



Agenda Date: 5/22/18  
Agenda Item: 8A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24</u> , THE SOLAR ACT OF 2012	)	
	)	DOCKET NO. EO12090832V
	)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24</u> , 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
	)	
KDC SOLAR CARLSTADT, LLC SCIENTIFIC CHEMICAL PROCESSING, INC.	)	
	)	DOCKET NO. QO17111188

**Party of Record:**

Joshua Smith, KDC Solar Carlstadt, LLC

BY THE BOARD:

This Order concerns an application by KDC Solar Carlstadt, LLC (“KDC” or “Applicant”) for certification pursuant to L. 2012, c. 24, (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). KDC seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SRECs”) for the proposed solar electric generation facility to be located in Carlstadt, Bergen County, New Jersey. KDC alleges that the proposed site is a brownfield as defined 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 Department of Environmental Protection . . . ." *Ibid.*

The October 10, 2012 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 of the New Jersey Department of Environmental Protection ("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

---

<sup>1</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 \(Oct. 10, 2012\).](#)

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. 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. 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 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 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 KDC that its proposed solar facility, to be located in Carlstadt, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). KDC filed an application with supporting documentation with the Board, which then forwarded the materials to NJDEP for it to determine 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. Based on NJDEP's determination, the information certified by KDC in its application and the January 24 Order, Staff recommends that the Board grant conditional certification, as explained further below.

---

<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(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).

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Proposed Array Size (MWdc)
KDC Solar Carlstadt, LLC	QO17111188	Carlstadt Scientific Chemical Processing, Inc.	Block 124, Lot 1 - 5 216 Paterson Plank Road Carlstadt, NJ 07072	Bergen	Brownfield	2

**Scientific Chemical Processing, Inc. – (Carlstadt) – DOCKET NO. QO17111188**

On November 13, 2017, KDC submitted an application to the Board to have its two (2) megawatt (“MW dc”) project on 5.53 acres certified as being located on a brownfield pursuant to Subsection (t) of the Solar Act. Specifically, the application identified the owner of the site as the Borough of Carlstadt and the location of the site as 216 Paterson Plank Road, Block 124, Lots One (1) through Five (5), on the tax maps of the Borough of Carlstadt, County of Bergen, and State of New Jersey, 07072.

KDC’s application included correspondence, dated November 9, 2017, from P. Stephen Finn, Chartered Engineer, of Golder Associates, regarding the current remediation status of the property. Attached to Mr. Finn’s correspondence was an Access Agreement that grants an easement to KDC by the Borough of Carlstadt for the purpose of performing studies and analyses on the property. The Access Agreement identified the property as the Paterson Plank Road Redevelopment Area, Borough of Carlstadt, New Jersey, Block 124, Lots One (1) through Five (5).

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated that the approximately 5.53 acre property is a former chemical recycling and waste processing facility that was forced to cease operations in 1980 by court order. In 1983, the site was placed on the United States Environmental Protection Agency’s (“EPA”) National Priorities list. The site is presently owned by the Borough of Carlstadt and the EPA is overseeing the remediation activities that are being conducted by the parties potentially responsible for the contamination.

NJDEP indicated that the EPA has divided the site into operable units (“OU”) for the purposes of remediation. OU-1 and OU-2 addressed interim and final remedies for soil and shallow on-property groundwater contamination; a Record of Decision (“ROD”) was issued for OU-1 in 1990 and OU-2 in 2002. A ROD was issued in 2012 for OU-3 to address the off property and deep groundwater remedies.

NJDEP determined the 5.53 acre area proposed for certification meets the State’s definition of “brownfield” as set forth in the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., which is identical to the Solar Act’s definition of “brownfield” at N.J.S.A 48:3-51. According to NJDEP, the area in question is a former industrial site that is currently vacant and underused, as the facility ceased operations in 1980. Further, this site is currently a Superfund site undergoing remedial action to clean contaminants, referenced in the Declaration Statement and Paragraph Two of the Access Agreement of Property attached to the application, which NJDEP reviewed. Furthermore, NJDEP points out that the federal government did not take ownership of the property, but is rather overseeing the property for the sole purpose of remediation. Therefore, NJDEP concluded that the property is not under United States

jurisdiction, and the Federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601(39)(B)(vii), is not applicable in this matter.

NJDEP further determined that the proposed solar project will be installed on property that requires additional remediation measures. The property owner and the 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 installation of the proposed solar project: (1) does not exacerbate the contamination at the property; (2) does not interfere with any necessary remediation of the property; (3) 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 (4) is protective of public health and the environment.

