



Agenda Date: 1/17/19 •
Agenda Item: 8B

STATE OF NEW JERSEY
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

SENECA ENERGY, LLC)
LAKES SAND & GRAVEL LANDFILL)

DOCKET NO. QO18060622

Party of Record:

Larry Haas, Seneca Energy, LLC

BY THE BOARD:

This Order concerns an application by Seneca Energy, LLC (“Seneca Energy” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). Seneca Energy seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SRECs”) for the proposed solar electric generation facility to be located at the Lakes Sand & Gravel Landfill¹ in Tabernacle Township, Burlington County, New Jersey. Seneca Energy alleges that the proposed site is a properly closed sanitary landfill facility as defined in the Solar Act.

¹ In Section F of the application, Seneca Energy listed the name of the landfill as Lakes Sand & Gravel. However, other documents identify the landfill as Lakes Sand & Gravel, LLC or Lake Sand & Gravel Landfill. In addition, in Section F of the application, Seneca Energy identified the address as 290 Medford Lakes Road in Tabernacle. However, some documents identify the property address as 208 Tabernacle-Medford Lakes Road in Tabernacle. The Block and Lot references, Block 202.02, Lots 10 and 11, remain consistent. We will refer to the proposed location of the solar array as Lakes Sand & Gravel Landfill, 290 Medford Lakes Road, Tabernacle, New Jersey.

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.²

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

² *I/M/O the Implementation of P.L. 2012, C. 24, The Solar Act of 2012; I/M/O the Implementation of P.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 P.L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; I/M/O the Implementation of P.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 P.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 P.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).*

("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.³ 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.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by Seneca Energy that its proposed solar facility, to be located in Tabernacle, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). Seneca Energy filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. The NJDEP reviewed the application and supplied an advisory memorandum to Staff on December 11, 2018 on the land use classification and the closure or remediation status of the proposed

³ [I/M/O the Implementation of P.L. 2012, C. 24, The Solar Act of 2012; I/M/O 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; and I/M/O the Implementation of P.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 \(Jan. 24, 2013\).](#)

site. On the basis of the NJDEP's determination, the information certified by Seneca Energy in its application, and the January 24, 2013 Order, Staff recommends that the Board deny conditional certification, as explained further below.

Developer	Docket Number	Project Designation	Location / Town	County	Landfill, Brownfield, or Historic Fill	Array (MWdc)	EDC
Seneca Energy, LLC	QO18060622	Lakes Sand & Gravel Landfill	Block 202.02, Lots 10 and 11 290 Medford Lakes Rd Tabernacle, NJ 08088	Burlington	Landfill	13	PSE&G

Seneca Energy, LLC – Lakes Sand & Gravel Landfill – Docket No. QO18040430

On May 18, 2018, Seneca Energy submitted its application⁴ 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 13 MWdc project is proposed to be constructed on fifty (50) acres of land purportedly owned by Seneca Energy. The former landfill is located on a ninety-six (96) acre site, specifically, Block 202.02, Lots 10 and 11, at 290 Medford Lakes Road in Tabernacle Township, Burlington County, New Jersey.

Staff forwarded the application to the NJDEP for review and a recommendation as described above. NJDEP indicated that a Disruption Approval was issued on October 27, 2004 for the excavation of 100,000 cubic yards of debris and waste material from a seven-acre landfill on site. The Department noted that it is in receipt of the September 28, 2007 NFA letter attached to the Lakes Sand & Gravel Subsection (t) application. This unrestricted use NFA was issued for the former landfill and soil stockpile areas. The Department noted that, according to Lakes Sand & Gravel, LLC's December 13, 2005⁵ certified Final Report, post-excavation sampling results indicated that contamination was remediated below standards. In addition, the Department noted that there is an unrestricted use NFA letter dated February 20, 2008 for the entire site.

According to the Solar Act at N.J.S.A. 48:3-87(t)(1), SRECs may be available for projects proposed to be located on a properly closed sanitary landfill facility. The NJDEP no longer considers the subject site as a landfill, as the NFAs referenced above indicate that a cleanup was conducted and contamination was remediated.

