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**Board of Public Utilities**  
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF )  
P.L. 2012, C. 24, THE SOLAR ACT OF 2012 )

DOCKET NO. EO12090832V

IN THE MATTER OF THE IMPLEMENTATION OF )  
P.L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A )  
PROCEEDING TO ESTABLISH A PROGRAM TO )  
PROVIDE SRECS TO CERTIFIED BROWNFIELD, )  
HISTORIC FILL AND LANDFILL FACILITIES )

DOCKET NO. EO12090862V

AC POWER 2, LLC )  
WINZINGER LANDFILL )

DOCKET NO. QO18050592

**Party of Record:**

**Annika Colston, AC Power 2, LLC**

**BY THE BOARD:**

This Order concerns an application by AC Power 2, LLC ("AC Power 2" or "Applicant") for certification pursuant to P.L. 2012, c. 24 ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection (t)"). AC Power 2 seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located at the Winzinger Landfill in Egg Harbor Township, Atlantic County, New Jersey. AC Power 2 alleges that the proposed site is a properly closed sanitary landfill facility as 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.<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.

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 Commissioner Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

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<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).

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.<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 the NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site. 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 AC Power 2 that its proposed solar facility, to be located in Egg Harbor Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). AC Power 2 filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on March 5, 2019 on the land use classification and the closure or remediation status of the proposed site. On the basis of NJDEP's determination, the information certified by AC Power 2 in its application, and the January 24, 2013 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	Location / Town	County	Landfill, Brownfield, or Historic Fill	Array (MWdc)	EDC
AC Power 2, LLC	QO18050592	Winzinger Landfill	Block 1504, Lots 1-9 Pearce Rd Egg Harbor Township, NJ 08234	Atlantic	Landfill	6.5	ACE

**AC Power 2, LLC – Winzinger Landfill – Docket No. QO18050592**

On May 17, 2018, AC Power 2, LLC submitted its application to the Board to have its project certified as being located on a properly closed sanitary landfill facility pursuant to Subsection (t) of the Solar Act. Applicant’s 6.5 MWdc project is proposed to be constructed on approximately 25 acres of land owned by Robert T. Winzinger, Inc. The landfill is located on an approximately 22-acre site, specifically, Block 1504, Lots 1–9, at Pearce Road in Egg Harbor Township, Atlantic County, New Jersey.<sup>3</sup>

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated that, on May 2, 1975, NJDEP issued a Registration of Solid Waste Disposal and/or Processing Facility (“Registration”) to Steve Waszen for operation of a sanitary landfill at the site. NJDEP stated that, during most of the late 1970s the sanitary landfill did not operate. On August 17, 1979, NJDEP approved the transfer of the landfill’s Registration to Robert T. Winzinger, Inc., and on August 18, 1981, NJDEP issued a Certificate of Approved Registration and Engineering Design Approval to Robert T. Winzinger, Inc. that authorized continued operation of the landfill for disposal of construction and demolition waste. NJDEP issued a Closure and Post-Closure Plan Approval for the landfill on October 14, 1991. NJDEP received documentation and professional engineer certification of completion of the final landfill cap on December 11, 2003 and revised final cap documentation and certification on May 20, 2004. NJDEP accepted the final cap documentation and certification on July 1, 2004. NJDEP noted that it requires the owner to continue to monitor and maintain the landfill during its post-closure care period.

<sup>3</sup> In its original application dated May 16, 2018, on Page 4, AC Power 2 described the landfill using the outdated Block 39A and Lots 1–6, 8, and 9, but in the “Final Cap Certification” the applicant stated Block 1504 (formerly Block 39A), Lots 1–9. In June 2018, NJDEP noted that its Geographic Information System (“GIS”) also showed Block 1504, Lots 1–9. NJDEP reported to Staff that on June 13, 2018 it received revised pages 4 and 5 of the application with the correct Block 1504 and Lots 1–9. In its original application, the applicant also represented the total acreage of the proposed solar facility to be 25 acres. However, the Closure Plan and Post-Closure Plan Approval, dated October 14, 1991, which AC Power 2 attached to its application, described the landfill site as 22 acres. The Board received another revised map from AC Power 2’s main point of contact, Annika Colston, on or around October 30, 2018, and the same was submitted to NJDEP. On February 28, 2019, the Board received another revised site plan/map (albeit still reflecting an October 2018 date) showing the current block and lots and depicting more clearly the property boundary and the approximate limit of the waste, a copy of which is attached hereto as Exhibit A. NJDEP received this revised site plan on March 4, 2019.

