



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u>	)	ORDER GRANTING
	)	REQUESTS FOR
	)	EXTENSIONS OF TIME TO
	)	REGISTER
IN THE MATTER OF THE IMPLEMENTATION OF <u>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</u>	)	DOCKET NO. EO12090832V
	)	DOCKET NO. EO12090862V
	)	
KDC SOLAR AVON, LLC AVON LANDFILL	)	DOCKET NO. QO18091000
	)	
KDC SOLAR KINGSLAND, LLC KINGSLAND LANDFILL	)	DOCKET NO. QO18090999
	)	
KDC SOLAR RUTHERFORD EAST, LLC RUTHERFORD LANDFILL	)	DOCKET NO. QO18091001

**Party of Record:**

**Joshua Smith, Senior Vice President,** Development, KDC Solar

**BY THE BOARD:**

This Order concerns a March 20, 2020 petition by KDC Solar (“KDC Solar” or “Petitioner”) – on behalf of KDC Solar Kingsland LLC, KDC Solar Avon LLC, and KDC Solar Rutherford East LLC – to the New Jersey Board of Public Utilities (“Board” or “BPU”) for an extension of time to register those three grid-supply solar projects in the Solar Renewable Energy Certificate (“SREC”) Registration Program (“SRP”) given the current public health crisis and resulting business disruption that has arisen since the Board conditionally certified the projects on March 9, 2020, with an effective date of March 19, 2020. N.J.A.C. 14:8-2.4(c)(1) includes, in part, the requirement that a solar electric generating facility shall submit an initial registration package within 14 business days from the effective date of an order granting approval, conditional certification, or designation.

## **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.

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.*

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>1</sup> 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 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.

---

<sup>1</sup> In re 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 In re 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).

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 SRP. The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On September 13, 2018, KDC Solar submitted three applications to the Board seeking certification that three distinct projects were located on a properly closed sanitary landfill facility pursuant to Subsection (t). Each project was proposed to be constructed on property owned by the New Jersey Sports and Exposition Authority. KDC Solar established limited liability partnerships for each project: KDC Solar Avon LLC, KDC Solar Kingsland LLC, and KDC Solar Rutherford LLC.

KDC Solar Avon, LLC is a 11.27 MWdc project proposed to be constructed on property located at Block 231, Lots 14, 15, p/o 16; Block 233, Lot 14; Block 235, Lot 30, p/o 29 at 1000 Valley Brook Avenue in Lyndhurst Township, Bergen County, New Jersey.

KDC Solar Kingsland, LLC is a 8.66 MWdc project proposed to be constructed on property located at Block 236, Lots 1.01; Block 193, Lot 4 on Valley Brook Ave in Lyndhurst/ North Arlington, Bergen County, New Jersey.

KDC Solar Rutherford East, LLC is a 5.81 MWdc project proposed to be constructed on the Rutherford Landfill located at Block 220, Lots 14 and 15.03 on Haul Road in Rutherford Township, Bergen County, New Jersey.

Following review of the application and the advisory memoranda provided by NJDEP, Staff recommended and the Board granted on March 9, 2020 conditional certification based on NJDEP's determination that each of the three projects were located on property defined as a "properly closed sanitary landfill" consistent with the Solar Act of 2012. The Board memorialized its action at the March 9, 2020 Agenda meeting in three Orders, one for each Subsection (t) application submitted.

The three Orders, which each required the developer to submit an SREC registration within 14 business days of the effective date of the Order, became effective on March 19, 2020. The SRP registration for each Subsection (t) project was therefore required to be submitted by April 8, 2020 to be compliant with the Order and the SRP rules at N.J.A.C. 14:8-2.4(c)(1)(i).

On March 27, 2020, toward implementing the Clean Energy Act of 2018 ("CEA") requirement to close the SRP upon the state's attainment of 5.1% of its retail electricity from solar electric generation facilities, the Board issued an Order providing direction to participants in the SREC market on the procedures to be followed during the closure of the SRP.<sup>2</sup> In this Order, consistent with past Orders and rulemaking related to the SRP closure, the Board differentiated between projects which applied on or before October 29, 2018 for conditional certification pursuant to Subsection (t) and those which applied after October 29, 2018. Projects that applied prior to October 29, 2018 were not held to the requirement to obtain permission to operate ("PTO") prior to the SRP closure in order to maintain SREC eligibility but, rather, were granted the ability to use the entire length of time provided for in the SREC registration rules, i.e., submit post-construction certification packages within two years of SRP conditional registration.

---

<sup>2</sup> In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO18070698 (Order dated March 27, 2020).

