



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)	ORDER
<u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012)	
)	DOCKET NO. EO12090832V
IN THE MATTER OF THE NEW JERSEY SOLAR)	
TRANSITION PURSUANT TO <u>P.L.</u> 2018, <u>C.</u> 17 –)	
APPLICATION FOR CERTIFICATION OF SOLAR)	
FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO)	DOCKET NO. QO19010068
SUBSECTION (T) OF THE SOLAR ACT OF 2012)	
)	
CEP RENEWABLES)	
FOUL RIFT SOLAR FARM, LLC NATURES CHOICE)	DOCKET NO. QO20120769
BROWNFIELD)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Gary Cicero, Managing Member, CEP Renewables

BY THE BOARD:

This Order concerns an application by Foul Rift Solar Farm, LLC (“CEP Renewables” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) [“Subsection (t)”]. In the petition, CEP Renewables sought certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for a proposed solar electric generation facility to be located at the Nature’s Choice Corporation site, Block 21, Lot 11.03 at 40 Foul Rift Road, White Township, Warren County, New Jersey (“Project”). The Applicant asserted that the proposed site is a “brownfield” as that term is 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.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” Id. 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” Id.

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.

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

¹ 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).

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 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.³

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 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, 2019.⁴ 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 efficient manner.⁵ The TI 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 the full incentive

² 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).

³ January 24, 2013 Order at 31–33.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

⁵ 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").

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 TI rule proposal⁶ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁷ 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.⁸ 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.⁹ The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Orders, and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹⁰ Moreover, the TI rules require compliance with all rules and regulations of the SRP at N.J.A.C. 14:8-2.4.¹¹

On August 17, 2022, the Board provided the opportunity for a conditional extension of the TI deadline to Subsection (t) projects registered in the TI Program or with applications pending review with NJDEP.¹² The Board waived its rules and modified prior orders to allow up to a 12-month extension to all Subsection (t) solar projects with current registrations as well as those that receive conditional certification by the Board in the future, provided these projects can meet specified criteria. In addition, the Board granted the same relief to Subsection (t) applicants with applications pending review at the Board or NJDEP that received conditional certification. Such applicants thus received an automatic additional six (6) months to the registration expiration date that would otherwise be set in the Board order granting the project’s conditional certification pursuant to N.J.A.C. 14:8-10.4(e) or (f).

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 TI Program.¹³ The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

⁶ 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”).

⁷ 52 N.J.R. 1048(a) (May 18, 2020).

⁸ 52 N.J.R. 1850(a) (October 5, 2020).

⁹ N.J.A.C. 14:8-10.4(a).

¹⁰ N.J.A.C. 14:8-10.4(h).

¹¹ N.J.A.C. 14:8-10.4(i).

¹² In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, Order Granting an up to 12-Month Extension for Projects Seeking an Incentive Pursuant to Subsection (t) in the Solar Transition Incentive Program BPU Docket No. QO19010068, Order dated August 17, 2022 (“TI Extension Order”).

¹³ December 2019 Order at 33.

STAFF RECOMMENDATIONS

Project Description

On December 29, 2020, Staff received the Foul Rift Solar Farm, LLC application for inclusion in the TI Program. Staff transmitted a copy of the application to NJDEP for review and advice on April 15, 2021.

At issue is the request by CEP Renewables that its proposed Foul Rift Solar Farm, LLC solar facility, to be located in White Township, New Jersey, be certified as eligible for TREC's pursuant to Subsection (t). CEP Renewables filed an application with supporting documentation to enable a NJDEP determination as to whether 55.89 acres of the proposed site is a brownfield. NJDEP reviewed the application and supplied an advisory memorandum to Staff on December 16, 2022 on the land use classification and on remediation status of the proposed site. On the basis of NJDEP's determination, the information certified by CEP Renewables 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.

CEP Renewables/Foul Rift Solar Farm LLC - Docket No. QO20120769

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield or Historic Fill	Array Size (MWdc)	EDC
Foul Rift Solar Farm, LLC (CEP Renewables)	QO20120769	Nature's Choice Corporation	Block 21, Lot 11.03 40 Foul Rift Road White Township, NJ 07823	Warren	Brownfield	24.183	JCP&L

NJDEP provided the following description of the site background and findings from a review of the application. The Applicant is proposing a 24.183 MWdc grid supply solar farm at the Nature's Choice Corporation ("NCC") site in White Township, Warren County, New Jersey ("Property"). The Applicant proposes to construct the proposed solar electric power generation facility on a brownfield portion of the Property, approximately 55.89 acres as rendered in the Electrical Site Plan map provided in the application package.

NCC operated a composting facility that was permitted by NJDEP to manufacture mulch and topsoil from 1997 to 2020. According to an Administrative Consent Order that NCC entered into with NJDEP's Division of Solid and Hazardous Waste on November 3, 2017, the facility was authorized to accept Class C materials for composting: yard trimmings (including leaves, wood chips, and grass clippings), brush less than four (4) inches in diameter, and tree branches less than four (4) inches in diameter. On July 21, 2013, the facility experienced a fire in a pile of unprocessed mixed yard waste on the site that required a response from multiple area fire departments to contain. A second, smaller fire occurred on the site on or about October 24, 2013 that NCC employees were able to contain.

NCC's cessation of operations on December 3, 2020, triggered the New Jersey Industrial Site Recovery Act ("ISRA"). Accordingly, on December 17, 2020, the Department received a General Information Notice. As required by ISRA, remediation must be conducted pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E). The Department received a

Preliminary Assessment Report / Site Investigation Report / Remedial Investigation Report / Remedial Action Workplan on November 17, 2021. The report indicates that elevated concentrations of metals and organics were detected in the soil, including but not limited to Benzo(a)pyrene and arsenic. A deed notice will be established to address the soil contamination.

