



Agenda Date: 7/26/23  
Agenda Item: 8B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF )	ORDER
<u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012 )	
	DOCKET NO. EO12090832V
IN THE MATTER OF A NEW JERSEY 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 )	DOCKET NO. QO19010068
SUBSECTION (T) OF THE SOLAR ACT OF 2012 )	
PASADENA PEMBERTON SOLAR FARM, LLC – )	
APPLICATION FOR SOLAR ACT SUBSECTION (T), )	DOCKET NO. QO21050822
BLOCK 906, LOT 1.01 )	

**Parties of Record:**

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

BY THE BOARD:<sup>1</sup>

This Order concerns an application by Pasadena Pemberton 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 Pemberton Township Landfill site, Block 906, Lot 1.01, Pasadena Road, Pemberton Township, Burlington 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 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

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<sup>1</sup> Commissioner Marian Abdou abstained from voting on this matter.

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>2</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 . . . .” 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

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<sup>2</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(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.<sup>3</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 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.<sup>4</sup>

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.<sup>5</sup> 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.

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<sup>3</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, Order dated January 24, 2013 ("January 24, 2013 Order").

<sup>4</sup> January 24, 2013 Order at 31–33.

<sup>5</sup> 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.<sup>6</sup> 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 proposal<sup>7</sup> that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Moreover, the TI rules require compliance with all rules and regulations of the SRP at N.J.A.C. 14:8-2.4.<sup>12</sup>

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.<sup>13</sup> 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

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<sup>6</sup> 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”).

<sup>7</sup> 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”).

<sup>8</sup> 52 N.J.R. 1048(a) (May 18, 2020).

<sup>9</sup> 52 N.J.R. 1850(a) (October 5, 2020).

<sup>10</sup> N.J.A.C. 14:8-10.4(a).

<sup>11</sup> N.J.A.C. 14:8-10.4(h).

<sup>12</sup> N.J.A.C. 14:8-10.4(i).

<sup>13</sup> 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.<sup>14</sup> 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 May 20, 2021, Staff received the Pasadena Pemberton Solar Farm, LLC application for inclusion in the TI Program. 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 Pasadena Pemberton Solar Farm, LLC solar facility, to be located in Pemberton 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 18 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 18, 2023 on the land use classification and 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 Pemberton Sanitary Landfill site as explained further below.

**CEP Renewables/Pasadena Pemberton Solar Farm LLC – Docket No. QO21050822**

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield or Historic Fill	Array Size (MWdc)	EDC
Pasadena Pemberton Solar Farm, LLC (CEP Renewables)	QO21050822	Pemberton Township Sanitary Landfill	Block 906, Lot 1.01 Pasadena Road Pemberton Twp. 08068	Burlington	Landfill	10.387	PSEG

NJDEP provided the following description of the site background and findings from a review of the application. The Applicant is proposing a 10.387 MWdc grid supply solar farm at the Pemberton Township Sanitary Landfill site in Pemberton Township, Burlington County, New Jersey (“Property”). The Applicant proposes to construct the solar electric power generation facility on a properly closed sanitary landfill portion of the Property, approximately 18 acres as rendered in the revised Electrical Site Plan map provided in the application package. The landfill makes up approximately 18 acres of the 26.78 total acres of the Property.

<sup>14</sup> December 2019 Order at 33.

The Property, is a fallow, non-productive site on a former sanitary landfill. The Property is currently owned by Pemberton Township, the operator of the former landfill. By resolution 124-2021, dated April 21, 2021, the Township has designated the Property as an “area in need of rehabilitation” in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et. seq. (“LRHL”). The Applicant included Township of Pemberton Resolution No. 124-2021 & No. 128-2021 in the application package.

The Department issued a Registration of Solid Waste Disposal and/or Processing Facility to the Township of Pemberton on July 31, 1973. On December 15, 1978, the Department granted the Township a 12-month extension at their request to continue operation of the landfill until December 31, 1979. On January 3, 1980, the Department further extended the date, allowing the landfill to operate until March 31, 1980. On March 20, 1981, the Department issued a Notice of Prosecution to the Township because investigation disclosed that solid waste was being disposed at the landfill after operations were required to terminate. On May 8, 1981, the Department rescinded the Notice of Prosecution due to a misunderstanding regarding the use of the landfill but made it clear that the landfill may not be used for further disposal of any waste. On September 4, 1984, the Department issued an Administrative Order finding that the facility had not been properly graded to facilitate drainage and that final cover had not been applied. The Administrative Order required submission of plans; final grading and cover; and implementation of the plans immediately upon Department approval. There is no indication in Department records that the final grading and placement of final cover has ever occurred.

