



Agenda Date: 1/31/24
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE NEW JERSEY SOLAR)
TRANSITION PURSUANT TO P.L. 2018, C. 17 –)
APPLICATION FOR CERTIFICATION OF SOLAR)
FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO)
SUBSECTION (T) OF THE SOLAR ACT OF 2012 –)
SPARTA TOWNSHIP, SPARTA TOWNSHIP MUNICIPAL)
LANDFILL)
)
)
)

ORDER

DOCKET NO. QO21081104

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Stanley Puszcz, CP Engineers on behalf of Sparta Township

BY THE BOARD:

This Order concerns an application submitted by CP Engineers, on behalf of Sparta Township (“Applicant”), for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) [“Subsection (t)”]. Sparta Township seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for a proposed solar electric generation facility to be located on 20 acres at the Sparta Municipal Township Landfill site, Block 12001, Lot 4 at 15 Prices Lane, Sparta Township, Sussex County, New Jersey (“Project”). The Applicant claimed that the proposed site is located on a “brownfield” 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 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.”² “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”³ 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”⁴

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.

¹ In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; In re 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, Order dated October 10, 2012.

² N.J.S.A. 48:3-51

³ Ibid.

⁴ Ibid.

By 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.⁵ 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.⁶

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.⁷

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, 2019.⁸ 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.

⁵ In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; 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 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").

⁶ January 24, 2013 Order at 31–33.

⁷ Id. at 33

⁸ 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.⁹ 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 proposal¹⁰ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.¹¹ 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.¹² 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.¹³ 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.¹⁴ Moreover, the TI rules require compliance with all rules and regulations of the SRP at N.J.A.C. 14:8-2.4.¹⁵

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.¹⁶ 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

⁹ 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”).

¹⁰ 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, April 27, 2020 (“TI Rule Proposal”).

¹¹ 52 N.J.R. 1048(a) (May 18, 2020).

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

¹³ N.J.A.C. 14:8-10.4(a).

¹⁴ N.J.A.C. 14:8-10.4(h).

¹⁵ N.J.A.C. 14:8-10.4(i).

¹⁶ 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.¹⁷ 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 27, 2021, Staff received the application filed by CP Engineers on behalf of Sparta Township for inclusion in the TI Program. Staff notes that the Sparta Township Landfill was not properly closed at the time of the application, and the Applicant chose to submit the project for consideration as a “brownfield.” Staff transmitted a copy of the application to NJDEP for review and advice on September 8, 2021.

At issue is the request by Sparta Township that its proposed 7.290 megawatt dc (“MWdc”) solar facility, to be located at the Sparta Township Landfill site (“Property”) in Sparta Township, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). The Applicant filed an application with supporting documentation to enable a NJDEP determination as to whether 20 acres of the proposed site is located on a “brownfield.” NJDEP reviewed the application and supplied an advisory memorandum to Staff on July 24, 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 the Applicant in the application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board deny conditional certification of the Applicant’s Sparta Township Landfill Project as not being located on a “brownfield” as defined in the Solar Act of 2012.

Sparta Township Landfill – Docket No. QO21081104

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield or Historic Fill	Array Size (MWdc)	EDC
Sparta Township	QO21081104	Sparta Township Landfill	Block 12001, Lot 4 15 Prices Lane, Sparta, NJ 07871	Sussex	Brownfield	7.29	JCP&L

NJDEP provided the following description of the site background and findings from a review of the application. The Applicant is proposing a 7.290 MWdc grid supply project on 19.5 acres at the Property. The Applicant proposes to construct the solar electric power generation facility on a “brownfield” portion of the Property.

¹⁷ December 2019 Order at 33.

The Property is approximately 82.13 acres and is bordered to the north by Prices Lane, to the south by the New York Susquehanna and Western Railway Main Line, and to the west by the border with Lafayette Township. The Property consists of the Sparta Township Department of Public Works garage, the former Sparta Township Municipal Landfill which began operating in 1967 on approximately 19.5 acres of the property, and a vacant lot.

