



Agenda Date: 4/15/15  
Agenda Item: 8J

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012;	)	ORDER
	)	
IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, <u>N.J.S.A. 48:3-87(T)</u> – A PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SOLAR RENEWABLE ENERGY CERTIFICATES TO CERTIFIED BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES; AND	)	DOCKET NO. EO12090832V
	)	
	)	DOCKET NO. EO12090862V
	)	
KDC SOLAR GREEN POWER, LLC B & J WARREN & SONS LANDFILL	)	DOCKET NO. QO14121408

**Party of Record:**

**Thomas P. Lynch**, KDC Solar Green Power, LLC.

BY THE BOARD:

This Order concerns the application for SREC eligibility for a solar electric generation facility proposed to be constructed on the B&J Warren & Sons Inc. (“B&J”) Landfill located in Monroe Township, New Jersey. The applicant seeking certification submitted the required documentation to enable a New Jersey Department of Environmental Protection (“NJDEP”) determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed sanitary landfill.

**BACKGROUND**

On July 23, 2012, L. 2012, c. 24 (“Solar Act”) was signed into law by Governor Chris Christie. 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. On October 4, 2012, the Board directed Board staff (“Staff”) to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act. Docket No. EO12090832V (“October 4 Order”).

The Solar Act, specifically, N.J.S.A. 48:3-87(t) (“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[.] . . . [F]or projects certified under this subsection, the board shall establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility.

[N.J.S.A. 48:3-87(t).]

The Solar Act defines the terms “brownfield,” “area of historic fill,” and “properly closed sanitary landfill.” 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 [DEP.]” Ibid.

The October 4 Order directed Staff to initiate a proceeding to fulfill the mandate of the Solar Act. Staff met with Staff of the New Jersey Economic Development Authority (“NJEDA”) and the NJDEP. On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

In an Order dated January 23, 2013, Docket No. EO12090862V (“January 23 Order”), the Board approved Staff’s proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and landfills. 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 the NJDEP has determined require further remedial action or, in the case of properly sanitary closed landfills, 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. January 23 Order at 12-13. 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. Ibid.

The January 23 Order states that certification would be limited to those areas delineated by the 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 the NJDEP reviewed 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 landfills was necessary to initiate the certification process and directed Staff to work with NJDEP to develop an application. Id. at 13. On or about April 10, 2013, Staff distributed, via the public renewable energy stakeholder email distribution list and posted to the NJCEP and BPU websites, a Subsection t application form.

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, following receipt of conditional certification, once a contract for facility installation has been executed, these projects need to be registered in the Board's SRP within ten days. N.J.A.C. 14:8-2.4. The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

### **SREC REGISTRATION**

In the January 23 Order, the Board ruled that only those projects that have received a full certification would be eligible to register in the SREC Registration Program ("SRP"); "full certification is a pre-requisite to consideration for acceptance into the SRP." However, because this requirement is in conflict with the SREC Registration rules at N.J.A.C. 14:8-2.4, which require a solar electric generation project to submit a registration within ten days of executing a contract to install a solar system or to purchase panels for solar system, on Staff's recommendation, on July 19, 2013, the Board reversed that portion of the January 23 Order and required developers to comply with the SREC Registration rules at N.J.A.C. 14:8-2.4. Docket Nos. EO12090862V, EO13050389V, EO13050388V ("July 19 Order"). By maintaining the requirement that an applicant submit a SRP registration for a project within ten days of contract execution, the Board believed it was ensuring the continued transparency of the SREC registration process.

Staff concludes, based on feedback from several of the initial Subsection t applicants which received conditional approval from the Board, that the existing rules for SREC registration provide a disincentive for the project developers to execute a contract for the installation of the solar facility in an expeditious manner. If developers execute contracts upon receipt of the Board's conditional certification under Subsection t, they are then required to register. Under the SRP rules at N.J.A.C. 14:8-2.4 (f), this registration expires after one year, with only one six month extension. N.J.A.C. 14:8-2.4 (g). Construction of solar facilities on properly closed sanitary landfills, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer completion periods. Strict compliance with the SRP process may mean the developers cannot complete the construction process prior to the expiration of their registrations, thereby thwarting one of the goals of the Solar Act, that being to direct solar development to properly closed landfills, brownfields, and areas of historic fill.

