



Agenda Date: 6/30/17
Agenda Item: 8B

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 LANDFILL FACILITIES)	
)	DOCKET NO. EO12090862V
EPP RENEWABLE ENERGY, LLC PENNSAUKEN TOWNSHIP LANDFILL)	
)	DOCKET NO. QO16100958

Party of Record:

Nicholas Pratt, EPP Renewable Energy, LLC

BY THE BOARD:

This Order concerns an application by EPP Renewable Energy, LLC ("EPP" or "Applicant") for certification pursuant to L. 2012, c. 24, ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection t"). EPP seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located in Pennsauken Township, Camden County, New Jersey. EPP submitted the required documentation to enable a New Jersey Department of Environmental Protection ("NJDEP") determination as to whether the proposed site is a properly closed sanitary landfill facility 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.¹

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 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.

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

¹ *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").

closed sanitary landfill facilities.² 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 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. (January 24 Order at 12-13). 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. Ibid.

The January 24 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 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 EPP that the proposed Pennsauken Township Landfill solar facility, to be located in Pennsauken Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection t. EPP 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 use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP's determination, the information certified by EPP in its application and the January 24 Order, Staff recommends that the Board grant conditional certification, as explained further below.

² 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").

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
EPP Renewable Energy, LLC	QQ16100958	Pennsauken Twp. Landfill	9600 River Road Pennsauken, NJ 08110	Camden	Landfill	3	PSE&G

Pennsauken Township Landfill – (Pennsauken) – Docket. No. QQ16100958

On or about October 14, 2016, EPP submitted its 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 three (3) MWdc project is proposed to be constructed on the Pennsauken Township Landfill, Block 1904, Lot 1, which is owned by the Pollution Control Financing Authority of Camden County. The landfill is located at 9600 River Road in Pennsauken Township, Camden County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated the Pennsauken Township Landfill is an approximately 146-acre lot, which is bounded by Pennsauken Creek to the north, a Conrail railroad spur to the south, River Road to the west and the Pennsauken Industrial Park to the east. Landfilling activities at the site began in the 1960s. According to the Solid Waste Facility Permit for the Pennsauken Sanitary Landfill, issued by NJDEP on May 2, 2013, and most recently modified on July 19, 2016, approximately 104 acres of this site will eventually be landfilled. Approximately thirty-six (36) acres of the site is an active, operating Class I sanitary landfill.

NJDEP advised that the remainder of the 104 acres (approximately sixty-eight (68) acres) no longer receives solid waste and can be divided into two (2) areas, designated by NJDEP’s Division of Solid and Hazardous Waste as 0427A (“Area A”) and 0427D (“Area D”).³ Area A is approximately forty (40) acres and is the original unlined waste disposal area. Area D is approximately 28 acres and was constructed in the 1980s with a clay liner and leachate collection system. Area D was capped with a clay cap in 1993, and NJDEP approved the construction certification of the Area D clay cap on October 27, 1994. The remediation of Area A is the subject of a December 1988 Administrative Consent Order signed between the Pennsauken Solid Waste Management Authority and NJDEP. As part of the remediation of Area A, the area was capped with a geosynthetic capping system. NJDEP approved the construction certification for the Area A geosynthetic capping system on April 17, 2006. According to NJDEP, the remediation of Area A also required the installation of a ground water treatment and injection system.

NJDEP indicated that a licensed site remediation profession (“LSRP”) submitted a certified Remedial Action Report, dated February 2017, to NJDEP on March 16, 2017. The Remedial Action Report states that the groundwater remediation system utilizes air sparging and consists of forty-three (43) sparge wells designed to cover approximately 5,000 linear feet of treatment

³ Area A and Area D are depicted on a map provided to NJDEP by the Pollution Control Financing Authority of Camden County on October 14, 2016, as part of its application for a landfill disruption approval to construct the project. Renderings of the proposed solar facility submitted with the Subsection t application, in conjunction with the delineation of Area A and Area D on the above-referenced map, indicate that the proposed solar panel layout is within the boundaries of Area A and/or D.

perimeter. The effectiveness of the ground water remediation system is determined through a network of monitoring wells. The ground water remediation system has been constructed and full scale operation began on April 1, 2014. NJDEP also indicated that the Remedial Action Report documents that the groundwater remediation system has been properly designed to address known groundwater contamination associated with the landfill and is operating as designed. In addition, both Areas A and D are equipped with landfill gas collection systems.

In addition, NJDEP advised that the solar installation will constitute the construction of improvements on a closed landfill. Accordingly, the property owner will need to obtain an approval from the NJDEP Division of Solid and Hazardous Waste prior to construction of the solar electric power generation facility, which will need to address impacts on the environmental controls in place at the site. NJDEP noted that these impacts may include, but are not limited to, 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, in addition to on-going maintenance and monitoring during the post-closure period. Consistent with the above requirements, NJDEP further advises that the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap and other environmental controls. NJDEP also indicated that the property owner and/or solar developer will need to obtain any other permits identified by the NJDEP. Finally, NJDEP determined that the 10 acres requested for Subsection t certification at the Pennsauken Township Landfill constitutes a properly closed sanitary landfill facility as defined by the Solar Act as the renderings submitted with the Subsection t application and with the landfill disruption application indicate that the proposed solar panel layout is within the boundaries of Area A and/or D.

Based on the information provided by EPP and NJDEP's determination that the solar project as proposed on Area A and Area D 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.

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 ten (10) acres requested for Subsection t certification on Area A and Area D at the Pennsauken Township Landfill is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." Based on information provided by NJDEP, the Board **FINDS** that the Pennsauken Township Landfill project as proposed on Area A and Area D 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 the NJDEP Division of Solid and Hazardous Waste, as well as any permits identified by NJDEP, prior to construction of the solar electric power generation facility. The Board also **FINDS** that "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, in addition to on-going maintenance and monitoring during the post-closure period" must be addressed in order to construct the solar electric power generation facility. In addition, the property owner and

operator of the solar electric power generation facility should ensure that all future operations continue to protect the integrity of the cap and other environmental controls for Pennsauken Township Landfill.

The Board **FINDS** that the NJDEP requirements must be addressed and thus **GRANTS** conditional certification. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements for landfill disruption have been satisfied and that there are no outstanding requirements under the Closure and Post-Closure Plan Approval. 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.

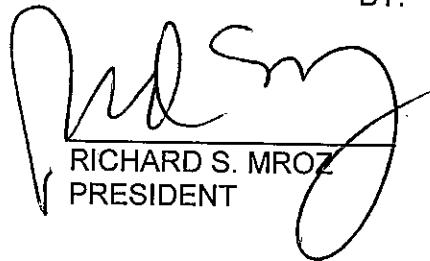
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans as represented in the application, and the SRP registration.

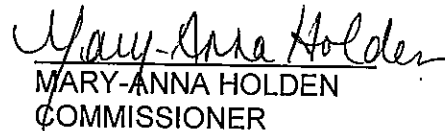
This Order shall be effective on July 10, 2017.

DATED: 6/30/17

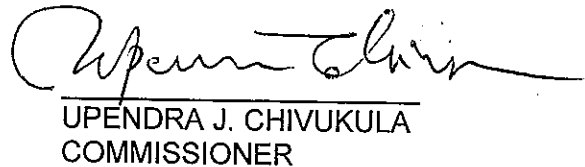
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SECRETARY

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, Historic Fill and Landfill
Facilities; EPP Renewable Energy, LLC – Pennsauken Township Landfill

Docket Nos. EO12090832V, EO12090862V and QO16100958

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