NJDEP provided the statutory definition of “brownfield.” N.J.S.A. 48:3-51 defines “brownfield” as: “[A]ny 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.” All three (3) prongs of the “brownfield” definition must be met for an applicant to qualify for SRECs on a brownfield. The burden is on the Applicant to demonstrate that all three (3) prongs have been met. See below:

- a. Former or current commercial or industrial site: This site was an industrial facility that housed composting operations. Additionally, the site has been assessed as commercial for tax purposes by White Township. As operations at the site were considered industrial in nature, the site meets the first part of the definition of a “brownfield.”
- b. Vacant or underutilized: According to the application, the site sits vacant and underutilized. The composting facility ceased operations in 2020. Therefore, the site meets the second part of the “brownfield” definition.
- c. Discharge of a contaminant at the location of the proposed solar array: Soil contamination was detected above applicable remediation standards indicating a discharge had occurred from on-site activities. Additionally, the Department is aware of a discharge of contaminants at the Property, as identified in the PA/SI/RI/RAW. Contaminant levels are above standards across the entire site, in addition to a record of historically applied pesticides. Therefore, the site meets the third part of the “brownfield” definition.

In consideration of the site background and as rendered in the Electrical Site Plan, submitted in the Subsection (t) application package, NJDEP determined that the 55.89 acres proposed for solar development does constitute a brownfield as defined by the Solar Act of 2012.

NJDEP advised Staff of additional considerations since the solar project is proposed to be located on property that requires remediation. 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 solar installation: a) does not exacerbate the contamination at the Property; b) does not interfere with any necessary remediation of the Property; c) does not disrupt or change, without prior written permission from NJDEP, any existing or future engineering or institutional control that is part of a remedial action for the Property; and d) is protective of public health and the environment. A Remedial Funding Source shall be posted, and the Remedial Action Workplan shall be implemented as specified above. The Applicant must contact NJDEP’s Office of Permitting and Project Navigation to determine which permits may be required.

Based on the information contained in the application and NJDEP’s findings, Staff recommends that the Board conditionally certify the Applicant’s 24.183 MWdc project as being located on 55.89 acres of a “brownfield,” as that term is defined pursuant to Subsection (t). Staff also recommends that the Board authorize Staff to require that the conditions for certification provided by the NJDEP be fully documented as satisfied by the Applicant prior to Staff’s issuance of full certification of the project’s eligibility for TRECs. In addition, Staff recommends that the Board direct the Applicant

to file its TREC registration within 14 days of the date of the Order and explicitly grant conditional certification.

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 by CEP Renewables for Block 21, Lot 11.03 as documented in the Applicant's Electrical Site Plan map, is located on land meeting the Solar Act's definition of a "brownfield." To be eligible for the creation of TRECs, the facility must not exceed 24.183 MWdc and must be placed within the 55.89 acres of the brownfield depicted in the application. Based on information provided by NJDEP, the Board **FINDS** that the Foul Rift Solar Farm LLC project is located on land meeting the Solar Act's definition of a "brownfield."

The Board also **FINDS** that NJDEP determined that the Property owner will need to comply with State laws relevant to the Property for the solar installation, as well as any other permits identified by NJDEP, prior to construction of the solar electric power generation facility. The Board **FINDS** that NJDEP has stated that the construction of the solar installation on the brownfield needs to address the remediation requirements of the Property.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of the Applicant's proposed solar electric generation facility, to be located on 55.89 acres at the Nature's Choice Corporation site at Block 21, Lot 11.03, in White Township, Warren County, New Jersey, with an array size not to exceed 24.183 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

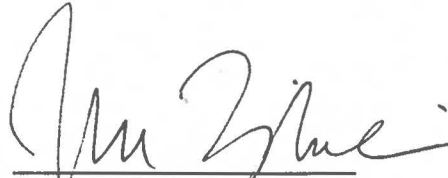
In addition, to obtain full certification, the Board **DIRECTS** CEP Renewables to submit an initial TI Program registration package within 14 days of the effective date of this order and to complete construction within 30 months in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3) as modified by the TI Extension Order. 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. 14:8-10.1 et seq. – have been satisfied. After the Applicant receives 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 site plans filed with the application, and the TREC registration.

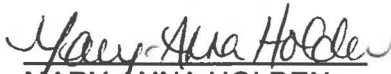
This Order shall be effective on February 1, 2023.

DATED: January 25, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



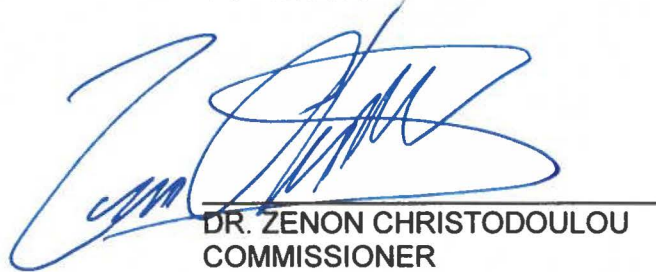
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COMMISSIONER



DIANNE SOLOMON
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DR. ZENON CHRISTODOULOU
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ATTEST: 

CARMEN D. DIAZ
ACTING SECRETARY

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 NEW JERSEY 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

CEP RENEWABLES
FOUL RIFT SOLAR FARM, LLC NATURES CHOICE BROWNFIELD

DOCKET NOS. EO12090832V, QO19010068, AND QO20120769

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