



Agenda Date: 1/29/14
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
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CLEAN ENERGY

ORDER

| | | |
|---|---|------------------------|
| IN THE MATTER OF THE IMPLEMENTATION OF |) | |
| L. 2012, C. 24, THE SOLAR ACT OF 2012 |) | DOCKET NO. EO12090832V |
| |) | |
| IN THE MATTER OF THE IMPLEMENTATION OF L. |) | |
| 2012, C. 24, <u>N.J.S.A. 48:3-87(T)</u> – A PROCEEDING TO |) | |
| ESTABLISH A PROGRAM TO PROVIDE SOLAR |) | |
| RENEWABLE ENERGY CERTIFICATES TO |) | |
| CERTIFIED BROWNFIELD, HISTORIC FILL AND |) | |
| LANDFILL FACILITIES; |) | DOCKET NO. EO12090862V |
| |) | |
| VANGUARD ENERGY PARTNERS, LLC |) | |
| INDUSTRIAL LAND RECLAIMING LANDFILL |) | DOCKET NO. QO13111136 |
| |) | |
| PUBLIC SERVICE ELECTRIC AND GAS |) | |
| PARKLANDS LANDFILL |) | DOCKET NO. QO13111130 |

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
John Geraghty, Vanguard Energy Partners, LLC
Robert Pollock, Public Service Electric and Gas

BY THE BOARD:

BACKGROUND

On July 23, 2012, L. 2012, c. 24 ("Solar Act") was signed into law by Governor Chris Christie. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities ("Board") to conduct proceedings to establish new standards and to develop new programs to implement the directives. On October 4, 2012, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act. Dkt. No. EO12090832V ("October 4 Order").

Subsection t of the Solar Act 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[.] [F]or projects certified under this subsection, the board shall establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility.

[N.J.S.A. 48:3-87(t)]

The Solar Act defines the terms "brownfield", "area of historic fill," and "properly closed landfill. 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 [DEP.]" ibid.

The October 4 Order directed Staff to initiate a proceeding to fulfill the mandate of the Solar Act. Staff has met with Staff of the New Jersey Economic Development Authority ("NJEDA") and the New Jersey Department of Environmental Protection ("NJDEP"). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

In an Order dated January 23, 2013, Docket. No. EO12090862V ("January 23 Order"), the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and landfills. The certification process for projects seeking approval pursuant to subsection t provides three 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 the NJDEP has determined require further remedial action or, in the case of properly closed landfills, additional protective measures, and full certification may be granted for projects located on sites for which the NJDEP has determined no further remedial or protective action is necessary. January 23 Order, at 12-13. 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. Ibid.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfills was necessary in order to initiate the certification process and directed Staff to work with NJDEP to develop an application. Id. at 13. 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. This order considers two applications that were filed with the Board.

The Board further found that the Solar Act requires the development of an incentive to offset the increased costs of siting solar generation facilities on the areas covered by subsection (t) and directed Staff to continue working with the NJDEP, the NJEDA, and the stakeholders to develop a process to determine appropriate incentives. Ibid. The Board further directed Staff to coordinate any incentive developed with the incentives to be provided to solar projects located on landfills pursuant to the Electric Distribution Companies' ("EDC") SREC financing programs. Ibid.

Financial incentives for projects developed under subsection t are found in the programs developed by the EDCs in response to the Board's Order of May 23, 2012, Docket EO11050311V. The EDCs continue to maintain EDC SREC financing programs. For example, on May 29, 2013, the Board approved a settlement stipulation for Public Service Electric and Gas' ("PSE&G") Solar 4 All Extension program and its Solar Loan III program. In the Matter of Petition of PSE&G for Approval of an Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1, Docket No. EO12080721 (May 31, 2013); In the Matter of Petition of PSE&G for Approval of a Stipulation Solar Loan III Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, Dkt. No. EO12080726 (May 31, 2013). In addition, the other three EDCs have filed petitions for extensions of their SREC-based finance programs which each contain provisions for solar projects on landfills and brownfields.

