



Agenda Date: 8/29/18
Agenda Item: 8C

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 LANDFILL FACILITIES)	DOCKET NO. EO12090862V
)	
HESP SOLAR, LLC JACKSON LEGLER LANDFILL)	DOCKET NO. Q018040428
)	

Party of Record:

Daniel Grohman, HESP Solar, LLC

BY THE BOARD:¹

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

¹ Commissioner Robert M. Gordon did not participate.

² The landfill has been referred to as the “Jackson Twp/Legler LF,” “Jackson Township/Jackson Legler Landfill,” “Jackson Township (Legler) Landfill,” and “Jackson Township Landfill.”

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.³

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

³ 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).

construction of all measures, structures, or equipment required by the Department of Environmental Protection” Ibid.

Toward implementing the October 10, 2012, 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.

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.⁴ 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 the 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 the 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 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 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.

⁴ 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).

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by HESP Solar that its proposed solar facility, to be located in Jackson Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). HESP Solar 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 May 22, 2018 on the land use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP’s determination, the information certified by HESP Solar in its application, and the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
HESP Solar, LLC	Q018040428	Jackson TWP, Legler Landfill	Block 18702, Lot 29; Block 19001, Lot 5 Lakehurst Avenue & Dorothy’s Lane Jackson, NJ 08527	Ocean	Landfill	3.987	JCP&L

HESP Solar, LLC – Jackson Legler Landfill – Docket. No. Q018040428

On April 16, 2018, HESP Solar 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 3.987 MWdc project is proposed to be constructed on 12.12 acres of land owned by Jackson Township. The landfill is located on an approximately 68.29-acre lot, specifically, Block 18702, Lot 29 and Block 19001, Lot 5, between Lakehurst Avenue and Dorothy’s Lane⁵ in Jackson Township, Ocean County, New Jersey. Regarding the site plan included as Attachment 4, HESP Solar noted in Attachment 5 that the final locations of the panels, associated equipment pads and access roads to be located within the area of waste and the final location of the interconnection improvements as well as the nature of such

⁵ On Page 4 of the Sub-T Application, HESP lists the site address as Lakehurst Avenue and Dorothy’s Lane, Jackson, NJ, 08527. The maps attached to the application as Attachments 3 and 4 show the site approximate to Dorothy’s Lane (“Dorothy’s” Lane is the correct spelling, according to the subject maps submitted to the application, and Google Maps). In addition, in Attachment 5, the Applicant noted that the Block and Lot information in Section F of the Application is based on current tax maps of the Jackson Township, but that a title search indicated that the affected areas were previously designated as Block 37, Lots 2-13, and Block 34, Lots 21-27 and 31-37, generally corresponding with the Block and Lot information included in the approved closure plan and on the DEP’s website at <http://www.nj.gov/dep/dshw/lrm/landfill.htm>.

interconnection improvements are subject to review and approval by the Pinelands Commission.

Staff forwarded the application to NJDEP, for review and a recommendation as described above. NJDEP indicated that the Jackson Legler Landfill operated from 1972 to 1980 and accepted sewage sludge, septic tank wastes, solid wastes, bulk liquid and semi-liquid coffee wastes, household refuse, tree stumps, construction debris, junked cars, and liquid septage. After residents complained of poor water quality, the landfill was closed by order of the Superior Court of New Jersey in 1980.

NJDEP stated that the Environmental Protection Agency ("EPA") placed the site on the Superfund Program's National Priorities List ("NPL") in September 1983. EPA completed a Remedial Action Master Plan ("RAMP") for the site in November 1984, which concluded that additional investigation of the site was necessary. In 1988, the NJDEP and Jackson Township entered into a Judicial Consent Order ("JCO") that required Jackson Township to conduct further investigation and remediation of the landfill. In 1989 and 1990, Jackson Township conducted a remedial investigation ("RI") of the site, in addition to a risk assessment. Based on the results of the RI and findings of the risk assessment, the NJDEP, with EPA's concurrence, issued a No Further Action with Maintenance and Monitoring Record of Decision ("ROD") for the site in September 1994. Pursuant to both the JCO and ROD, closure and on-going maintenance and monitoring of the landfill were to be conducted in accordance with the NJDEP's Solid Waste Rules. In September 1995, EPA removed the site from the NPL.