Staff's experience with implementing the Board's directives with respect to the conditionally approved projects of N.J.S.A. 48:3-87(q) ("Subsection q") applicants supports applying a similar process for the registration of a Subsection t applicant. I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012 Docket No. EO12090832V and I/M/O the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(Q)( R) & (S) - Proceedings to Establish the Processes for Designation of Certain Grid Supply Projects as Connected to the Distribution System – Subsection (Q) Approvals, Docket No. 2090880V (August 21, 2013). The purpose for submission of a timely SRP registration is transparency to the pipeline, providing notice of the capacity and number of proposed new market entrants to all participants in the New Jersey SREC market. Staff believes that the Board's conditional certification of an application pursuant to Subsection t provides a reasonable and logical substitute for the project development milestone that is currently served by the execution of a contract which triggers the requirement to register in the SRP.

## **STAFF RECOMMENDATIONS**

### **Project Description**

As stated above, at issue is the request by KDC Solar Green Power, LLC ("KDC" or "applicant") that the B&J Landfill solar facility, proposed to be located in Monroe Township, New Jersey be certified as eligible for SRECs pursuant to Subsection t. The applicant seeking certification submitted the required documentation to enable a NJDEP determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed landfill. The NJDEP reviewed the application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP's determination, information contained in the application, and the requirements of the January 23 Order, Staff is recommending conditional certification for the portion of the B&J Landfill property that the NJDEP has determined is a "properly closed sanitary landfill," as explained further below.

### **B&J Warren & Sons Inc. Landfill – (Monroe Township) – Docket No. Q014121408**

On November 25, 2014, KDC submitted an application to the Board to have its project certified as being located on a properly closed landfill pursuant to Subsection t of the Solar Act. Applicant's 6.5 MW dc project is proposed to be constructed on the B&J Landfill owned by the Estate of Joan Warren in Monroe Township, Burlington County, New Jersey. KDC identified the landfill as 79.1 acres on Block 49, Lot 18 and stated that the solar facility would be located on approximately 21.13 acre portion of the 79.1 acre lot. In its application, KDC represented that the B&J Landfill ceased operations in approximately 1988.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised Board Staff that it reviewed the application and found that only 5.4 acres within the 79.1 acre site meet the definition of a "properly closed sanitary landfill facility" pursuant to Subsection t and N.J.S.A. 48:3-51. NJDEP noted that the landfill formerly used for clay mining was filled with coal ash in the late 1990s, with the 5.4 acre capped portion of the landfill constituting a "properly closed sanitary landfill."

NJDEP further indicated that the proposed solar installation, at any size, “will constitute the construction of improvements on a closed landfill,” and therefore will require additional NJDEP approvals and permits prior to the construction of the solar electric power generation facility. NJDEP noted that the approvals must “address impacts on the environmental controls in place at the site, such as 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.”

Based on the information provided in the application and NJDEP’s determination that additional approvals are necessary as modifications may need to be made to the current closure plan, Staff recommends that the Board grant conditional certification of a portion of the proposed project limited to the area identified by the NJDEP as the “properly closed sanitary landfill”. Staff recommends the Board direct the applicant to submit a revised Subsection t application with the proposed solar electric generation facility construction limited to the 5.4 acre capped portion of the property and the capacity re-sized as appropriate. Full certification is conditioned upon the project developers satisfying NJDEP permit requirements for the construction of the solar facility. Staff further recommends that should the applicant intend to proceed with construction of a solar facility with the reduced acreage and system capacity, the Board authorize the applicant to submit a Subsection t application package consistent with the recommendations from the NJDEP within thirty days of the effective date of this Order.