Given the existing solar market conditions where the supply of SRECs significantly exceeds the demand created by the solar RPS, Staff sees no valid reason to create additional incentives, beyond the EDC solar finance programs, to be funded by the ratepayer. Staff recommended against any further incentive for solar and invited public comment on this position in the straw proposal for the Comprehensive Resource Analysis ("CRA") for Fiscal Year 2014 through 2017 issued June 3, 2013. At the Board's Agenda meeting of June 21, 2013, the Board approved Staff's recommendation that no funding be provided for solar rebates through the New Jersey Clean Energy Program ("NJCEP").¹

On November 26, 2013, the Board conditionally approved two applications for solar generation facilities seeking eligibility to create SRECs pursuant to the Solar Act's subsection t. N.J.S.A. 48:3-87(t). The Board approved Staff recommendations to change the subsection t process for conditionally approved projects with respect to the applicant's requirements in the SREC Registration program based upon experience with the process established.

¹ I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Years 2014 through 2017 Clean Energy Program Docket No. EO11050324V (June 21, 2013).

The January 23 Order states that certification would be limited to those areas delineated by the NJDEP. In compliance with this directive, applicants are required to delineate the precise location where the solar facility is proposed to be sited and the NJDEP reviewed this material in making its recommendation.

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, following receipt of conditional certification, once a contract for facility installation has been executed, these projects will need to be registered in the Board's SREC Registration Program ("SRP") within ten days. The size and location of the subject project would then be reflected in the public reporting of solar development pipeline data.

SREC Registration

In the January 23 Order, the Board ruled that only those projects that have received a full certification would be eligible to register in the SRP; "full certification is a pre-requisite to consideration for acceptance into the SRP". However, the Board found that this requirement is in conflict with the SREC Registration rules at N.J.A.C. 14:8-2.4, which require a solar electric generation project to submit a registration within 10 days of executing a contract to install a solar system or to purchase panels for solar system. Subsequently, on July 19, 2013, the Board reversed that portion of the January 23 Order and required developers to comply with the SREC Registration rules at N.J.A.C. 14:8-2.4. Staff believes it is important for the Board to maintain the requirement that an applicant submit a registration for a project within 10 days of contract execution. As a result, the Board found that applicants comply with the requirements of the SREC Registration rules at N.J.A.C. 14:8-2.4 and the deadlines set forth therein. Docket Nos. EO12090862V, EO13050389V, EO13050388V ("July 19 Order").

STAFF RECOMMENDATIONS

Project Descriptions

This Order deals with Staff's recommendation on two projects: the Industrial Land Reclaiming ("ILR") Landfill proposed to be located in Edison, New Jersey and the Parklands Landfill proposed to be located in Bordentown, New Jersey. The applicants seeking certification submitted the required documentation to enable a NJDEP determination as to whether the proposed sites were brownfields, areas of historic fill, or properly closed landfills. The NJDEP reviewed each application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of each proposed site. On the basis of the NJDEP's determination, information contained in the applications, and the January 23 Order, Staff is recommending conditional certification for the ILR and Parklands Landfills, as explained further below.

| Date Submitted | Submitted by | Contact Address | Developer | Project/ Designation Address | Location Town | County | Landfill, Brownfield, or Historic Fill | Array Size (MWdc) | EDC |
|----------------|---------------------------------|--|--|------------------------------|--|------------|--|-------------------|-------|
| 11/19/2013 | John Geraghty | One Commerce Street Branchburg, NJ 08876 | Vanguard | ILR Landfill | 1 Nixon Drive Edison, NJ 08820 | Middlesex | Landfill | 12.063 | PSE&G |
| 11/22/2013 | Robert Pollock Paul M. Drake | 4000 Hadley Road South Plainfield, NJ 07080 | Public Service Electric & Gas (PSE&G) | Parklands Landfill | 1070 Route 206 Bordentown, NJ 08505 | Burlington | Landfill | 10 | PSE&G |

