



Agenda Date: 9/18/23
Agenda Item: 8D

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF A SUCCESSOR SOLAR)
INCENTIVE PROGRAM PURSUANT TO P.L. 2021, c.)
169 – APPLICATION FOR CERTIFICATION OF SOLAR)
FACILITY AS ELIGIBLE FOR SREC-IIS IN THE INTERIM)
SUBSECTION (T) PROGRAM - VCC 3905 RIVER ROAD,)
LLC – VINELAND CONSTRUCTION COMPANY)
LANDFILL)
)

ORDER

DOCKET NO. QO22040256

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
John Krauser, President, Vineland Construction Company

BY THE BOARD:

This Order concerns an application by VCC 3905 River Road, LLC (“Vineland Construction Company” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) [“Subsection (t)”]. The Applicant seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SREC-IIs”) for a proposed solar electric generation facility to be located at the Vineland Construction Company Landfill site, Block 201, Lots 8 and 17, 3905 River Road, Pennsauken Township, Camden County, New Jersey (“Project”). The Applicant alleges that the proposed site is located on a “properly closed sanitary landfill facility” 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

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).

("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 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"), 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.

² 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").

³ January 24, 2013 Order at 31–33.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

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 Transition Renewable Energy Certificates (“TREC”) 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 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 Order and requires developers seeking eligibility for TREC 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 July 9, 2021, Governor Murphy signed new solar legislation, referred to as the Solar Act of 2021 (“Act”), which directs the Board to establish a comprehensive program to provide incentives for the development of at least 3,750 megawatts (“MW”) of new solar generation by 2026, by establishing a new program for incentivizing solar in New Jersey through the mechanism of SREC-IIs, representing the value of the environmental attributes produced by the solar electric power generation facility. The Act directs the Board to create a small solar facilities program with administratively set incentive values, and a competitive solicitation process for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five (5) MW.

On July 28, 2021, the Board voted unanimously to implement the Successor Solar Incentive Program (“SuSI” Program).¹² Like the Act itself, the SuSI Program is divided into an administrative “small solar facilities” program, and a competitive procurement for grid supply projects and net metered projects over five (5) MW. On August 16, 2021, the Board adopted the SuSI Program rule proposal, and the rules became effective on February 2, 2022 when published in the New

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”).

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 Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO20020184, Order dated July 28, 2021.

Jersey Register.¹³ By order on July 28, 2021, the Board issued the closure of the TI Program, effective August 27, 2021.¹⁴

On August 28, 2021, the Administratively Determined Incentive (“ADI”) Program opened to new registrations, offering a fixed incentive in the form of SREC-IIs for net metered residential projects, net metered non-residential solar projects of five (5) MW or less, and all community solar projects. Additionally, the ADI Program included an interim program for solar projects located on properly closed sanitary landfill facilities, brownfields, and areas of historic fill that were previously eligible for certification under Subsection (t) of the 2012 Solar Act (SuSI Order at 49). The Interim Subsection (t) segment of the ADI Program offered \$100/MWh for participants.¹⁵ The Board closed the Interim Subsection (t) segment of the ADI program on December 7, 2022.¹⁶

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.¹⁷ 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.¹⁸ 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

On April 15, 2022, Staff received the VCC 3905 River Road, LLC application for inclusion in the Interim Subsection (t) capacity block of the ADI Program. Staff transmitted a copy of the application to NJDEP for review and advice on April 26, 2022.

At issue is the request by Vineland Construction Company that its proposed VCC 3905 River

¹³ 54 N.J.R. 368 (February 22, 2022).

¹⁴ In re A New Jersey Solar Transition Pursuant to P.L. 2018, C.17, BPU Docket No. QO19010068, Order dated July 28, 2021.

¹⁵ L. 2012, C. 24. Subsection (t) provided SRECs to “owners of solar electricity power generation projects located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility.”

¹⁶ In re a Competitive Solar Incentive Program Pursuant to P.L. 2021, C.169 - Order Launching the CSI Program, BPU Docket No. QO21101186, Order dated December 7, 2022 (“CSI Order”).

¹⁷ 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”).

¹⁸ December 2019 Order at 33.

Road, LLC solar facility, to be located in Pennsauken Township, New Jersey, be certified as eligible for SREC-IIs pursuant to the Interim Subsection (t) market segment of the ADI Program. Vineland Construction Company filed an application with supporting documentation to enable a NJDEP determination as to whether 12 acres of the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on May 22, 2023 on the land use classification and remediation status of the proposed site.

On the basis of NJDEP's determination, the information certified by Vineland Construction Company in its application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board deny conditional certification for the solar generation facility proposed for the Vineland Construction Company Landfill site as explained further below.

VCC 3905 River Road, LLC – Docket No. QO22040256

| Developer | Docket Number | Project/ Designation Address | Location Town | County | Landfill, Brownfield or Historic Fill | Array Size (MWdc) | EDC |
|-------------------------------|---------------|--|--|--------|---------------------------------------|-------------------|-------|
| Vineland Construction Company | QO22040256 | Vineland Construction Company Landfill (VCC) | Block 201, Lots 8 & 17 3905 River Road Pennsauken Twp. 08110 | Camden | Landfill | 5.19 | PSE&G |

NJDEP provided the following description of the site background and findings from a review of the application. The Applicant is proposing a 5.19 MWdc grid supply solar farm at the Vineland Construction Company Landfill site in Pennsauken Township, Camden County, New Jersey ("Property"). The Applicant proposes to construct the solar electric power generation facility on approximately 12 acres as rendered in the Concept System Layout map provided in the application package.

