



Agenda Date: 7/12/23
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF <u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012)	ORDER
)	
)	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
WINSLOW LF SOLAR FARM, LLC - SOLAR ACT SUBSECTION (T) - BLOCK 8802, LOT 1, BLOCK 9101, LOT 2, BLOCK 9102, LOT 1)	
)	
)	DOCKET NO. QO21081079

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Gary Cicero, Managing Member, CEP Renewables

BY THE BOARD:¹

This Order concerns an application by Winslow Landfill Solar Farm, LLC (“CEP Renewables” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) [“Subsection (t)”]. CEP Renewables seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for a proposed solar electric generation facility to be located at the Winslow Township Landfill site, Block 8802, Lot 1, Block 9101, Lot 2, and Block 9102, Lot 1 on 896 Piney Hollow Road, Winslow Township, Camden County, New Jersey (“Project”). The Applicant alleges that the proposed site is located on 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

¹ Commissioner Marian Abdou did not participate.

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” 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.

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(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).

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 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 NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site.⁴

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 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, 2019.⁵ 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.

³ 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").

⁴ January 24, 2013 Order at 31–33.

⁵ 51 N.J.R. 138(e) (Jan. 22, 2019).

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.⁶ The TI Program provides eligible projects with TRECs for each megawatt hour 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 proposal⁷ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁸ 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.⁹ 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.¹⁰ The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Order and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹¹ Moreover, the TI rules require compliance with all rules and regulations of the SRP at N.J.A.C. 14:8-2.4.¹²

On August 17, 2022, the Board provided the opportunity for a conditional extension of the TI deadline to Subsection (t) projects registered in the TI Program or with applications pending review with NJDEP.¹³ The Board waived its rules and modified prior orders to allow up to a 12-month extension to all Subsection (t) solar projects with current registrations as well as those that receive conditional certification by the Board in the future, provided these projects can meet specified criteria. In addition, the Board granted the same relief to Subsection (t) applicants with applications pending review at the Board or NJDEP that received conditional certification. Such applicants thus received an automatic additional six (6) months to the registration expiration date that would otherwise be set in the Board order granting the project’s conditional certification pursuant to N.J.A.C. 14:8-10.4(e) or (f).

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

⁶ 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”).

⁷ 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”).

⁸ 52 N.J.R. 1048(a) (May 18, 2020).

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

¹⁰ N.J.A.C. 14:8-10.4(a).

¹¹ N.J.A.C. 14:8-10.4(h).

¹² N.J.A.C. 14:8-10.4(i).

¹³ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, Order Granting an up to 12-Month Extension for Projects Seeking an Incentive Pursuant to Subsection (t) in the Solar Transition Incentive Program BPU Docket No. QO19010068, Order dated August 17, 2022 (“TI Extension Order”).

“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 TI Program.¹⁴ 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

On August 25, 2021, Staff received the Winslow Landfill Solar Farm, LLC application for inclusion in the TI Program. The application was amended on September 23, 2021 and Staff transmitted a copy of the application to NJDEP for review and advice on November 9, 2021.

At issue is the request by CEP Renewables that its proposed Winslow Landfill Solar Farm, LLC solar facility, to be located in Winslow Township, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). CEP Renewables filed an application with supporting documentation to enable a NJDEP determination as to whether 39.9 acres of the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on May 8, 2023 on the land use classification and on remediation status of the proposed site.

On the basis of NJDEP’s determination, the information certified by CEP Renewables in its amended application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board deny conditional certification for the solar generation facility proposed for the Winslow Landfill site as explained further below.

CEP Renewables/Winslow Landfill Solar Farm LLC – Docket No. QO21081079

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield or Historic Fill	Array Size (MWdc)	EDC
Winslow Landfill Solar Farm, LLC (CEP Renewables)	QO21081079	Winslow Township Landfill	Block 8802, Lot 1, Block 9101, Lot 2, Block 9102, Lot 1 896 Piney Hollow Road Winslow Twp. 08037	Camden	Landfill	29.5	ACE

NJDEP provided the following description of the site background and findings from a review of the application. The Applicant is proposing a 29.5 MWdc grid supply solar farm at the Winslow Township Landfill site in Winslow Township, Camden County, New Jersey (“Property”). The Applicant proposes to construct the solar electric power generation facility on a properly closed

¹⁴ December 2019 Order at 33.

sanitary landfill portion of the Property, approximately 39.9 acres as rendered in the revised Electrical Site Plan map provided in the application package. The landfill makes up approximately 70 acres of the 98.05 total acres of the Property, which is located in the New Jersey Pinelands National Reserve (“Pinelands”).

The site, or “Property,” is a fallow, non-productive municipally-owned sanitary landfill located in Winslow Township (“Township”), Camden County. The Winslow Township Landfill ceased operations in August 1991. Prior to that time, the sanitary landfill facility was operated by the Township under the Solid Waste Facility Registration approved by the Department. The Property is currently owned by the Township, the operator of the former landfill. By resolution R-2021-283, dated July 20, 2021, the Township has designated the Property as an “Area in Need of Non-Condemnation Redevelopment” in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12-1 to -89 (“LRHL”). By Township resolution R-2021-279, dated July 20, 2021, the Applicant was appointed as the redeveloper in accordance with the LRHL. However, Township resolution R-2021-361, dated November 23, 2021, rescinded the appointment of the Winslow Landfill Solar Farm, LLC as conditional redeveloper for the solar landfill redevelopment project.

