



Agenda Date: 6/18/14
Agenda Item: 8A

STATE OF NEW JERSEY
Board of Public Utilities
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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; AND)	
)	DOCKET NO. EO12090862V
)	
IN THE MATTER OF PVNAVIGATOR, LLC - SOMERDALE ROAD (OWENS CORNING) LANDFILL)	
)	DOCKET NO. QO14010014

Party of Record:

Robert Potter, PVNavigator, LLC

BY THE BOARD:

This Order concerns the Somerdale Road (Owens Corning) Landfill solar electric generation facility proposed to be located in Gloucester Township, New Jersey. The applicant seeking certification submitted the required documentation to enable a New Jersey Department of Environmental Protection (“NJDEP”) determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed sanitary landfill.

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. Docket 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 sanitary 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 met with Staff of the New Jersey Economic Development Authority ("NJEDA") and the Department of Environmental Protection. 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 sanitary 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 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 section(s) of the location where the solar facility is proposed to be sited and the NJDEP reviewed 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 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.

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. I/M/O 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); I/M/O 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, Docket No. EO12080726 (May 31, 2013). The Solar 4 All program provides an incentive for PSE&G to invest over \$200 million for 42 megawatts ("MW") of solar on properly closed landfills and brownfields. The Solar Loan III program includes a carve-out for landfills and brownfields from the program's total capacity with the goal of facilitating private sector ownership of solar on landfills and brownfields. In addition, in December 2013 the Board approved the petitions of Jersey Central Power & Light, Rockland Electric Company and Atlantic City Electric 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 to be funded by the ratepayer for projects under Subsection t. At the Board's Agenda meeting of June 21, 2013, Staff recommended that no funding be provided for any solar rebates through the New Jersey Clean Energy Program ("NJCEP").¹

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

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).

"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. N.J.A.C. 14:8-2.4. 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 SREC Registration Program ("SRP"); "full certification is a pre-requisite to consideration for acceptance into the SRP." However, because 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 ten days of executing a contract to install a solar system or to purchase panels for solar system, on Staff's recommendation, 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. Docket Nos. EO12090862V, EO13050389V, EO13050388V ("July 19 Order"). By maintaining the requirement that an applicant submit a SRP registration for a project within ten days of contract execution, the Board believed it was ensuring the continued transparency of the SREC registration process.

Staff concludes, based on feedback from several of the initial Subsection t applicants which received conditional approval from the Board, that the existing rules for SREC registration provide a disincentive for the project developers to execute a contract for the installation of the solar facility in an expeditious manner. If developers execute contracts upon receipt of the Board's conditional certification under Subsection t, they are then required to register. Under the SRP rules at N.J.A.C. 14:8-2.4 (f), this registration expires after one year, with only one six month extension. N.J.A.C. 14:8-2.4 (g). Construction of solar facilities on properly closed sanitary landfills, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer completion periods. Strict compliance with the SRP process may mean the developers cannot complete the construction process prior to the expiration of their registrations, thereby thwarting one of the goals of the Solar Act, that being to direct solar development to properly closed landfills, brownfields, and areas of historic fill.

Staff's experience with implementing the Board's directives with respect to the conditionally approved projects of Subsection q applicants supports applying a similar process for the registration of a Subsection t applicant. I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012 Docket No. EO12090832V and I/M/O the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(Q)(R) & (S) - Proceedings to Establish the Processes for Designation of Certain Grid Supply Projects as Connected to the Distribution System – Subsection (Q) Approvals, Docket No. EO12090880V (August 21, 2013). The purpose for submission of a timely SRP registration is transparency to the pipeline, providing notice of the capacity and number of proposed new market entrants to all participants in the New Jersey SREC market. Staff believes that the Board's conditional certification of an application pursuant to Subsection t provides a reasonable and logical substitute for the project development milestone that is currently served by the execution of a contract which triggers the requirement to register in the SRP.

STAFF RECOMMENDATIONS

Project Description

This Order deals with Staff's recommendation on the Somerdale Road (Owens Corning) Landfill proposed to be located in Gloucester Township, New Jersey. The applicant seeking certification submitted the required documentation to enable a NJDEP determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed landfill. The NJDEP reviewed the application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP's determination, information contained in the application, and the January 23 Order, Staff is recommending conditional certification for the Somerdale Landfill, 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
1/9/2014	Robert Potter	1 Point Drive Brea, CA 92821	PVNavigator, LLC	Somerdale Road Landfill	300 Somerdale Road Gloucester, NJ 08083	Camden	Landfill	3.897	PSE&G

