



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF <u>P.L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012	)	DOCKET NO. EO12090832V
	)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>P.L.</u> 2012, <u>C.</u> 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
	)	
LAKEHURST SOLAR, LLC JOINT BASE MCGUIRE-LAKEHURST	)	DOCKET NO. QO18060658

**Party of Record:**

**Jamie Fordyce**, Lakehurst Solar, LLC

**BY THE BOARD:**

This Order concerns an application by Lakehurst Solar, LLC ("Lakehurst Solar" or "Applicant") for certification pursuant to P.L. 2012, c. 24 ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection (t)"). Applicant seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located at the US Naval Air Station Lakehurst at Joint Base McGuire-Dix-Lakehurst, at Block 70, Lot 18 on Route 547 in Manchester Township, Ocean County, New Jersey ("Joint Base McGuire-Lakehurst"). Applicant submitted the required documentation to enable a determination by the New Jersey Department of Environmental Protection ("NJDEP") as to whether the proposed project is located on a brownfield as defined in the Solar Act.

**BACKGROUND**

On July 23, 2012, the Solar Act was signed into law. The Solar Act amended certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act required 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.<sup>1</sup>

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 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.

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<sup>1</sup> 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).

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.<sup>2</sup> 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 that 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 New Jersey Clean Energy Program 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.

On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17 ("Clean Energy Act"), which requires the Board to close the SRP once the Board has determined that 5.1% of the total kilowatt-hours sold in New Jersey have been generated by SREC-eligible solar generation installations ("5.1% Milestone"). The Clean Energy Act also sets the SREC term as ten years. Pursuant to the Clean Energy Act and Board Orders dated October 29, 2018<sup>3</sup> and February 27, 2019,<sup>4</sup> a proposed solar electric generation facility that submits a Subsection (t) application after October 29, 2018 is eligible to receive a ten-year SREC term, provided that the project achieves

<sup>2</sup> 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).

<sup>3</sup> I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2018 N.J. PUC LEXIS 251 (Oct. 29, 2018).

<sup>4</sup> I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2019 N.J. PUC LEXIS 20 (Feb. 27, 2019).

commercial operation prior to the Board's closure of the SREC program upon attainment of the state's 5.1% solar milestone and is otherwise in compliance with applicable law.

**STAFF RECOMMENDATIONS**

**Project Description**

As stated above, at issue is the request by Lakehurst Solar that its proposed solar facility, to be located in Manchester Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). Lakehurst Solar submitted an application to BPU on June 19, 2018 with supporting documentation to enable a NJDEP determination as to whether the proposed site is located on a "brownfield," as defined in the Solar Act, N.J.S.A. 48:3-87(t). NJDEP reviewed the application and supplied advisory memoranda to Staff on December 20, 2018 and March 29, 2019 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 Lakehurst Solar 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 Size (MWdc)	EDC
Lakehurst Solar, LLC	QO1806065 8	Joint Base McGuire-Lakehurst Brownfield	Block 70, Lot 18 Route 547, Manchester Township, NJ 08641	Ocean	Brownfield	13.8	JCP&L

**Lakehurst Solar, LLC – Joint Base McGuire-Lakehurst Brownfield – Docket No. QO18060658**

On June 19, 2018, Lakehurst Solar, LLC submitted its application to the Board to have its project certified as being located on a brownfield pursuant to Subsection (t) of the Solar Act. Applicant submitted supplemental information about past use of the site that the NJDEP received on August 1, 2018, October 17, 2018, January 7, 2019, and January 23, 2019. Applicant's 13.8 MWdc project is proposed to be located on 68.24 acres of the total 1,066 acres of Block 70, Lot 18 owned by U.S. Naval Air Station Lakehurst at Joint Base McGuire-Dix-Lakehurst and located on Route 547 in Manchester, New Jersey.

Staff forwarded the application to NJDEP on or around June 19, 2018, for review and a recommendation as described above.<sup>5</sup> NJDEP noted that Applicant identified the U.S. Air Force as the present owner of Joint Base McGuire-Dix-Lakehurst ("Joint Base"), the U.S. Navy as the owner from 1921–2009, and the U.S. Army as the owner from 1917–1921. NJDEP also noted that supplemental information submitted by Applicant indicates that some portion of the property was leased by Eddystone Chemical Company ("Eddystone"), described as "an industrial chemical company" circa 1916, but that NJDEP is not in possession of documentation specifically identifying the area or dimensions of this former company.

<sup>5</sup> NJDEP also reviewed the Applicant's supplemental information which was received on August 1, 2018 and October 17, 2018.

NJDEP stated that the Applicant's submission of the Final Environmental Assessment for the proposed solar installation reflects that the leasehold for the installation is sixty-eight acres but that Applicant did not submit documentation demonstrating that the proposed project is located on the former Eddystone property. NJDEP also indicated that the proposed site contains 16.8 acres of pine trees that would have to be removed to accommodate the installation.