NJDEP noted that the solar installation will constitute the construction of improvements on a closed landfill pursuant to the law, and, accordingly, the property owner will need to obtain an approval from NJDEP's Division of Solid and Hazardous Waste for construction of improvements on the closed landfill, as well as any permits identified by NJDEP, and approval from any other applicable state or federal agency. NJDEP stated that, for example, if applicable, the property owner may need to ensure compliance and obtain any relevant approvals from the New Jersey Pinelands Commission, such as meeting the standards of the Comprehensive Management Plan ("CMP"), if appropriate, prior to construction of the solar electric power generation facility. NJDEP stated that 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 ongoing maintenance and monitoring during the post-closure period. Consistent with the above requirements, NJDEP noted that the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap.

The Closure and Post-Closure Plan Approval requires Robert T. Winzinger, Inc. to conduct period site inspections, gas monitoring, and ground water monitoring, and to submit the results of these events to NJDEP. However, NJDEP noted that it has not received any inspection or gas monitoring reports and has not received ground water monitoring reports since 2011. NJDEP stated that Robert T. Winzinger, Inc. must address these items to comply with post-closure care requirements. Additionally, NJDEP stated that approval for the landfill requires payment of \$9,789 in Solid Waste fees, or the fees that Robert T. Winzinger, Inc., was billed relating to the recycling center that operated at the same location as the landfill.

NJDEP noted on Page 2 of its advisory memorandum that, while AC Power 2 represents that the total acreage of the proposed solar facility is twenty-five (25) acres, NJDEP's Geographic Information System ("GIS") shows the measurement of the landfill to be about twenty-two (22) acres total.<sup>4</sup>

Based on the information provided in the application and NJDEP's determination that the proposed solar array, as rendered in the drawing C-1 titled "Conceptual Site Plan Layout For Solar," is located on a "properly closed sanitary landfill facility" under the Solar Act, Staff recommends that the Board grant conditional certification of the proposed project.

## **FINDINGS AND CONCLUSIONS**

The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. NJDEP has determined that the solar array proposed for Block 1504, Lots 1-9, as rendered in the "Conceptual Site Plan Layout For Solar," is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." To be eligible for the creation of SRECs, the entire solar array must be placed solely within the twenty-two (22) acres shown on the Conceptual Site Plan Layout for Solar and on the GIS rendering, attached hereto as Exhibits A and B, respectively. Based on information provided by NJDEP, the Board **FINDS** that the

<sup>4</sup> A screenshot of the GIS image showing the landfill in the instant matter is attached hereto as Exhibit B. NJDEP's interactive web mapping application, or the NJ-GIS website, is available at <https://www.nj.gov/dep/gis/geoweb splash.htm>.

Winzinger Landfill project is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP has determined that the property owner will need to obtain an approval from NJDEP's Division of Solid and Hazardous Waste for construction of improvements on the closed landfill, as well as any permits identified by NJDEP, and approval from any other applicable state or federal agency, and, if applicable, the Pinelands Commission, prior to construction of the solar electric power generation facility. The Board also **FINDS** that approval for construction of improvements on the closed landfill must 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 ongoing maintenance and monitoring during the post-closure period." The property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap on the Winzinger Landfill. In addition, the property owner must satisfy any outstanding requirements, including any outstanding fees, such as the \$9,789 in Solid Waste fees noted above.

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 twenty-two (22) acres at the Winzinger Landfill at Block 1504, Lots 1-9 in Egg Harbor Township, Atlantic County, New Jersey, with an array size not to exceed 6.5 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that there are no outstanding requirements under the Closure and Post-Closure Plan Approval and that all NJDEP or federal requirements have been satisfied. To obtain full certification, the Board also **DIRECTS** the Applicant to demonstrate to Staff that the Applicant has ensured compliance and obtained any relevant approvals required by the New Jersey Pinelands Commission prior to construction of the solar electric power generation facility.

In addition, to obtain full certification, the Board **DIRECTS** AC Power 2 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. 14:8-4(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 for a fifteen year Qualification Life, 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.

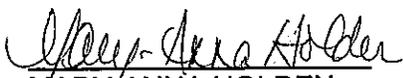
This Order shall be effective on April 8, 2019.

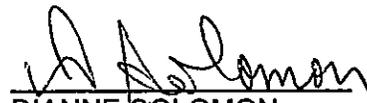
This Order shall be effective on April 8, 2019.

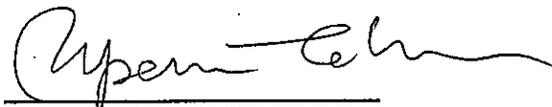
DATED: 3/29/19

BOARD OF PUBLIC UTILITIES  
BY:

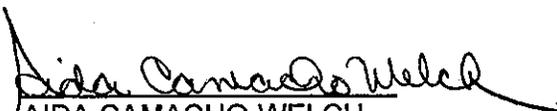
  
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ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

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; AC Power 2, LLC – Winzinger Landfill

Docket Nos. EO12090832V, EO12090862V, and QO18050592

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Exhibit B.