⁴ As attachments to the application, Seneca Energy attached a three-page No Further Action ("NFA") letter, dated September 28, 2007. Seneca Energy also attached a two-page, undated letter. However, the two pages are not from the same document. The first page appears to be another NFA letter for the property ("undated NFA"). The second page is a letter signed by Robert M. Confer, but based on the limited information on this page, it is not certain that the correspondence relates to this property. NJDEP was able to locate a complete copy of that undated NFA, which is a three page NFA document dated October 25, 2006, and relates solely to the removal of an underground storage tank, which is not a controlling document in the instant matter. The next document in the application was a fax cover sheet indicating that the attachment was a copy of an invoice and dumping slip for the site. The invoice, however, was not legible. Seneca Energy also included three Well Abandonment Reports and a Preliminary Layout of the proposed solar system as rendered in Drawing A1, dated January 25, 2017.

⁵ The reference to 2015 in the Recommendation Memorandum is a typographical error as the September 28, 2007 NFA letter shows the year as 2005.

Based on the information provided in the application and the NJDEP's determination that the fifty (50) acre portion of the ninety-six (96) acre property for which Seneca Energy requests Subsection (t) certification does not constitute a "properly closed sanitary landfill facility" under the Solar Act, Staff recommends that the Board deny certification of the proposed project.

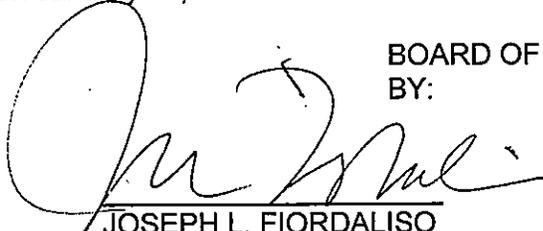
FINDINGS AND CONCLUSIONS

The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to the NJDEP for a determination of eligible land use type and status of remediation on the proposed site. The NJDEP has determined that the fifty (50) acre portion of the ninety-six (96) acre property for which Seneca Energy requests Subsection (t) certification does not constitute a "properly closed sanitary landfill facility." On September 28, 2007, the Department issued an unrestricted use NFA letter for Block 202.02, Portion of Lots 10 and 11. Also, on February 20, 2008, the Department issued an unrestricted use NFA letter for the entire site, Block 202.02, Lots 10 and 11. These documents demonstrate that, following various remediation efforts, the debris and waste were removed, and Lakes Sand & Gravel eventually received an unrestricted use NFA letter for the entire site. Indeed, Applicant's Drawing A1 shows the areas where the debris and waste were removed. Based on information provided by the NJDEP and the information certified in Seneca Energy's application, the Board **FINDS** that the Lakes Sand & Gravel Landfill project is not located on land meeting the definition of a "properly closed sanitary landfill facility."

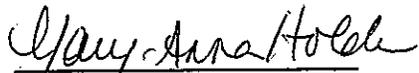
The Board therefore **DENIES** conditional certification of the Applicant's proposed solar electric generation facility at the Lakes Sand & Gravel Landfill at Block 202.02, Lots 10 and 11 in Tabernacle Township, Burlington County, New Jersey.

This Order shall be effective on January 27, 2019.

DATED: 1/17/19

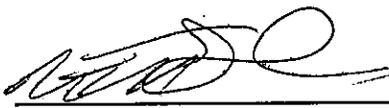

JOSEPH L. FIORDALISO
PRESIDENT

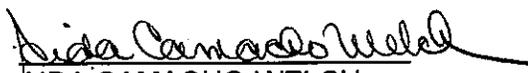
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PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SRECS TO CERTIFIED
BROWNFIELDS, HISTORIC FILL AND LANDFILL FACILITIES; SENECA ENERGY, LLC –
LAKES SAND & GRAVEL LANDFILL**

DOCKET NOS. EO12090832V, EO12090862V, AND QO18060622

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