A contractor hired by the Department investigated the site in 2004/2005 to facilitate the landfill closure design. Additional investigation activities were conducted in 2011. Based on the results of the investigations, the Department’s contractor prepared a closure plan in 2011 (95% Remedial Design) which included capping the landfill, collecting and managing landfill gases, and collecting and managing stormwater. The contractor performed additional field investigations in 2018 for the purpose of obtaining current data to update the closure design cost estimate and to evaluate remedial alternatives for landfill closure and groundwater capture/treatment. As of May 8, 2023, a Closure and Post-Closure Plan has not been submitted to the Department for approval.

Additionally, due to its location in the Pinelands, the landfill closure must meet the requirements of the Pinelands Comprehensive Management Plan, as well as any applicable Department requirements under the Solid Waste and Site Remediation rules.

NJDEP provided the statutory definition of “properly closed sanitary landfill.” N.J.S.A. 48:3-51 defines “properly closed sanitary landfill” as: “[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, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.”

In consideration of the Site Background and the Subsection (t) Application Package, which acknowledges that the landfill is not properly closed, the Department determined that the 39.9¹⁵ acres, as rendered in the Concept Solar Plan submitted in the Application, requested for Subsection (t) certification at the Winslow Township Landfill does not constitute a “properly closed sanitary landfill facility” as defined by the Solar Act.

The Department noted that the Applicant attempted to argue that the Project should be approved consistent with previous Board Orders¹⁶, however, NJDEP determined that the Winslow Landfill Solar Farm, LLC installation site is not fully remediated and has numerous steps to take before installing a final cap. Additionally, NJDEP determined that the Winslow Landfill Solar Farm, LLC site was not properly closed in the past, nor does it only require simple maintenance of closure elements.

Based on the information contained in the application and NJDEP’s findings, Staff recommends that the Board deny the Applicant’s 29.5 MWdc Project as being not located on a “properly closed sanitary landfill,” as that term is defined pursuant to Subsection (t).

DISCUSSION AND FINDINGS

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 by CEP Renewables for Block 8802, Lot 1, Block 9101, Lot 2 and Block 9102, Lot 1, as documented in the Applicant’s Electrical Site Plan map, is not located on land meeting the Solar Act’s definition of a “properly closed sanitary landfill.” Based on information provided by NJDEP, the Board **FINDS** that the Property proposed for the Winslow Landfill Solar Farm, LLC Project does not meet the Solar Act’s definition of a “properly closed sanitary landfill.” The Board thus **DENIES** conditional certification of the Applicant’s proposed solar electric generation facility, to be located on 39.9 acres at the Winslow Township Landfill site at Block 8802, Lot 1, Block 9101, Lot 2 and Block 9102, Lot 1 in Winslow Township, Camden County, New Jersey.

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 consideration under Subsection (t).

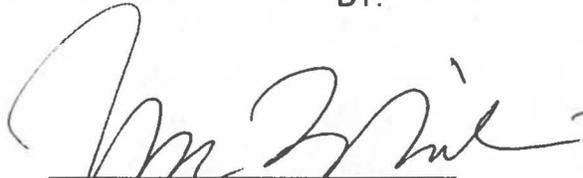
¹⁵ In an email dated June 28, 2023, NJDEP issued a correction to page 3 of its memo. The NJDEP incorrectly had the acreage as 29.5 acres. NJDEP confirmed the memo should read ...”the Department has determined that the 39.9 acres, as rendered in the Concept Solar Plan submitted in the Application, requested for Subsection (t) certification at the Winslow Township Landfill does not constitute a “properly closed sanitary landfill facility”.

¹⁶ NJDEP determined the rationale included in the previous Orders raised by the Applicant relating to Highland Park borough Landfill, and GEMS landfill are distinguishable from this Project. First, closure for Highland Park was complete for the portion of the site hosting the solar installation, and the remainder of the site only needed a final cap. GEMS was properly closed, and the developer entered into an Administrative Consent Order (“ACO”) to agree to maintain the cover/final cap and other aspects of the properly closed landfill. Additionally, in GEMS the ACO was not speculative. By the time BPU conditionally approved the project through Board Order, the ACO was already final and executed.

The effective date of this Order is July 19, 2023.

DATED: July 12, 2023

BOARD OF PUBLIC UTILITIES
BY:



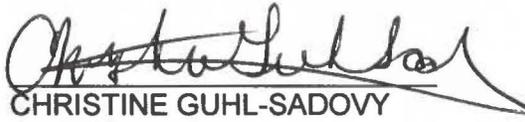
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER



CHRISTINE GUHL-SADOVY
COMMISSIONER

ATTEST: 

SHERRI L. GOLDEN
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 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

WINSLOW LF SOLAR FARM LLC - SUBSECTION (T), BLOCK 8802, LOT 1, BLOCK 9101, LOT 2, BLOCK 9102,
LOT 1

DOCKET NOS. EO12090832V, QO19010068, AND QO21081079

SERVICE LIST

Winslow Landfill Solar Farm LLC

Gary Cicero
gary_cicero@ceprenewables.com

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel
ssteinde@rpa.nj.gov

New Jersey Division of Law

Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Steven Chaplar, DAG
steven.chaplar@law.njoag.gov

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Sherri Golden, Board Secretary
board.secretary@bpu.nj.gov

Bob Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Henry Gajda, Deputy Chief of Staff
henry.gajda@bpu.nj.gov

Division of Clean Energy

Kelly Mooij, Director
kelly.mooij@bpu.nj.gov

Stacy Ho Richardson, Esq., Deputy Director
stacy.richardson@bpu.nj.gov

Earl Thomas Pierce
earl.pierce@bpu.nj.gov

General Counsel's Office

Michael Beck, General Counsel
michael.beck@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Rachel Boylan
rachel.boylan@bpu.nj.gov