NJDEP further described how Applicant's supplemental submission identified the entire base as the site on which there has been, or at least is suspected to have been, a discharge of a contaminant. NJDEP noted, however, that the Subsection (t) application, along with supporting attachments provided by Applicant establishes that there is no indication of soil contamination in the proposed solar area, which is just south of Landsdowne Road and west of Route 547, at the main gate. NJDEP asserted that it appears that the only contamination relied upon by Applicant for the premise that there has been a discharge is groundwater contamination, as depicted by the Classification Exception Area boundary, which is outside of the proposed site.

NJDEP determined that the area of the site for which the Applicant requests certification does not meet any of the three prongs of the Solar Act's definition of a "brownfield" at N.J.S.A. 48:3-51 – that is, 1) it is a former commercial or industrial site; 2) it is currently vacant or underutilized; and 3) on which there has been, or there is suspected to have been, a discharge of a contaminant. Specifically, DEP stated that:

- a. The site is not currently vacant or underutilized. The solar project is proposed for location on an active federal military installation. NJDEP does not consider an active federal military installation to be "currently vacant or underutilized" as that phrase is used in the Solar Act's definition of "brownfield."
- b. There has not been a discharge of a contaminant at the site of the solar installation. The documentation submitted to the NJDEP establishes that there is no contamination at the site of the proposed solar installation. To rely on the existence of groundwater contamination present at other areas of the site as reflected in the Classification Exception Area would run counter to the intent and purpose of the Solar Act, which is to promote solar projects on "contaminated industrial and commercial sites." In re Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(t), 443 N.J. Super. 73, 76 (App. Div. 2015).
- c. The site of the proposed solar facility is not on the site of the former industrial establishment. The applicant submitted information to show that there apparently was an industrial establishment located on a portion of the property that is now the Joint Base. However, the location of that establishment has not been clearly identified. Although the applicant suggests that the extent of the brownfield should be the entire area that the former industrial establishment affected or encroached upon in the early 1900s, as a result of its operations, to include the entire base as the brownfield "site" would contort the meaning of a brownfield pursuant to the Solar Act.

NJDEP referred to the intent of the Solar Act to further several goals of the New Jersey Energy Master Plan, including promoting the installation of solar projects on contaminated industrial and commercial sites that would likely otherwise remain unproductive, and encouraging the construction of solar energy facilities on polluted former commercial and industrial land that is not readily usable for general commercial or residential purposes. NJDEP concluded that, although a portion of the Joint Base property may have had a commercial/industrial history, it was subsequently and continues to be actively and productively used as a federal military base.

NJDEP stated that this use contradicts the notion that the prior history rendered the property unproductive or "not readily usable for general commercial or residential purposes," as envisioned in the Energy Master Plan.

Following NJDEP's submission of its advisory memorandum to Staff on December 20, 2018, the Board received a letter from the President of Lakehurst Solar, Mr. James S. Gordon, dated January 7, 2019, and from Mr. Christopher A. Archer, Deputy Base Civil Engineer, Department of the Air Force, 87<sup>th</sup> Air Base Wing, dated January 18, 2019. Both letters are in support of the application and express the position that the site of the proposed solar project is a brownfield as defined in the Solar Act. The Board sent the letters to NJDEP and requested that NJDEP prepare an additional formal memorandum in response, which NJDEP did on March 29, 2019.<sup>6</sup>

As described by NJDEP, in his January 18, 2019 letter, Mr. Archer notes that the Air Force evaluated the site in conjunction with its lease program and determined that it is underutilized and therefore classified as "vacant," "underdeveloped," "open," and "not needed" for the term of the lease. In his January 7, 2019 letter, Mr. Gordon suggests that NJDEP's position that the project site is not "currently vacant or underutilized" is inapposite to the federal government's determination that the site is vacant and underutilized and is therefore arbitrary, capricious, and contrary to fact and law. Although a copy of the referenced lease was not provided, Mr. Gordon avers that the language of the lease confirms that the site is currently vacant and underutilized. He refers to provisions describing the site as "generally underdeveloped, flat, and open" and referencing that the site "is not for the time needed for public use," and he quotes an appendix to the lease that provides that, "The site is vacant land with a portion utilized for recreational trails. The land is a mixture of forested, grassland and un-vegetated including impervious coverage (abandoned runway and gravel running trails)." Mr. Gordon's submission also references a Government Accountability Office report to bolster his position that federal law clarifies that portions of active federal facilities can be "unutilized" or underutilized."

Following review of Applicant's most recent submissions, NJDEP stood by its original recommendation that the proposed site does not meet the definition of a 'brownfield' pursuant to Subsection (t) of the Solar Act. NJDEP argued that, although the federal government may characterize a portion of the larger facility as "vacant" or "underutilized," these classifications were not made pursuant to the Solar Act and are inconsistent with NJDEP's interpretation of State law as it relates to the definition and designation of a property as a brownfield.