ILR Landfill – (Edison Township) – Dkt. No. QO13111136

On November 19, 2013, Vanguard Energy Partners, LLC (“Vanguard” or “applicant”) submitted an application to the Board to have the project identified as ILR Landfill certified as located on a properly closed landfill pursuant to subsection t of the Solar Act. ILR’ proposes to construct a 12.063 MWdc project on a landfill located in Edison, New Jersey. In its application, Vanguard represented that the ILR Landfill project is to be located on a sanitary landfill which ceased operations on March 25, 1985.

Staff forwarded the application to NJDEP for review and an advisory recommendation as previously described above. NJDEP advised Board Staff that it reviewed the application and found that proposed site began accepting municipal waste in 1957 and ceased in 1985. NJDEP indicated that it approved the Closure and Post-Closure Care Plan (“Closure Plan”) in 1988 and a modification to the original Closure Plan was made in 1997, and that it has completed remediation activities and the capping of the land fill. NJDEP further advised Staff that, in order to install the solar array proposed, a modification to the Closure Plan will be necessary, as well as other permits. In addition, NJDEP advised Staff that the applicant must address impacts on environmental controls at the site, and address the ongoing problems with leachate/ ground water control system and, the proposed revised grading plan and storm water improvements to install the proposed solar facility. Staff recommends that the application be conditionally certified with full certification being contingent upon the developer completing the modification to the Closure and Post Closure Plan that does not jeopardize the remedy implemented at the site to the satisfaction of the NJDEP.

Based on the information provided in the application and NJDEP’s indication that additional protective measures are necessary, Staff recommends conditional certification. Full certification is conditioned upon the ILR Landfill project developers satisfying NJDEP permit requirements for construction of the solar facility. Staff further recommends that the applicant comply with the requirements and time limits established in the SREC Registration Program.

Parklands Landfill– (Bordentown, NJ) – Dkt. No. QO13111130

On November 22, 2013, Public Service Electric and Gas (“PSE&G” or “applicant”) submitted an application to the Board to have its Parklands Landfill project certified as located on a properly closed landfill pursuant to subsection t of the Solar Act. Applicant’s 10 MWdc project is proposed to be located in Bordentown, New Jersey. On its application, PSE&G represented that the Parklands Landfill project is located on a sanitary landfill which ceased operations in 1989.

Staff forwarded the application to the NJDEP for review and an advisory recommendation. NJDEP advised Board Staff that it reviewed the application and found that the proposed site is a "properly closed landfill facility". NJDEP informed Board Staff that the landfill must address the environmental controls at the site. Staff recommends that the application be conditionally certified with full certification being contingent upon the developer completing the modification to the Closure and Post Closure Plan that does not jeopardize the remedy implemented at the site to the satisfaction of the NJDEP.

Based on the information provided in the application and NJDEP's indication that additional protective measures are necessary, Staff recommends conditional certification. Full certification is conditioned upon the Parklands Landfill project developers satisfying NJDEP permit requirements for construction of the solar facility. Staff further recommends that the applicant comply with the requirements and time limits established in the SREC Registration Program.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that Staff has consulted with the NJDEP with regard to the development of the applications for certification of solar generation as being located on brownfields, areas of historic fill, and properly closed sanitary landfills. The Board **FINDS** that Staff transmitted the applications discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed sites.

ILR Landfill – (Edison, NJ) – Dkt. No. QO13111136

Based on information provided by NJDEP, the Board **FINDS** that the ILR Landfill project is located on land meeting the definition of a "properly closed landfill." The Board also **FINDS** that NJDEP has determined that "environmental controls at the site, such as the protection or re-establishment of the final cap, leachate collection, gas collection and storm water collection systems, settlement, slope stability, control of erosion, on-going maintenance, and monitoring during the post-closure period and source of funding" must be accounted for to construct the solar project.