On April 6, 2020, consistent with the statute and previous Board directives related to SRP closure, the Board announced that the 5.1% milestone for closure would be attained before May 1, 2020 and ordered that this determination and the closure of the SRP would be effective on April 30, 2020.<sup>3</sup> The Board further ordered Staff to close the SRP to new registrations on that date and noted that only projects in the SRP pipeline that received a PTO by April 30, 2020 from the relevant electric distribution company would be eligible to receive SRECs.

The April 6 Order stated generally that projects in the SRP pipeline that did not receive a PTO by April 30, 2020 would be eligible for the Transition Incentive. The April 6 Order inadvertently omitted treatment of the several projects that had submitted Subsection (t) applications to the Board by October 29, 2018. By rule amendment effective February 3, 2020, where solar electric generation facilities are required to apply to the Board for conditional certification and the registration package is deemed by Staff to be complete, Staff shall issue a notice of conditional registration, including an expiration date 24 months after the effective date of conditional certification. N.J.A.C. 14:8-2.4(h)(4)(iii).

### **THE PETITION**

On March 20, 2020, KDC Solar petitioned the Board for extensions of the 14 day requirement to submit its SRP registration packages enumerated at N.J.A.C. 14:8-2.4(c)(1) to June 1, 2020 or following the date the Governor lifts the State of Emergency if the same is still in effect on June 1, 2020. Petitioner cites to the current public health crisis and resulting business disruption that has arisen since the Board's March 9, 2020 meeting as cause to waive the registration rules. Petitioner attributes an inability to access its project engineers during the 14 day period as the cause for failure to register.

### **STAFF RECOMMENDATIONS**

The SREC registration provisions within the Renewable Portfolio Standard rules at N.J.A.C. 14:8-2.4 establish the requirements for SREC eligibility. The registration process is "intended to provide advance notice to the public and the renewable energy markets when increases in solar electric generation capacity in New Jersey are planned." N.J.A.C. 14:8-2.4(a). The registration process includes "three important deadlines" the first of which is described at N.J.A.C. 14:8-2.4(c)(1)(i). Subsection (t) projects which receive a conditional certification are required to register within 14 business days from the effective date of an order granting conditional certification. Pursuant to N.J.A.C. 14:8-2.4(e), if the deadline for registration submittal "is not met, any SRECs based on electricity generated by the solar facility shall not be usable for compliance with this chapter until 12 months after the solar facility received authorization to energize..."

In light of the ability of many solar developers to continue processing SREC registrations through April 30, 2020 without issue, Staff recommends that the Board deny Petitioner's waiver request and direct Staff to implement the penalty for failure to register within 14 business days. Because the activities required for SREC registration can all be conducted within the parameters established by the Governor's Executive Orders, Staff also recommends that the Board direct KDC Solar to complete the registration for each individual project within 14 days of the effective date of this Order

---

<sup>3</sup> In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17 and In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17 – Calculation of 5.1% Milestone for SREC Program Closure, BPU Docket Nos. QO18070698 & QO19010068, Order dated April 6, 2020 ("April 6 Order").

consistent with the SRP rules and the Board's most recent directives to similar Subsection (t) applicants.

Staff notes that the ability to transfer SREC eligibility to the Transition Incentive Program for solar electric generation facilities that applied pursuant to Subsection (t) prior to October 29, 2018, while not raised as an issue within this petition, is currently the subject of three petitions unrelated to this developer. Staff anticipates bringing this separate issue to the Board at a subsequent agenda meeting.

### **DISCUSSION AND FINDINGS**

KDC Solar requests a waiver of the Board's requirement that Petitioner file a registration package with the SRP within a set time period, as set forth at N.J.A.C. 14:8-2.4(c)(1) and as required by each of the Board's three March 9, 2020 Orders. The Board is authorized to waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions.

In special cases and for good cause shown, the Board may grant a request for a waiver of its rules. The Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1) and determines (1) whether the request is in accord with the general purposes and intent of the rules; and (2) whether full compliance with the rules would adversely affect ratepayers, a utility or other regulated entity, or the public interest. To determine the general purpose and intent of its rules, the Board looks to the policy underlying the rule(s) in question, as well as the rule's history.

