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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO <u>P.L.</u> 2018, <u>C.</u> 17 – APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012)	DOCKET NO. QO19010068
)	
HESP SOLAR LLC PITTSGROVE TOWNSHIP LANDFILL)	DOCKET NO. QO21040724

Parties of Record:

Brian O. Lipman, Esq., Acting Director, New Jersey Division of Rate Counsel
Daniel Grohman, HESP Solar, LLC

BY THE BOARD:

This Order concerns an application by HESP Solar, LLC (“HESP” 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 seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located at the Pittsgrove Township Landfill in Pittsgrove in Salem County, New Jersey (“Site”). Applicant claims that the proposed Site is a “properly closed sanitary landfill facility” as that term is defined in the Solar Act.

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” or “BPU”) 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” Id. 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” Id.

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 (“NJDEP” or “Department”). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by then-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

¹ 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(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; In re 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; In re 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 In re 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).

sanitary landfill facilities.² 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 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. 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.³

The January 24, 2013 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 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.

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the Solar Renewable Energy Certificate ("SREC") program by no later than June 2021, reducing the SREC term or "qualification life" to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandated that the Board close the SREC Registration Program ("SRP") once it determined that 5.1% of the kilowatt-hours sold in the State had been generated by solar electric power generators connected to the distribution system ("5.1% Milestone") or, in the alternative, by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication in the New Jersey Register on January 22, 2019.⁴ Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

On December 6, 2019, the Board established a Transition Incentive ("TI") Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.⁵ The TI Program provides eligible projects with TRECs for each megawatt hour

² 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, Order dated January 24, 2013 (January 24, 2013 Order).

³ January 24, 2013 Order at 31-33.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 ("December 2019 Order").

of electricity produced. Incentives are tailored to specific project types by the use of factors, which are applied to a base incentive rate to provide a particular project type with the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects certified pursuant to Subsection (t) receive a factor of 1.0 and thus the full amount of the base incentive.

At a Special Agenda Meeting held on April 27, 2020, the Board approved a TI rule proposal⁶ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁷ On September 10, 2020, the Board adopted the rule proposal, and the rules became effective on October 5, 2020 when published in the New Jersey Register.⁸ The rule provides that the transition incentive “shall be available to projects that submitted a complete SREC Registration Program registration or a complete Subsection (t) application after October 29, 2018” (emphasis added) but that have not received a Permission to Operate at the time that the 5.1% Milestone is achieved.⁹ The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Orders, and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹⁰ Moreover, the TI rules require compliance with all rules and regulations of the SREC registration program at N.J.A.C. 14:8-2.4.¹¹

Projects certified under Subsection (t) are subject to all of the Board’s SRP and TI 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 seeking TREC eligibility must comply with the TI rules at N.J.A.C. 14:8-10, and applicable Board orders concerning registration with the Transition Incentive Program.¹² 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 HESP that its proposed solar facility, to be located in Pittsgrove, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). HESP filed an application with supporting documentation to enable a NJDEP determination as to whether 9.5 acres of the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on September 14, 2021, on the land use classification and on the closure status of the proposed site. On the basis of NJDEP’s determination, the information certified by HESP in its application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

⁶ In re a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QX20030253 (“TI Rule Proposal”).

⁷ 52 N.J.R. 1048(a) (May 18, 2020).

⁸ 52. N.J.R. 1850(a) (October 5, 2020).

⁹ N.J.A.C. 14:8-10.4(a).

¹⁰ N.J.A.C. 14:8-10.4(h).

¹¹ N.J.A.C. 14:8-10.4(i).

¹² December 2019 Order at 33.

Applicant's 3.83 MWdc project is proposed to be located on a total of 9.5 acres owned by Pittsgrove Township at Block 1701, Lot 1 at 1050 Porchtown Road, Pittsgrove Township.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
HESP Solar LLC	QO21040724	Pittsgrove Twp. Landfill	Block 1701 Lot 1 1050 Porchtown Rd. Pittsgrove Township, NJ 08318	Salem	Landfill	3.83	ACE

HESP Solar, LLC / Pittsgrove Township Landfill - Docket No. QO21040724

On April 27, 2021, 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. Staff reviewed the application for administrative completeness and on May 7, 2021 forwarded the application to the NJDEP for review and a recommendation as described above. The NJDEP advised in a September 14, 2021 memorandum that the proposed site for the solar array described in the application comprises 9.5 acres.

The Township of Pittsgrove Landfill is located southwest of the intersection of Centerton – Porchtown Road and Garden Road on Block 1701, Lot 1 in the Township of Pittsgrove in Salem County. The landfill accepted various solid waste types, including but not limited to municipal waste, bulky waste, and vegetative waste, beginning no earlier than 1965 and ending no later than April 30, 1988. On October 25, 1991, the Department's Division of Solid Waste Management issued a Sanitary Landfill Closure and Post-Closure Plan Approval to the Township for the landfill. Closure activities included but were not limited to construction of a clay cap, installation of final cover atop the landfill, and installation of 18 landfill gas vents. In a letter dated February 21, 1995, a New-Jersey licensed professional engineer certified these activities as complete in accordance with the Sanitary Landfill Closure and Post-Closure Plan Approval. The Township is required to continue to maintain and monitor the landfill during the post-closure care period in accordance with the Closure and Post-Closure Plan Approval and Solid Waste Rules.

