



Agenda Date: 3/26/18
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)	
<u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u>)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF)	
<u>L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A PROCEEDING</u>)	
TO ESTABLISH A PROGRAM TO PROVIDE SRECS)	
TO CERTIFIED BROWNFIELD, HISTORIC FILL AND)	DOCKET NO. EO12090862V
LANDFILL FACILITIES)	
)	
KDC SOLAR BLACK ROCK, LLC)	
SCHALKS CROSSING ROAD)	DOCKET NO. QO17080893

Party of Record:

Joshua Smith, KDC Solar Black Rock, LLC

BY THE BOARD:

This Order concerns an application by KDC Solar Black Rock, LLC (“KDC” or “Applicant”) for certification pursuant to L. 2012, c. 24, (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). KDC seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SRECs”) for the proposed solar electric generation facility to be located in Plainsboro, Middlesex County, New Jersey. KDC alleges that the proposed site is a brownfield as defined in the Solar Act.

BACKGROUND

On July 23, 2012, the 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 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.

The October 10 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 and of 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 L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

¹ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090860V; I/M/O the Implementation of L.2012, C.24, N.J.S.A. 48:3-87(e)(4) – Net Metering Aggregation Standards, Docket No. EO12090861V; 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, Docket No. EO12090880V; 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, Docket No. EO12090862V; 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, Docket No. EO12090863V (October 10, 2012) ("October 10 Order").

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. (January 24 Order at 12-13). 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. Ibid.

The January 24 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 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.

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 KDC that its proposed solar facility, to be located in Plainsboro, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). KDC filed an application with supporting documentation with the Board, which then forwarded the materials to NJDEP for it to determine whether the proposed site is a brownfield, area of historic fill, or properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on the land use classification and the closure or remediation status of the proposed site. Based on NJDEP's determination, the information certified by KDC in its application and the January 24 Order, Staff recommends that the Board deny certification, as explained further below.

² I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; 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, Docket No. EO13010009V (January 24, 2013) ("January 24 Order").

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MW dc)	EDC
KDC Solar Black Rock, LLC	QO17080893	Black Rock Gun Club 33 Schalks Crossing Road.	Block 1402, Lot 55 Plainsboro, NJ 08536	Middlesex	Brownfield	4.5	PSE&G

Black Rock Gun Club – (Plainsboro) – Docket. No. QO17080893

On August 17, 2017, KDC submitted an application to the Board to have its four and half (4.5) megawatt (“MW dc”) project on fifteen (15) acres certified as being located on a brownfield pursuant to Subsection (t) of the Solar Act. Specifically, the application identified the owner of the site as Turkey Island Corporation and the location of the site as 33 Schalks Crossing Road, Block 6, Lot 22.03, on the tax maps of Plainsboro, County of Middlesex, and State of New Jersey, 08536.

To its application, KDC attached a site plan, dated November 2, 2016, which showed the location as Block 6, Lot 22.06. In addition, KDC annexed the first and last page of a June 22, 2017 Lease Option Agreement between KDC and Turkey Island Corporation, which described the proposed location of the solar facility as: “Schalks Crossing Road (Block 1402, Lot 55 Q Farm [f/k/a Block 6, Lot 22.05 Q Farm] on the Township of Plainsboro Tax Map)”. KDC’s application also included a Site Investigation Report Remedial Investigation Workplan, dated July 2017, which identified the property as Black Rock Gun Club and Nassau Gun Club, 31 Schalks Crossing Road, Plainsboro, New Jersey, Block 1402, Lot 55. This report also stated that the property is 69.91 acres.

Staff forwarded the application to NJDEP for review and a recommendation as described above. During its review of the application, NJDEP asked KDC to clarify and correct the discrepancies between the block and lot reflected on the application and attachments to the application (i.e., site plan and lease agreement).

