and the TREC registration.

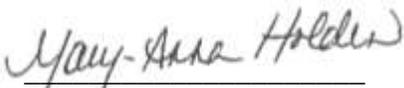
This Order shall be effective on June 16, 2021.

DATED: June 9, 2021

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



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COMMISSIONER



DIANNE SOLOMON  
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UPENDRA J. CHIVUKULA  
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ROBERT M. GORDON  
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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 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;  
Advanced Solar Products Inc – Buckeye Pennsauken Terminal LLC

Docket Nos. EO12090832V, QO19010068, and QO20090606

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