Based on the information provided by KDC and NJDEP's determination that the solar project as proposed is located on a brownfield, in accordance with the definition in 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 5.53 acres requested for Subsection (t) certification on Block 124, Lots One (1) through Five (5) is located on land meeting the Solar Act's definition of a "brownfield." Based on the information provided by NJDEP, including its observation that the federal government is not the owner of the property but is overseeing the remediation of the site, the Board **FINDS** that the proposed solar project is located on land meeting the definition of a "brownfield" as defined by Subsection (t) of the Solar Act.

The Board also **FINDS** that NJDEP has determined that the proposed solar project will be installed on property that requires remediation. The property owner, the Borough of Carlstadt, and the 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 installation of the proposed solar project: (1) does not exacerbate the contamination at the property; (2) does not interfere with any necessary remediation of the property; (3) 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 (4) is protective of public health and the environment.

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 brownfield remediation and/or disruption have been satisfied and that there are no outstanding requirements. To obtain full certification, the Board **ALSO DIRECTS** KDC 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

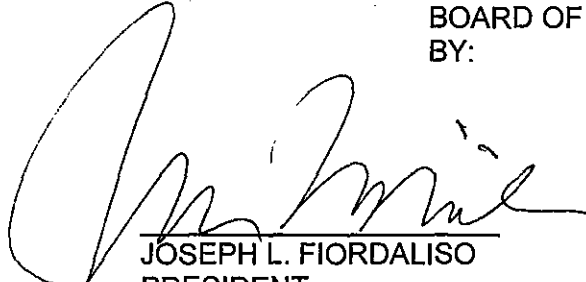
Jersey Certification Number to the project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

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 June 1, 2018.

DATED: 5/22/18

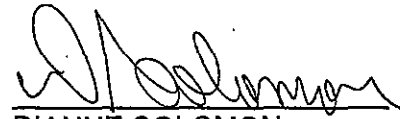
BOARD OF PUBLIC UTILITIES  
BY:



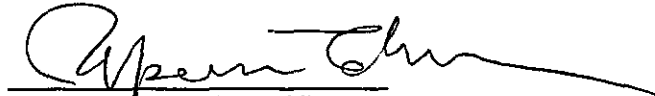
JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



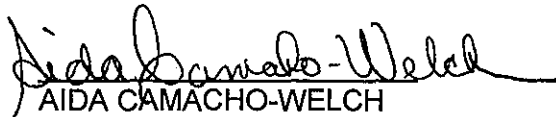
DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

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, KDC Solar Carlstadt, LLC – Scientific Chemical Processing, Inc.

Docket Nos. EO12090832V, EO12090862V and QO17111188

SERVICE LIST

**KDC Solar Carlstadt, LLC**

Joshua Smith  
1420 Highway 206, Suite 120  
Bedminster, NJ 07921  
[joshua.smith@kdcsolar.com](mailto:joshua.smith@kdcsolar.com)

Golder Associates, Inc.  
200 Century Parkway, Suite C  
Mt. Laurel, NJ 08054

**Division of Rate Counsel**

140 Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Felicia Thomas-Friel, Esq.  
[ftthomas@rpa.state.nj.us](mailto:ftthomas@rpa.state.nj.us)

Sarah Steindel, Esq.  
[ssteindel@rpa.state.nj.us](mailto:ssteindel@rpa.state.nj.us)

**Division of Law**

Department of Law & Public Safety  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07102-45029

Caroline Vachier, DAG  
[caroline.vachier@law.njoag.gov](mailto:caroline.vachier@law.njoag.gov)

**Board of Public Utilities**

44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350

Aida Camacho-Welch  
Secretary of the Board  
[Aida.camacho@bpu.nj.gov](mailto:Aida.camacho@bpu.nj.gov)

Kenneth Sheehan, Esq., Director  
Economic Development and Emerging Issues  
[kenneth.sheehan@bpu.nj.gov](mailto:kenneth.sheehan@bpu.nj.gov)

Sherri Jones, Assistant Director  
Office of Clean Energy  
[sherri.jones@bpu.nj.gov](mailto:sherri.jones@bpu.nj.gov)

Benjamin S. Hunter  
Office of Clean Energy  
[benjamin.hunter@bpu.nj.gov](mailto:benjamin.hunter@bpu.nj.gov)

Earl Pierce  
Office of Clean Energy  
[earl.pierce@bpu.nj.gov](mailto:earl.pierce@bpu.nj.gov)

Megan Lupo, Esq.  
Counsel's Office  
[megan.lupo@bpu.nj.gov](mailto:megan.lupo@bpu.nj.gov)