The Board **FINDS** that ILR Landfill project must satisfy the aforementioned NJDEP requirements and **DIRECTS** ILR Landfill to address the existing leachate/ groundwater control system and grading for storm water improvement and demonstrate to Staff that it has satisfied all NJDEP requirements in order to obtain full certification. The Board **DIRECTS** Staff to issue full certification to ILR Landfill project upon satisfying all requirements for full certification. Finally, and after it has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the ILR Landfill project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

The Board notes that it previously issued a conditional certification to Solar Wind, LLC ("Solar Wind") for a proposed project on the ILR Landfill. See I/M/O Solar Wind Energy, LLC Industrial Land Reclaiming (ILR) Landfill, et al., Docket No. EO13060499V (September 18, 2013) ("September 18 Order"). Through the instant application and correspondence submitted to the Board, Vanguard disputes the right of Solar Wind to develop on the ILR Landfill and has asked the Board to rescind the September 18 Order. Solar Wind provided the Board with information in defense of its project.

To rescind the September 18 Order would require the Board to decide the merits of a contract dispute between private parties. Such a task is beyond the scope of the Board's jurisdiction. In addition, it is unnecessary to rescind the September 18 Order because the Order did not confer any development rights. Certification under subsection t only allows the applicant to receive the benefits described in N.J.S.A. 48:3-87(t) if the project is built according to the specifications in the application and if the project meets all NJDEP requirements. Certification does not authorize the applicant to construct a project, nor does it create any other rights beyond the scope of subsection t.

Although the Board is not inclined to approve an application where the applicant does not have development authority, the Board will rely on an applicant's certification that the information provided in the application is true unless the Board receives sufficient evidence to the contrary. Based on the information presented by Vanguard and Solar Wind, the Board does not have a reasonable basis to rescind the September Order.² Accordingly, Vanguard's request to rescind the September 18 Order is **DENIED** without prejudice.

Parklands Landfill– (Bordentown) – Dkt. No. QO13111130

Based on information provided by NJDEP, the Board **FINDS** that the Parklands Landfill project is located on land meeting the definition of a "properly closed landfill." The Board also **FINDS** that NJDEP has determined that "environmental controls at the site, such as the protection or re-establishment of the final cap, leachate collection, gas collection and storm water collection systems, settlement, slope stability, control of erosion, on-going maintenance, and monitoring during the post-closure period" must be accounted for in order to construct the solar project.

The Board **FINDS** that Parklands Landfill project must satisfy the aforementioned NJDEP requirements and **DIRECTS** Parklands Landfill project developers to demonstrate to Staff that the landfill has satisfied all NJDEP requirements in order to obtain full certification. The Board **DIRECTS** Staff to issue full certification to the Parklands Landfill project upon the applicant's demonstration that it has satisfied all requirements for full certification. Finally, and after it has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the Parklands Landfill project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

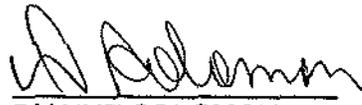
² The Board may reconsider its analysis upon receipt of a judicial determination that Solar Wind does not have development rights at the ILR Landfill.

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 projects beyond designation 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 take effect on February 7, 2014.

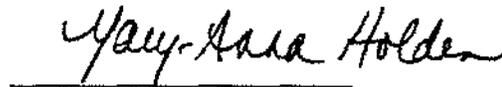
DATED: 1/29/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

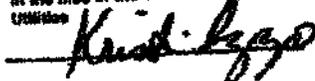

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MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
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 SOLAR RENEWABLE ENERGY
CERTIFICATES TO CERTIFIED BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES;

VANGUARD ENERGY PARTNERS, LLC
INDUSTRIAL LAND RECLAIMING LANDFILL

PUBLIC SERVICE ELECTRIC AND GAS
PARKLANDS LANDFILL

Docket Nos. EO12090832V, EO12090862V, QO13111136, and QO13111130

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