The Rundle Manufacturing Company ("Rundle"), later known as Universal-Rundle Corporation, originally developed the Property, and Rundle owned and operated the Property from the late 1920s through 1973. Rundle used the Property for the manufacture of porcelain-enameled cast iron bathroom fixtures. Vineland Construction Company purchased the Property in 1973 and used the buildings on site for warehousing and distributing. Vineland Construction Company operated a NJDEP-permitted landfill for disposal of construction and demolition waste on a portion of the Property adjacent to the Delaware River. To contain the landfilled materials, an earthen berm was constructed around the perimeter of the landfill. Landfilling operations stopped in 1982 and a soil cap was installed over the landfill.

After the soil cap was installed, investigations were conducted at the site which yielded the presence of lead, arsenic, and antimony contamination in isolated areas around the former landfill. In July 2009 ENVIRON International Corporation ("ENVIRON"), on behalf of Vineland Construction Company, submitted an Amended and Supplemental Remedial Action Workplan ("ASRAW") to the Department to address this soil contamination. The ASRAW was approved by the Department on January 20, 2010. In May 2011 ENVIRON submitted a Remedial Investigation Report and Remedial Investigation Workplan ("RIR/RAW") to compile all historic data and records related to remedial investigations conducted at the former Vineland Construction Company landfill.

The proposed remedial action was completed on the surface of the landfill to address the contamination found in 2018. This included five (5) areas on the landfill where a minimum of 18-inches of clean fill material and 6-inches of topsoil were installed to allow for proper cover and vegetation of these areas. The landfill and surrounding property, approximately 140 acres total, are now under Remedial Action Permits (“RAP”) for both soil and groundwater which include inspections of capped areas and monitoring surface water and groundwater for natural attenuation of the constituents of concern. A Remedial Action Outcome (“RAO”) was finalized by VCC’s Licensed Site Remediation Professional (“LSRP”) in May 2018.

A closure and post-closure plan permit application was first submitted to the Department on February 18, 2022; however, upon review of the plan the Bureau of Solid Waste Permitting identified deficiencies that needed to be addressed. The landfill operator was notified of the deficiencies on March 11, 2022. After communication between the applicant and the Department, a Notice of Deficiency from the Bureau of Solid Waste Permitting was sent on August 11, 2022. A revised Closure Plan Application was received by the Department on March 2, 2023 and is currently under review by the Department. Therefore, at this time no determination that the landfill is “properly closed” has been made.

Furthermore, the April 15, 2022, cover letter of the application package acknowledges that the application is being submitted “...even though the subject landfill has not reached closure according to the New Jersey Department of Environmental Protection.” Hence the Subsection (t) application could not provide documentation that demonstrates the landfill is properly closed:

7) Submit: (check one)

A copy of the NJDEP approval letter for the closure as-built certification submitted pursuant to N.J.A.C. 7:26-2A.9(c)6;
or
 Copies of any other correspondence indicating proper closure of the landfill.

A Closure and Post-Closure Plan is Pending with NJDEP. A copy of the Closure Plan Submittal Cover Letter is attached as Attachment 2.

8) I have attached a copy of the most recent sanitary landfill closure and post-closure plan approval, if applicable. Yes No

9) I have attached additional information or documentation that establishes that the sanitary landfill facility is properly closed as defined in N.J.S.A. 48:3-51..... Yes No

A Closure and Post-Closure Plan is Pending with NJDEP. A copy of the Closure Plan Submittal Cover Letter is attached as Attachment 2.

NJDEP provided the statutory definition of “properly closed sanitary landfill.” N.J.S.A. 48:3-51 defines “properly closed sanitary landfill” as: “[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, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.”

In consideration of the site background and as rendered in the Site Plan map provided in the application package, the Department has determined that the 12 acre area proposed for solar

development **does not** constitute a properly closed sanitary landfill as defined by the Solar Act of 2012.

Based on the information contained in the application and NJDEP's findings, Staff recommends that the Board deny the Applicant's 5.19 MWdc Project as being not located on a "properly closed sanitary landfill," as that term is defined pursuant to Subsection (t).

DISCUSSION AND FINDINGS

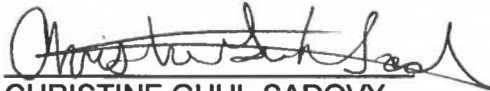
The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. NJDEP determined that the solar array proposed by Vineland Construction Company for Block 201, Lots 8 and 17, as documented in the Applicant's Electrical Site Plan map, is not located on land meeting the Solar Act's definition of a "properly closed sanitary landfill." Based on information provided by NJDEP, the Board **FINDS** that the Property proposed for the VCC 3905 River Road, LLC Project does not meet the Solar Act's definition of a "properly closed sanitary landfill." The Board thus **DENIES** conditional certification of the Applicant's proposed solar electric generation facility, to be located on 12 acres at the Vineland Construction Company Landfill site at Block 201, Lots 8 and 17, in Pennsauken Township, Camden County, New Jersey.

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 consideration under Subsection (t).

The effective date of this Order is September 25, 2023.

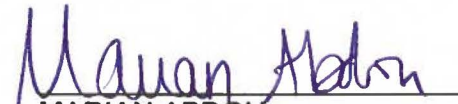
DATED: September 18, 2023

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER

ATTEST: 
SHERBIL. GOLDEN
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 A SUCCESSOR SOLAR INCENTIVE PROGRAM PURSUANT TO P.L. 2021, c. 169 –
APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR SREC-IIS IN THE INTERIM
SUBSECTION (T) PROGRAM - VCC 3905 RIVER ROAD, LLC – VINELAND CONSTRUCTION COMPANY
LANDFILL
DOCKET NO. QO22040256

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