NJDEP noted that Jackson Township submitted a Closure Plan to the NJDEP in June 1995, and NJDEP issued a Closure and Post-Closure Plan Approval ("Approval") in February 1996. The Closure Plan and Approval addressed final cover, soil erosion and sediment control, landfill gas venting, access controls, groundwater and landfill gas monitoring, and post-closure operation and maintenance. In 1997, Jackson Township submitted a certification that closure was completed in 1996. Due to elevated methane levels found during landfill gas monitoring, the Approval was modified in September 2004 to require the upgrade of the landfill gas venting system. Jackson Township submitted certification of installation of the landfill gas venting system upgrades in November 2008. NJDEP noted that Jackson Township is required to continue maintenance and monitoring of the landfill in accordance with the modified Approval.

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 the NJDEP Division of Solid and Hazardous Waste, as well as any permits identified by the Department, and approval from any other applicable state or federal agency. For example, if applicable, the property owner may need to ensure compliance and obtain any relevant approvals from the Pinelands Commission, such as a comprehensive management plan ("CMP"), if appropriate, prior to construction of the solar electric power generation facility. NJDEP stated that 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 ongoing maintenance and monitoring during the post-closure period. Consistent with these

requirements, NJDEP stated that the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap.

Based on the information provided in the application and NJDEP's determination that the solar project as proposed is 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 12.12 acres requested for Subsection (t) certification on Block 18702, Lot 29 and Block 19001, Lot 5 is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." Based on information provided by NJDEP, the Board **FINDS** that the Jackson Legler 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 the NJDEP Division of Solid and Hazardous Waste, as well as any permits identified by NJDEP, and approval from any other applicable state or federal agency, prior to construction of the solar electric power generation facility. The Board also **FINDS** that "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" must be addressed to construct the solar electric power generation facility. The property owner and operator of the solar electric power generation facility should ensure that all future operations continue to protect the integrity of the cap for the Jackson Legler Landfill.

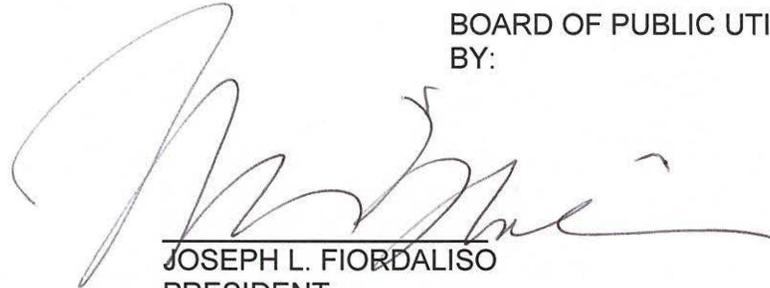
The Board **FINDS** that the NJDEP requirements must be addressed and thus **GRANTS** conditional certification. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements for landfill disruption have been satisfied and that there are no outstanding requirements under the Closure and Post-Closure Plan Approval. To obtain full certification, the Board **ALSO DIRECTS** the Applicant to demonstrate to Staff that the Pinelands Commission has issued a final determination finding that the site plan meets the minimum standards of the CMP, and/or that the Applicant has also obtained compliance with any other relevant approvals from the Pinelands Commission.

In addition, to obtain full certification, the Board **DIRECTS** HESP Solar 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, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

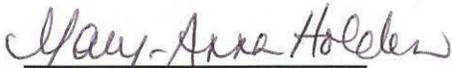
This Order shall be effective on September 8, 2018.

DATED: 8/29/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER

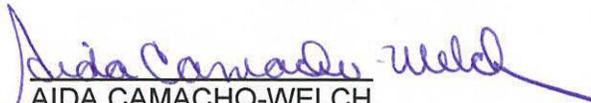


DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
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.

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; HESP Solar, LLC – Jackson Legler Landfill

Docket Nos. EO12090832V, EO12090862V, and Q018040428

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