In an August 29, 2017 electronic response, KDC submitted a corrected Page 3 to the application and a new site plan dated August 28, 2017, to reflect the accurate block and lot information as Block 1402, Lot 55. In a November 28, 2017 electronic response, KDC further explained that the initial Subsection (t) application had referenced a former tax parcel designation. KDC resubmitted its August 29, 2017 email and attached a copy of the current tax map, identified as 2003-2010 Site Tax Map.pdf, which shows a last revised date of December 2014. All of the documents attached to the August 29, 2017 and November 28, 2017 emails reflect the legal description as Block 1402, Lot 55.

NJDEP indicated that the approximately sixty-nine (69) acre property has been owned by Turkey Island Corporation since 1969. In 1972, a 900-square foot single story club house, two (2) trap ranges and two (2) skeet ranges were constructed, known as Black Rock Gun Club (approximately one (1) acre in total), which still remains an active trap and skeet shooting range on the sixty-nine (69) acre property.

NJDEP determined the fifteen (15) acre area proposed for certification does not meet the definition of “brownfield” as set forth in the Solar Act. According to NJDEP, a review of the tax

records indicates that the sixty-nine (69) acre property is identified as Qualified Farmland.³ NJDEP also noted that the project does not qualify for certification under Subsection (t) of the Solar Act because the proposed area for certification, approximately fifteen (15) acres, is on land which was devoted to "horticultural or agricultural use that is valued, assessed and taxed pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to 23.24, within the ten-year period" prior to the Solar Act's effective date. In support of this finding, NJDEP cited In re 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, Area of Historical Fill, and Landfill Facilities – Millenium Land Development, LLC (Love Lane), 443 N.J. Super. 73 (App. Div. 2015) ("Millenium"). Accordingly, NJDEP concluded that the fifteen (15) acre portion of the sixty-nine (69) acre property for which the Applicant seeks certification is not a brownfield.

Based on the information provided by KDC and NJDEP's determination that the solar project as proposed is not located on a brownfield under the Solar Act, Staff recommends that the Board deny 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 fifteen (15) acres requested for Subsection (t) certification on Block 1402, Lot 55 is not located on land meeting the Solar Act's definition of a brownfield, because the record shows that the sixty-nine (69) acre property is farmland.⁴ The Board agrees. KDC's application cannot be considered under Subsection (t), because the solar project will be sited on land which had been valued, assessed and taxed as farmland, and such applications are governed by N.J.S.A. 48:3-87(s) ("Subsection (s)").

Subsection (s) states in relevant part:

[A] solar electric power generation facility that is not net metered or an on-site generation facility and which is located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.) at any time within the 10-year period prior to . . . [July 23, 2012], shall only be considered "connected to the distribution system" if (1) the board approves the facility's designation pursuant to subsection q. of this section; or (2)(a) PJM issued a System

³ See searchable property tax database (referenced below) <https://www.stateinfoservices.com/property/1218/1402/55/QFARM>. Under the New Jersey Property Tax System, QFARM (3B) is a class of real property, which stands for Qualified Farmland. Thus, the 69.91 acres is assessed and taxed as Farmland. However, while one (1) acre of property used for the Black Rock Gun Club is assessed as commercial (4A), the proposed portion of land subject to the instant application is assessed as QFARM. Therefore, as the property is farmland and as the applicant produced no evidence that the proposed area is "a former or current commercial or industrial site," the location does not meet the definition of a brownfield. See, N.J.S.A. 48:3-51.

⁴ "Farmland" is "land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," N.J.S.A. 54:4-23.1 at any time within the 10-year period prior to the effective date of the Solar Act." N.J.A.C. 14:8-1.2. See also, N.J.S.A. 48:3-51.

Impact Study for the facility on or before June 30, 2011, (b) the facility files a notice with the board within 60 days of . . . [July 23, 2012], indicating its intent to qualify under this subsection, and (c) the facility has been approved as “connected to the distribution system” by the board

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

The plain text of Subsection (s) is indicative of a legislative intent to discourage development of grid-supply solar facilities on farmland and to limit eligibility of projects located on farmland to Subsections (q) and (s).