The SRP registration rules promote the development of renewable sources of electricity. To ensure transparency, provide advance notice to solar market participants of new renewable energy generation entering the market, and protect ratepayers who bear the SREC costs, N.J.A.C. 14:8-2.4 identifies the prerequisites that must be met before solar generation is eligible to earn SRECs. One requirement, codified at N.J.A.C. 14:8-2.4(c)(1)(i), is that the facility register within 14 days of obtaining conditional certification. There is no dispute that KDC Solar has not met this important requirement. KDC Solar's petition refers generally to the public health crisis and business disruption that has arisen since March 9, 2020 to justify its failure to comply with the rule and with the Board's March 9, 2020 Orders. The Board takes notice that a multitude of developers were able to submit new SRP registrations during this time period and that Board has instituted fines for developers who similarly missed the 14 day registration deadline.

While granting an additional amount of time for registration of the three Subsection (t) projects furthers the State's goal of siting solar facilities on properly closed sanitary landfill facilities, the petitioner failed to demonstrate special circumstances and good cause to justify a waiver of the Board's rules.

After weighing all of these considerations, the Board **DENIES** the request for a waiver of N.J.A.C. 14:8-2.4(c)(1). The Board therefore **DIRECTS** for each project that Staff implement the penalty for failure to timely register contained at N.J.A.C. 14:8-2.4(e).

The Board **FINDS** that KDC Solar must register in the SRP as required of all solar electric generation facilities seeking SREC eligibility pursuant to N.J.A.C. 14:8-2.4. The Board also **FINDS** that granting the developer another opportunity to register comports with the general intent and purpose of its rules and will further the State's goal of siting solar facilities on properly closed sanitary landfill facilities. The Board **ADOPTS** Staff's recommendation, and **DIRECTS** Petitioner to submit an initial registration package for each project within 14 business days of the effective date of this Order, by

August 13, 2020. The Board further advises that, should Petitioner fail to comply with the directives in this Order, it may be subject to penalty pursuant to N.J.S.A. 48:2-42.

The Board **DIRECTS** Staff to issue full certification to each project upon Petitioner's demonstration that all requirements for full certification – including all NJDEP requirements and all SRP requirements at N.J.A.C. 14:8-2.4 – have been satisfied. After Petitioner has received full certification for a project, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation for a 15-year qualification life.

This Order is issued in reliance on the information presented in the petition and does not grant any rights beyond a 14 day period of time to file the SRP registrations.

This Order shall be effective on July 25, 2020.

DATED: July 15, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

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, 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, Docket No. EO12090862V

KDC Solar Avon, LLC – Avon Landfill, Docket No. QO18091000  
KDC Solar Kingsland, LLC – Kingsland Landfill, Docket No. QO18090999  
KDC Solar Rutherford East, LLC – Rutherford East Landfill, Docket No. QO18091001

SERVICE LIST

**KDC Solar, LLC**

Joshua Smith  
Senior Vice President, Development  
1420 US Highway 206, Suite 120  
Bedminster, NJ 07921  
[joshua.smith@kdc solar.com](mailto:joshua.smith@kdc solar.com)

**New Jersey Division of Rate Counsel**

140 Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Felicia Thomas-Friel, Esq.  
[ftomas@rpa.state.nj.us](mailto:ftomas@rpa.state.nj.us)

Sarah Steindel, Esq.  
[ssteindel@rpa.state.nj.us](mailto:ssteindel@rpa.state.nj.us)

**New Jersey Division of Law**

R.J. Hughes Justice Complex, 7<sup>th</sup> Floor West  
25 Market Street, P.O. Box 112  
Trenton, NJ 08625-0112

David Apy, Assistant Attorney General  
[david.apy@law.njoag.gov](mailto:david.apy@law.njoag.gov)

Daren Eppley, Section Chief, DAG  
[daren.eppley@law.njoag.gov](mailto:daren.eppley@law.njoag.gov)

Pamela Owen, Assistant Section Chief, DAG  
[pamela.owen@law.njoag.gov](mailto:pamela.owen@law.njoag.gov)

Michael Beck, DAG  
[michael.beck@law.njoag.gov](mailto:michael.beck@law.njoag.gov)

**Board of Public Utilities**

44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Aida Camacho-Welch  
Secretary of the Board  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Kelly Mooij, Director  
Division of Clean Energy  
[kelly.mooij@bpu.nj.gov](mailto:kelly.mooij@bpu.nj.gov)

Benjamin S. Hunter, Manager  
Division of Clean Energy  
[benjamin.hunter@bpu.nj.gov](mailto:benjamin.hunter@bpu.nj.gov)

Jamal Garner, Environmental Engineer  
Division of Clean Energy  
[jamal.garner@bpu.nj.gov](mailto:jamal.garner@bpu.nj.gov)

Stacy Ho Richardson, Esq.  
Counsel's Office  
[stacy.richardson@bpu.nj.gov](mailto:stacy.richardson@bpu.nj.gov)