NJDEP determined that the 3.83 MWdc facility would be located on 9.5 acres of a properly closed sanitary landfill facility. NJDEP further advises 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 other permits identified by the Department, including the potential for Land Use permits and compliance with the stormwater management rules (N.J.A.C. 7:8 et. seq.), prior to construction of the solar electric power generation facility. The Approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site, including, but not limited to 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. Consistent with the above requirements, the property owner and operator of the solar facility must ensure that all future operations continue to protect the integrity of the cap.

The NJDEP further advises that the Closure and Post-Closure Plan Approval requires the Township to conduct quarterly inspections and annual gas surveys of the landfill and submit reports to the Department. The Department has not received quarterly inspection reports and

annual gas survey reports since 2019. The Township must address these issues to comply with post-closure care requirements.

Based on the information contained in the application and other documentation, Staff recommends that the Board conditionally certify the Applicant's 3.83 MWdc project as being located on 9.5 acres of a "properly closed sanitary landfill," as that term is defined pursuant to Subsection (t). Staff also recommends that the Board authorize Staff to require that the conditions for certification provided by the NJDEP be fully documented as satisfied by the Applicant prior to Staff's issuance of full certification of the project's eligibility for TRECs. In addition, Staff recommends that the Board direct the Applicant to file its TREC registration within 14 days of the date of the Order and explicitly grant conditional certification.

Staff also notes that some projects recommended for conditional certification pursuant to Subsection (t) may have been recommended for conditional approval or granted conditional approval in Pilot Year Two ("PY2") of the Community Solar Energy Pilot Program. Staff recommends that the Board disallow concurrent TI registrations for duplicative PY2 and Subsection (t) projects.

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 determined that the solar array proposed for Block 1701, Lot 1 as shown on the tax map of Pittsgrove Township, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." To be eligible for the creation of TRECs, the facility must not exceed 3.83 MWdc and must be placed within the 9.5 acres of properly closed sanitary landfill facility depicted on the map labeled, E0.50 Electrical Site Plan. Based on information provided by NJDEP, the Board **FINDS** that the Pittsgrove Township Landfill project is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP determined that the property owner will need to obtain an Approval from the NJDEP Division of Solid and Hazardous Waste, as well as any other permits identified by the NJDEP, prior to construction of the solar electric power generation facility. The Board **FINDS** that the NJDEP has 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 including, but not limited to 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. The Board **FURTHER FINDS** that the Closure and Post-Closure Plan Approval requires the Township to conduct quarterly inspections and annual gas surveys of the landfill and submit reports to the NJDEP and that the NJDEP has not received quarterly inspection reports and annual gas survey reports since 2019. The Board **ORDERS** that the Township must address these issues to comply with post-closure care requirements and fulfill the conditions for TREC eligibility.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of Applicant's proposed solar electric generation facility, to be located on 9.5 acres at the Pittsgrove Township Landfill at Block 1701, Lot 1 in Pittsgrove Township, Salem County, New Jersey, with an array size not to exceed 3.83 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

In addition, to obtain full certification, the Board **DIRECTS** HESP Solar to submit an initial TI program registration package within 14 days of the effective date of this order, and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all TREC eligibility requirements at N.J.A.C. 14:8-10, et seq. – have been satisfied. After the Applicant receives full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of TREC creation for a 15-year Qualification Life.

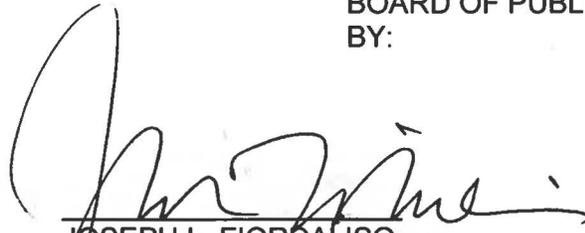
The Board **ORDERS** that a Conditionally Certified Project may not have concurrent PY2 and Subsection (t) TI registrations, and **DIRECTS** applicants conditionally approved in PY2 of the Community Solar Energy Pilot Program to withdraw such registrations prior to submission of the TI Program registration package for a Subsection (t) project.

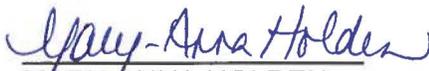
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection (t), provided that the facilities are constructed in accordance with NJDEP requirements, the site plans filed with the application, and the TREC registration.

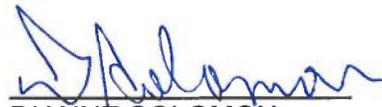
This Order shall be effective on November 4, 2021.

DATED: *10/28/2021*

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BY:


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ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012;
IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO L. 2018, C. 17 – APPLICATION FOR
CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T)
OF THE SOLAR ACT OF 2012; AND**

**HESP SOLAR LLC – PITTSBORO TOWNSHIP LANDFILL
DOCKET NOS. EO12090832V, QO19010068, AND QO21040724**

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