



STATE OF NEW JERSEY
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CLEAN ENERGY

IN THE MATTER OF THE SOLAR TRANSITION)
PURSUANT TO P.L. 2018, C. 17 – BIG HORN) ORDER
LANDFILL SOLAR FARM, LLC – APPLICATION FOR)
SOLAR ACT SUBSECTION (T), BLOCK 10, LOT 24.02) DOCKET NO. QO21071033

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Gary Cicero, Managing Member, Big Horn Landfill Solar Farm, LLC

BY THE BOARD:

This Order concerns an application by Big Horn Landfill Solar Farm, LLC (“Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) [“Subsection (t)”]. Applicant seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for a proposed solar electric generation facility to be located at the former Shamong Township Landfill site, Block 10, Lot 24.02, 378 Atsion Road, Shamong Township, Burlington County, New Jersey (“Project”). The Applicant claimed that the proposed site is 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 amended certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act required 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 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

¹ 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(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" 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.

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 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 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

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.

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”).

“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.

STAFF RECOMMENDATIONS

Project Description

On July 27, 2021, Staff received the Big Horn Landfill Solar Farm, LLC application for inclusion in the TI Program. Staff transmitted a copy of the application to NJDEP for review and advice on August 5, 2021.

At issue is the request by Applicant that its proposed Big Horn Landfill Solar Farm, LLC solar facility, to be located in Shamong Township, Burlington County, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). The Applicant filed an application with supporting documentation to enable a NJDEP determination as to whether 9.2 acres of the proposed site is located on a “properly closed sanitary landfill facility.” NJDEP reviewed the available application materials and supplied an advisory memorandum to Staff on July 24, 2023 on the land use classification and the remediation status of the proposed site. On the basis of NJDEP’s determination, the information certified by Applicant 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.

Big Horn Landfill Solar Farm LLC - Docket No. QO21071033

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield or Historic Fill	Array Size (MWdc)	EDC
Big Horn Landfill Solar Farm, LLC	QO21071033	Shamong Township Landfill	Block 10, Lot 24.02 378 Atsion Road Shamong Twp NJ 08088	Burlington	Landfill	4.2	PSEG

NJDEP provided the following description of the site background and findings from a review of the application. The Applicant is proposing a 4.2 MWdc grid supply solar farm at the Shamong Township Landfill site (“Property”) in Shamong Township, Burlington County, New Jersey. The Applicant proposes to construct the solar electric power generation facility on a landfill portion of the Property, approximately 9.2 acres of a 16.54 acre lot as rendered in the Electrical Site Plan map provided in the application package.

¹³ December 2019 Order at 33.

The Property serviced Shamong Township and the surrounding vicinity from 1971 to 1978, accepting primarily municipal (household, commercial and institutional), bulky, and vegetative wastes until its operation terminated in 1978.

At the time the landfill ceased operation, there was no requirement that the owner or operator submit a closure and post-closure plan for the Department's approval prior to closing the landfill. On January 14, 1981, the Department performed a "final" inspection of the landfill and determined that the landfill had been covered and closed. However, on June 24, 1981, the Department performed a follow-up final inspection. During that inspection the Department observed areas outside of the approved areas that had been landfilled. At that time, these non-approved landfilled areas did not have adequate vegetated final cover. The Department could find no documentation from that time period that indicates the final cover requirements were completed. The landfill was subsequently overgrown by vegetation.

In December 2020, the Township of Shamong and Big Horn Landfill Solar Farm, LLC applied to the Department for a Minor Sanitary Landfill Disruption Approval to investigate the existing condition and delineate the areal extent of the landfill on Block 10 Lot 24.02. The Department issued the Minor Disruption Approval on March 25, 2021. Investigation activities took place between April and June 2021. A Phase II Environmental Site Assessment Report ("Report") dated August 2021, prepared for Big Horn Landfill Solar Farm, LLC by SESI Consulting Engineers, was submitted to the Department upon completion of the investigation as required by the Approval. This Report was later updated in September 2021. Based on a review of the Report, the Department issued a letter dated January 17, 2023, that acknowledged that no further activities are required to properly close the landfill. Therefore, the Department has determined that the landfill was properly closed prior to the time of the investigation.

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 Electrical Site Plan, submitted in the Subsection (t) application package, NJDEP determined that the 9.2 acres requested for Subsection (t) certification at the Shamong Township Landfill does constitute a "properly closed sanitary landfill facility" as defined by the Solar Act.

The solar installation will constitute the construction of improvements on a properly closed sanitary landfill, pursuant to the law and, accordingly, the Property owner will need to obtain an approval from the NJDEP Division of Sustainable Waste Management, as well as any permits identified by the Department, prior to construction of the solar electric power generation facility. The 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, in addition to on-going maintenance and monitoring. Consistent with these requirements, the Property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap. The Applicant must

contact the Pinelands Commissions for additional approvals. The Applicant must also contact the Department's Office of Permitting and Project Navigation to determine what permits may be required for this Project

Based on the information contained in the application and NJDEP's findings, Staff recommends that the Board conditionally certify the Applicant's 4.2 MWdc Project as being located on 9.2 acres of a "properly closed sanitary landfill facility," 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.

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 Applicant for Block 10, Lot 24.02 on the Tax Maps of Shamong Township as documented in the Applicant's Electrical Site Plan map, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill." To be eligible for the creation of TRECs, the facility must not exceed 4.2 MWdc and must be placed within the 9.2 acres of the properly closed sanitary landfill depicted in the application. Based on information provided by NJDEP, the Board **FINDS** that the proposed Big Horn Landfill Solar Farm, LLC Project is located on land that meets the Solar Act's definition of a "properly closed sanitary landfill."

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 properly closed sanitary landfill 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 9.2 acres at the Big Horn Landfill Solar Farm, LLC, site at Block 10, Lot 24.02 on the Tax Maps of Shamong Township, New Jersey, with an array size not to exceed 4.2 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** Big Horn Landfill Solar Farm, LLC 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(f)(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.

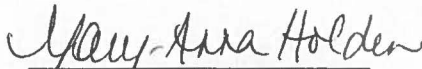
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed Project beyond certification under Subsection (t), provided that the facilities are constructed in accordance with NJDEP requirements, the site plans filed with the application, and the TREC registration.

This Order shall be effective on December 13, 2023.


DATED: December 6, 2023

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER

ATTEST: 
SHERRI L. 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 THE SOLAR TRANSITION PURSUANT TO P.L. 2018, C. 17 – BIG HORN
LANDFILL SOLAR FARM, LLC – APPLICATION FOR SOLAR ACT SUBSECTION (T), BLOCK 10, LOT
24.02

DOCKET NO.QO21071033

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