Somerdale Road Landfill – (Gloucester Township) – Docket No. Q014010014

On January 9, 2014, PVNavigator, LLC ("PVNavigator" or "applicant") submitted an application to the Board to have its project certified as being located on a properly closed landfill pursuant to Subsection t of the Solar Act. Applicant's 3.897 MWdc project is proposed to be constructed on the Somerdale Road landfill owned by Owens Corning Fiberglass Corporation in Gloucester Township, New Jersey. In its application, PVNavigator represented that the Somerdale Road landfill ceased operations in 1976.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised Board Staff that it reviewed the application and found that the site meets the definition of a "properly closed sanitary landfill facility" pursuant to N.J.S.A. 48-3:87(t)(1). NJDEP also advised that to install the solar array proposed, a Landfill Closure and Post-Closure Plan ("Closure Plan") application will be necessary as well as any other permits identified by NJDEP once the solar design plans are submitted. NJDEP further indicated that the Closure Plan 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 on-going maintenance and monitoring during the post-closure period.

Additionally, NJDEP has advised that, because the Somerdale Road Landfill, also known as the "Owens-Corning site," was remediated with Site Remediation Program oversight, a Licensed Site Remediation Professional ("LSRP") must be retained to submit a modified Deed Notice and Remedial Action Permit Application once the engineering controls are modified and restored. On this basis, Staff recommends that the project be conditionally approved and that the applicant retain a LSRP to ensure the solar project does not jeopardize the remediation activities previously conducted at the site.

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 project developers satisfying NJDEP permit requirements for the construction of the solar facility.

In addition, the Board has the power to relax its administrative rules if doing so permits the Board to effectively carry out its statutory functions. N.J.A.C. 14:1-1.2. As noted above, based on experience working with several of the initial Subsection t applicants which received conditional approval from the Board, Staff concludes that the existing rules for SREC registration provide a disincentive for the project developers to execute a contract for the installation of the solar facility, and submit the initial registration in the SRP, on a timely basis. Developers have expressed wariness toward timely execution of a contract and SRP participation after receiving the Board's conditional certification under Subsection t due to the SRP rules at N.J.A.C. 14:8-2.4 (f) which limit the registration length to one year and at N.J.A.C. 14:8-2.4 (g) which provide only one six month extension. Because construction of solar facilities on properly closed sanitary landfills, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer completion periods, Staff has noticed that the project developers under Subsection t are waiting until the last minute to execute engineering, procurement and construction contracts because that triggers the ten day rule for SRP registration and starts the clock on the one year plus six months extension registration length. The goal of SRP is transparency to all market participants of each project's capacity and likelihood of completion, and Staff's experience with implementing the Board's directives pursuant to Subsection q of the Solar Act applicants provides an apt model.

Therefore, Staff recommends that the applicant and all future applicants submit the SRP registration package to the Board within fourteen days of the effective date of an Order granting conditional or final certification (whichever comes first in time) and that the SREC Registration period for these projects be modified from the one year provided in the current RPS rules to two years to accommodate the longer construction periods for Subsection t projects.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that Staff has consulted with the NJDEP with regard to the development of an application 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 application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed sites.

Based on information provided by NJDEP, the Board **FINDS** that the Somerdale Road 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, monitoring and source of funding" must be accounted for to construct the solar project.

The Board **FINDS** that the applicant must satisfy NJDEP requirements and **DIRECTS** the applicant to obtain a LSRP and demonstrate to Staff that they have satisfied all NJDEP requirements for full certification. The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten days of installation contract execution at N.J.A.C. 14:8-2.4 (c) and the registration length of one year at N.J.A.C. 14:8-2.4 (f) for the Somerdale Road Landfill project.

The Board **DIRECTS** Staff to issue full certification to the 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 project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

Lastly, the Board further **DIRECTS** all future applicants submit the SRP registration package to the Board within fourteen days of the effective date of an Order granting conditional or final certification (whichever comes first in time) under Subsection t and further **GRANTS** a modification of one year provided in the current SRP to two years for construction to accommodate the longer construction periods for Subsection t projects. The Board **HEREBY DIRECTS** Staff to begin the process of amending the SREC registration rules to conform to the requirements of the Solar Act and this Board Order.

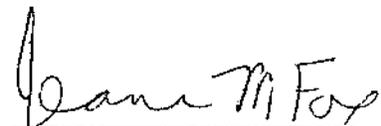
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed projects beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans as represented in the application, and the SRP registration.

This Order shall be effective on June 30, 2014.

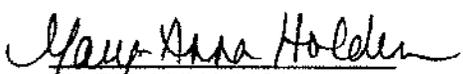
DATED: 6/18/14

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BY:


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PRESIDENT


JEANNE M. FOX
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JOSEPH L. FIORDALISO
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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; AND

IN THE MATTER OF PVNAVIGATOR, LLC - SOMERDALE ROAD
(OWENS CORNING) LANDFILL

Docket Nos. EO12090832V, EO12090862V, and QO14010014

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