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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, N.J.S.A. )	DOCKET NO. EO12090832V
48:3-87(T) )	
)	
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
)	
EPP RENEWABLE ENERGY, LLC )	
PENNSAUKEN TWP LANDFILL )	DOCKET NO. QO16100958

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Steve Gabrielle**, EPP Renewable Energy, LLC

BY THE BOARD:

This Order concerns an application by EPP Renewable Energy, LLC (“EPP” or “Applicant”) for certification pursuant to P.L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). EPP seeks certification for eligibility to create Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located at the Pennsauken Township Landfill in Pennsauken Township, Camden County, New Jersey. EPP alleges that the proposed site is a properly closed sanitary landfill facility 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 . . . ." 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 P.L. 2018, c. 17 into law, effective immediately. N.J.S.A. 48:3-51 to -87 ("Clean Energy Act" or "CEA" or "Act"). 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>

On December 6, 2019, the Board established a Transition Incentive Program to bridge the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.<sup>5</sup> The

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<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, 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).

<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").

Transition Incentive Program provides eligible projects with 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 either 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> (“TI Rule Proposal”) that codified this treatment and that was published on May 18, 2020.<sup>7</sup> On September 9, 2020, the Board adopted the rule proposal, and the rule 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 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 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, EPP Renewable Energy seeks to have its proposed solar facility in Pennsauken Township, New Jersey certified as eligible for TRECs pursuant to Subsection (t). EPP filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and has supplied an advisory memorandum to Staff 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 EPP 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>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. 14:10.4(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
EPP Renewable Energy	QO16100958	Pennsauken Twp. Landfill	9600 River Road Pennsauken 08110	Camden	Landfill	0.233	PSE&G

**EPP Renewable Energy, LLC – Pennsauken TWP Landfill – Docket No. QO16100958**

On June 30, 2017, the Board conditionally certified the construction of a 3.0 MWdc solar facility by EPP Renewable Energy, LLC on the Pennsauken Landfill at 9600 River Road in Pennsauken Township, Camden County, New Jersey.<sup>11</sup> EPP constructed a 2.97274 MWdc facility, which was inspected by Staff. Following EPP’s demonstration that it had met the NJDEP requirements, the Board fully certified the Pennsauken Landfill project for SRECs eligibility. On June 27, 2019, EPP submitted a second application to the Board for additional capacity for the project also certified as being located on a properly closed sanitary landfill pursuant to Subsection (t) of the Solar Act. The proposed additional 0.233 MWdc capacity is to be located on the same 146 acres of land as the 2.97274 MWdc facility approved in the June 2017 Order.

The Pennsauken Landfill accepted a wide variety of waste, including vegetative waste, municipal solid waste, bulk waste, animal and food processing waste, dry industrial wastes, and ash-containing waste. Approximately 68 acres of the site no longer receives solid waste and can be divided into two areas, designated by the Department’s Division of Solid and Hazardous Waste as 0427A (Area A) and 0427D (Area D). A Licensed Site Remediation Professional (“LSRP”) submitted a certified report to the Department on March 16, 2017 that detailed the remediation measures put in place and their ongoing operation. The proposed solar panels will be built in Area D, which the Department has determined is “properly closed.”

NJDEP noted that the solar installation will constitute the construction of improvements on a properly closed landfill pursuant to the law. Accordingly, NJDEP advises that the property owner will need to obtain an approval from NJDEP’s Division of Solid and Hazardous Waste for construction of improvements on the closed landfill for Area D, as well as any other permits identified by NJDEP, and approval from any other applicable state or federal agency prior to construction. NJDEP stated that EPP must comply with all requirements and conditions set forth by the LSRP. NJDEP also stated that any approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site, such as 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. Ongoing maintenance and monitoring during the post-closure period were also noted as necessary. Consistent with the above requirements, NJDEP noted that the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap.

<sup>11</sup> In re the Implementation of L. 2012, c. 24, The Solar Act of 2012, N.J.S.A. 48:3-87(t); 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 EPP Renewable Energy, LLC Pennsauken Twp. Landfill, BPU Docket Nos. EO12090832V, EO12090862V, and QO16100958, Order dated June 30, 2017 (“June 2017 Order”).

Based on the information provided in the application and NJDEP's determination that the proposed solar array is located on a "properly closed sanitary landfill facility" under the Solar Act, Staff recommends that the Board grant conditional certification of the proposed project.

### **DISCUSSION AND FINDINGS**

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 solar array proposed for Block 1904, Lot 1 – as depicted in the map attached to EPP's application – is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." To be eligible for the creation of TRECs, the entire solar array must be placed solely within the twenty-five (25) acres of Pennsauken Landfill's Area D. Based on information provided by NJDEP, the Board **FINDS** that the EPP project is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP has determined that the property owner will need to obtain an approval from NJDEP's Division of Solid and Hazardous Waste for construction of improvements on the properly closed sanitary landfill, as well as any other permits identified by NJDEP, and approval from any other applicable state or federal agency prior to construction of the solar electric power generation facility. The Board also **FINDS** that EPP and the property owner must comply with all requirements and conditions set forth by the LSRP. In addition, the Board **FINDS** that the property owner and EPP must address impacts on the environmental controls in place at the site, including but not limited to the protection and/or 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, the property owner and EPP must provide for ongoing maintenance and monitoring during the post-closure period. The property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap on the Pennsauken Landfill.

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 within the 25 acres of Area D at Pennsauken Landfill in Pennsauken Township, Camden County, New Jersey, with an array size not to exceed 0.233 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that there are no outstanding requirements under the Closure and Post-Closure Plan Approval or the certified plan of the LSRP and that all NJDEP or federal requirements have been satisfied.

In addition, to obtain full certification, the Board **DIRECTS** EPP to submit an initial Transition Incentive program registration package within 14 days of the effective date of this order, in accordance with N.J.A.C. 14:8-2.4(c)(1)(i) 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, provided that the project commences commercial operation within two years of acceptance into the TI program. 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.

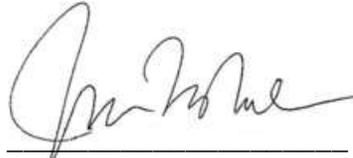
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification as being

located on a properly closed sanitary landfill facility, provided that the facilities are constructed in accordance with NJDEP requirements, the plans as represented in the application, and the TREC registration.

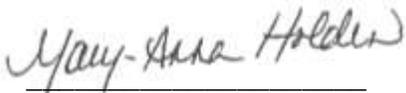
This Order shall be effective on October 24, 2020.

DATED: October 14, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

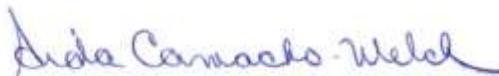


UPENDRA J. CHIVUKULA  
COMMISSIONER



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 New Jersey Solar Transition Pursuant to P.L. 2012, c. 17 – Application for  
Certification of Solar Facility As Eligible for TRECs Pursuant to Subsection (t) of the Solar Act of  
2012; EPP Renewable Energy, LLC – Pennsauken Township Landfill

Docket Nos. EO12090832V, QO20060460 and QO16100958

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