NJDEP reiterated that, in addition to finding that the site is not underutilized, NJDEP found that there has not been a discharge of a contaminant at the site of the proposed solar installation and that the site of the proposed solar facility is not on the site of the former industrial establishment.

NJDEP found that the supplemental submissions provided by Applicant did not provide any new facts to change NJDEP's three-pronged analysis as set forth in its initial Recommendation Memorandum dated December 20, 2018. NJDEP stated that Applicant submitted information to show that an industrial establishment was located on a portion of the property that is now the Joint Base, but the location of that establishment has not been clearly identified, and Applicant submitted no supplemental information to add clarity on this issue. NJDEP asserted that, although Applicant suggests that the extent of the brownfield should be the entire area that the

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<sup>6</sup> In these letters, the Applicant submitted arguments to the Board in its attempts to persuade the Board to reject NJDEP's recommendation. Although the Board had not yet acted on the application, Staff decided to treat these letters as akin to a motion for reconsideration and asked NJDEP to consider them.

former industrial establishment affected or encroached upon in the early 1900s as a result of its operations, it would contort the meaning of a brownfield pursuant to the Solar Act to include the entire military base as the brownfield "site." NJDEP added that, while it was in no way suggesting that the proposed solar array would be an inappropriate use for the site, the project simply should not qualify for SREC certification under Subsection (t) of the Solar Act because the site proposed for the solar installation is not a brownfield.

In summary, NJDEP determined that neither Applicant's conclusory statement that the leased property is vacant or underutilized, nor citation to the federal government lease as support for this position, justifies a repudiation of NJDEP's finding that the 68-acre area for which Lakehurst Solar, LLC requests certification is not a "brownfield," as defined in the Solar Act. The additional information provided by Applicant did not change the Department's conclusion, and NJDEP recommended that the Board deny the application.

Based on the information provided in the application and NJDEP's determination that the solar project as proposed is not a "brownfield" under the Solar Act, Staff recommends that the Board deny conditional certification of the proposed project.

### **FINDINGS AND CONCLUSIONS**

Eligibility to earn SRECs, a form of ratepayer subsidy, under Subsection (t) depends on the classification of the property. The burden is on the Applicant to establish its eligibility by meeting the criteria under Subsection (t). As noted in the January 24, 2013 Order, the applicant must submit project specifications, a map of the area for which the applicant is seeking certification, and a map of the relevant area that has been properly remediated. 2013 N.J. PUC LEXIS 27 at 31-33. Consistent with this Order, the Subsection (t) application requires, among other things, that an applicant provide "a delineated map of the portion of the property on which the solar facility will be located, and the location of the brownfield." See Section 2, question 17. The precise location of the proposed solar project and the precise location of the brownfield are necessary so that NJDEP, with its expertise, can conduct its review and make its recommendation as to whether the proposed location meets the Solar Act's definition of a brownfield.

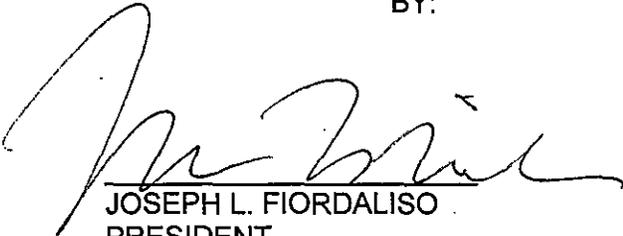
To that end, Staff transmitted the application, including the supplemental information received on August 1, 2018 and on October 17, 2018 and the supplemental information dated January 7, 2019 and January 18, 2019, to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. After a thorough review of the application and the supplemental submissions, NJDEP has determined that the 68.24 acres requested for Subsection (t) certification on Block 70, Lot 18, is not located on land meeting the Solar Act's definition of a "brownfield."

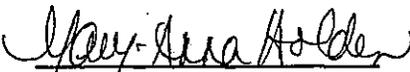
Based on information provided in Lakehurst Solar's application and the analysis supplied by NJDEP, the Board **FINDS** that the Joint Base McGuire-Lakehurst Brownfield project as proposed is not located on land meeting the definition of a "brownfield." For these reasons, the Board **FINDS** that the project does not qualify for certification under Subsection (t) and, as such, the Board **DENIES** the request for certification of the project.

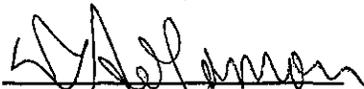
This Order shall be effective on June 7, 2019.

DATED: 5/28/19

BOARD OF PUBLIC UTILITIES  
BY:

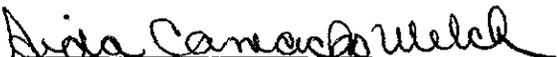
  
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ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

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 – Lakehurst Solar, LLC – Joint Base McGuire-Lakehurst

Docket Nos. EO12090832V, EO12090862V, and QO18060658

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