In Millenium, a development company filed an application seeking certification under Subsection (t) for its proposed solar facility on a former apple orchard. See Millenium, 443 N.J. Super. at 80. The Board denied the application, finding that the project did not qualify for certification under Subsection (t) because the site was farmland.⁵ To provide guidance to other developers, the Board clarified that solar projects on agricultural land “that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964 . . . within the ten (10) year period prior to July 24, 2012 will not be eligible for designation as being located on a brownfield . . . for purposes of qualifying for SRECs under Subsection t.”⁶

On November 12, 2015, the Appellate Division agreed and affirmed the Board’s denial of Millenium’s application under Subsection (t). The Court found that “projects sited on agricultural property valued, assessed and taxed as farmland do not qualify as brownfields for purposes of subsection (t).” Millenium, 443 N.J. Super. at 78. The court also held that Subsection (s) unambiguously precludes a Subsection (t) application for a solar project on land that was valued, assessed and taxed as farmland within the ten (10) year period prior to the effective date of the Solar Act. Id. at 80.

Like Millenium, KDC’s application must also be rejected as it is not eligible for SRECs under Subsection (t). KDC’s application discloses that the fifteen (15) acre parcel of land chosen for the construction of the solar facility qualifies as farmland, as that term is defined in the Solar Act and at N.J.A.C. 14:8-1.2. As noted earlier, the entire site is approximately sixty-nine (69) acres and its legal description is Block 1402, Lot 55. The June 22, 2017 Lease attached to the instant application described the proposed location of the solar facility as: “Schalks Crossing Road (Block 1402, Lot 55 Q Farm [f/k/a Block 6, Lot 22.05 Q Farm] on the Township of Plainsboro Tax Map)” (emphasis added). The 2003-2010 Site Tax Map also contains the words “Q Farm” for Block 1402, Lot 55 (emphasis added). Moreover, a searchable tax and property database discloses that the 69.91-acre property, with the exception of the one (1) acre on which the

⁵ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; and Millenium Land Development, LLC Love Lane – Motion for Reconsideration, Docket No. EO13050429V (May 21, 2014), 2014 N.J. PUC LEXIS 155. In its order, the Board clarified that solar projects on agricultural land “that is valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964 . . . within the ten (10) year period prior to July 24, 2012 will not be eligible for designation as being located on a brownfield . . . for purposes of qualifying for SRECs under Subsection t.” Id. at *14.

⁶ See Board’s May 21, 2014 decision denying Millenium’s motion for reconsideration of the Board’s July 19, 2013 Order. 2014 N.J. PUC LEXIS 155. In the May 21, 2014 decision, the Board confirmed its earlier rejection of Millenium’s application filed pursuant to the Solar Act, N.J.S.A. 48:3-87(t), but stated different grounds for rejection. Ibid.

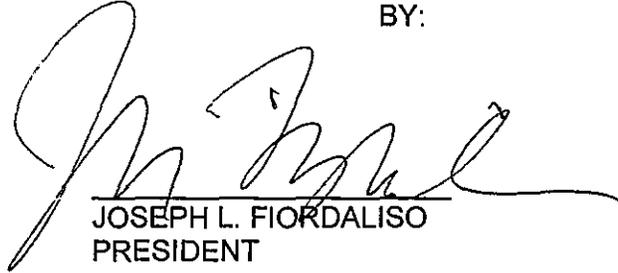
building and trap and skeet shooting range are located, is classified and taxed as a farm. <https://www.stateinfoservices.com/property/1218/1402/55/QFARM.7>

For these reasons, the Board **FINDS** that the project does not qualify for certification under Subsection (t) because the project is located on farmland and, as such, the Board **DENIES** the request for certification of the project.

This Order shall be effective on April 5, 2018.

DATED: 3/26/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARYANNA HOLDEN
COMMISSIONER



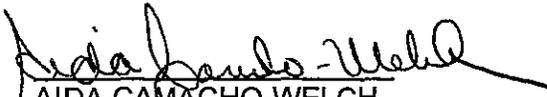
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



RICHARD S. MROZ
COMMISSIONER

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.

⁷ See also, <http://www.state.nj.us/treasury/taxation/lpt/TaxListSearchPublicWebpage.shtml>.

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SCHALKS CROSSING ROAD**

DOCKET NOS. EO12090832V, EO12090862V AND QO17080893

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