More recently, in preparation of landfill closure, the consultant for Pemberton Township prepared and submitted to the Department a Minor Disruption Permit Application to perform a site investigation, dated January 27, 2022. The Minor Disruption Permit Application was intended to get permission to clear the area for site access, conduct a ground penetrating radar and electromagnetic geophysical survey, test pit and boring excavation, conduct groundwater well redevelopment and sampling, and install probes to evaluate landfill gas existence and production. The Department approved the Minor Disruption Permit Application on October 24, 2022. Upon completion of this site assessment investigation, the results can be leveraged to prepare and submit a Landfill Closure and Post-Closure Plan to the Department. To date, the Department has not received a Landfill Closure and Post-Closure Plan.

Additionally, the Department noted that the Subsection (t) application did not provide documentation that demonstrates the landfill is properly closed, as requested at application questions 7 and 12, included below. The Applicant marked “no” to question 12 on the Subsection (t) application, asking whether they attached information establishing the site as properly closed.

7) Submit: (check one)

- A copy of the NJDEP approval letter for the closure as-built certification submitted pursuant to N.J.A.C. 7:26-2A.9(d)10;
- or
- Copies of any other correspondence indicating proper closure of the landfill.

12) I have attached additional information or documentation that establishes that the sanitary landfill facility is properly closed as defined in N.J.S.A. 48:3-51.....  Yes  No

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 18 acres requested for Subsection (t) certification at the Pemberton Township Sanitary Landfill, as rendered in the Electrical Site Plan map provided in the Application Package, does not constitute a “properly closed sanitary landfill facility” as defined by the Solar Act.

Based on the information contained in the application and NJDEP’s findings, Staff recommends that the Board deny the Applicant’s 10.387 MWdc Project as being not located on a “properly closed sanitary landfill,” as that term is defined pursuant to Subsection (t).

### **DISCUSSION AND FINDINGS**

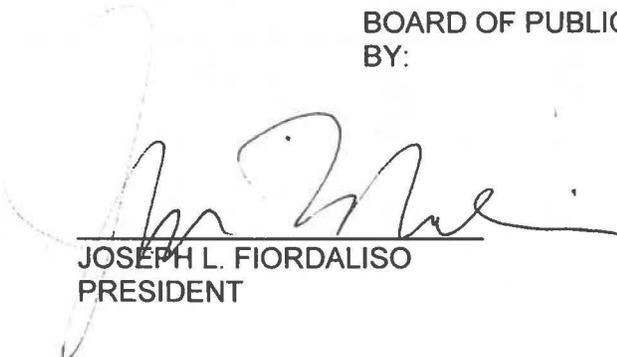
The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. NJDEP determined that the solar array proposed by CEP Renewables for Block 906, Lot 1.01, as 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 Pasadena Pemberton 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 18 acres at the Pemberton Township Sanitary Landfill site at Block 906, Lot 1.01, in Pemberton Township, Burlington 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).

The effective date of this Order is August 2, 2023.

DATED: July 26, 2023

BOARD OF PUBLIC UTILITIES  
BY:



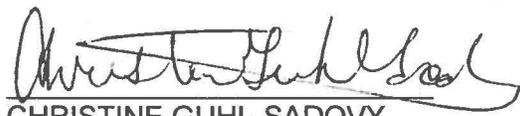
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DR. ZENON CHRISTODOULOU  
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CHRISTINE GUHL-SADOVY  
COMMISSIONER

ATTEST:



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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 A NEW JERSEY 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

PASADENA PEMBERTON SOLAR FARM, LLC – APPLICATION FOR SOLAR ACT SUBSECTION (T), BLOCK 906,  
LOT 1.01

DOCKET NOS. EO12090832V, QO19010068, AND QO21050822

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