As of November 23, 2005, Sparta Township had proceeded with the installation of final cover material, grading, fertilizing, and seeding of approximately 80 percent of the landfill area in preparation of formal landfill closure. Impacts to freshwater wetlands were determined during the activities in preparation for formal landfill closure. The landfill impacted freshwater wetlands and the Department issued a Notice of Violation, requiring restoration or mitigation. Redevelopment of the site would require the Applicant to apply for permits, amend the closure plan and complete the landfill closure, design and implement a wetlands mitigation proposal, and continue quarterly groundwater monitoring.

On March 9, 2021, the Township of Sparta adopted Resolution 21-55 authorizing and directing the Planning Board of the Township of Sparta to conduct a preliminary investigation to determine whether the Property or any portions thereof meets the criteria set forth in the Redevelopment Law and should be designated as a Non-Condensation Redevelopment Area, as defined by the Redevelopment Law (N.J.S.A 40A:12A-1 et seq.). After completing its investigation and public hearing on this matter, the Planning Board of the Township of Sparta adopted Resolution 9-16 which recommended that the Property be designated as a Non-Condensation Redevelopment Area.¹⁸

N.J.S.A. 48:3-51 defines “brownfield” as “[A]ny 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.” All three (3) prongs of the “brownfield” definition must be met for an applicant to qualify for TREC’s on a brownfield. The burden is on the applicant to demonstrate that all three prongs have been met.

- Former or current commercial or industrial site: The solar array is proposed to be sited on a municipally owned landfill site / property. The Applicant did not submit documentation to show that there was a commercial or industrial establishment formerly or currently located on the municipally owned landfill site / property.
- Vacant or underutilized: The Department does not consider undisturbed portions of landfill properties to be separate brownfields as defined by the Solar Act of 2012.
- Discharge of a contaminant at the location of the proposed solar array: The Applicant did not submit documentation to show that there is/was contamination at the location proposed for the solar array.

In consideration of the Site Background and as rendered in the Solar Layout map provided in the Application Package, the Department has determined that the 20 acres proposed for solar development does not constitute a Brownfield as defined by the Solar Act of 2012. The proposed site is a (municipal) landfill and thus is not considered a “brownfield.” The site was not reviewed for land classification as a “properly closed sanitary landfill” as defined by the Solar Act because it was not properly closed at the time of the Subsection (t) application submission.

¹⁸ Resolution 9-16 is available in full at:

https://www.spartanj.org/AgendaCenter/ViewFile/Agenda/_06222021-88

Based on the information contained in the application and NJDEP's findings, Staff recommends that the Board find that the solar array proposed by Sparta Township for Block 12001, Lot 4 as documented in the Applicant's Electrical Site Plan map, is not located on land meeting the Solar Act's definition of "brownfield." Staff recommends that the Board deny conditional certification of the Applicant's Sparta Township Landfill Project as not being located on a "brownfield" as defined in the Solar Act of 2012.

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 Sparta Township for Block 12001, Lot 4, as documented in the Applicant's Electrical Site Plan map, is not located on land meeting the Solar Act's definition of "brownfield." Based on information provided by the Applicant and the advisory memorandum from NJDEP, the Board **FINDS** that the Property located on Block 12001, Lot 4 does not meet the Solar Act's definition of "brownfield." The Board thus **DENIES** conditional certification of the Applicant's proposed solar electric generation facility to be located on 19.5 acres at the Sparta Township Landfill site at Block 12001, Lot 4 in Sparta Township, Sussex County, New Jersey.

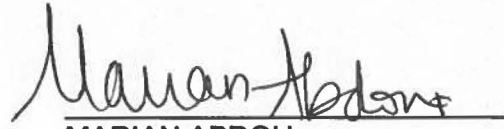
The effective date of this Order is February 7, 2024.

DATED: January 31, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZEMON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRIL 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 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 – SPARTA TOWNSHIP, SPARTA TOWNSHIP MUNICIPAL LANDFILL

DOCKET NO. QO21081104

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