In addition, the Board has the power to relax its administrative rules if doing so permits the Board to effectively carry out its statutory functions. N.J.A.C. 14:1-1.2. As noted above, based on experience working with several of the initial Subsection t applicants which received conditional approval from the Board, Staff concludes that the existing rules for SREC registration provide a disincentive for the project developers to execute a contract for the installation of the solar facility, and submit the initial registration in the SRP, on a timely basis. Developers have expressed wariness toward timely execution of a contract and SRP participation after receiving the Board’s conditional certification under Subsection t due to the SRP rules at N.J.A.C. 14:8-2.4 (f), which limit the registration length to one year, and at N.J.A.C. 14:8-2.4 (g), which provide only one, six-month extension. Because construction of solar facilities on properly closed sanitary landfills, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer completion periods, Staff has noticed that the project developers under Subsection t are waiting to execute engineering, procurement and construction contracts because doing so triggers the ten-day rule for SRP registration and starts the clock on the one year plus six months extension registration length. The goal of the SRP is transparency to all market participants of each project’s capacity and likelihood of completion, and Staff’s experience with implementing the Board’s directives pursuant to Subsection q applicants provides an apt model.

Therefore, Staff recommends that should the Board accept Staff’s recommendation, the applicant be directed to submit the SRP registration package to the Board within fourteen days of the effective date of an Order granting conditional certification and that the SREC Registration period for this project be modified from the one year provided in the current RPS rules to two years to accommodate the longer construction periods for 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.

Based on information provided by NJDEP, the Board **FINDS** that portions of the B&J Landfill project, specifically the 5.4-acre landfill area covered by the cap, are located on land meeting the definition of a “properly closed sanitary landfill.” Therefore, the Board **LIMITS** the conditional approval to those portions of the proposed project that lie within the area qualifying for certification under Subsection t. The Board **FURTHER DIRECTS** the applicant to revise its application such that all proposed capacity is limited to being located upon the 5.4 acres which constitute a properly closed sanitary landfill within thirty days of the effective date of this Order, and to submit the appropriate SRP materials reflecting the location of the solar facility in relation to the capped landfill and the associated reduction in capacity within fourteen days of submitting the revised application, or forego the conditional approval.

The Board also **FINDS** that NJDEP has determined that environmental controls at the site, such as the protection or re-establishment of the final cap, leachate collection, gas collection and storm water collection systems, settlement, slope stability, control of erosion, on-going maintenance, and monitoring must be accounted for to construct the solar project. The Board **FINDS** that the applicant must satisfy NJDEP requirements and **DIRECTS** the applicant to demonstrate to Staff that it has satisfied all NJDEP requirements for full certification. The Board **DIRECTS** Staff to issue full certification to the project upon the applicant’s demonstration that it has satisfied all requirements for full certification. After the applicant has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

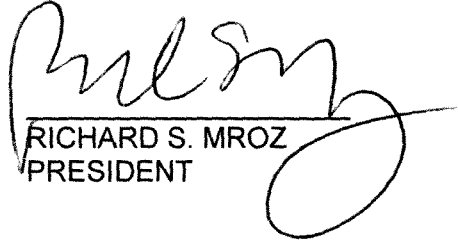
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten days of installation contract execution at N.J.A.C. 14:8-2.4 (c) and the registration length of one year at N.J.A.C. 14:8-2.4 (f) for the B&J Warren & Sons Landfill project. The Board **FURTHER GRANTS** a modification of one year provided in the current SRP to two years for construction to accommodate the longer construction period for Subsection t projects.

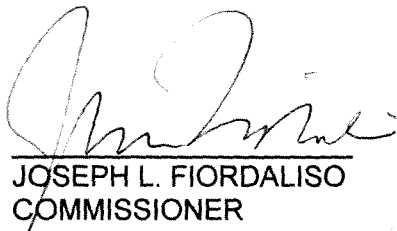
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans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

This Order shall be effective on April 25, 2015.

DATED: 4/15/15

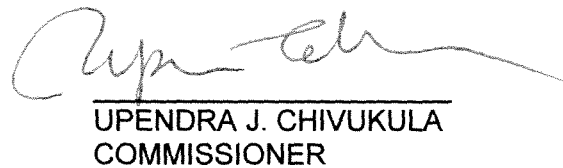
BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

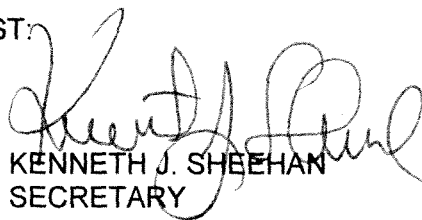
  
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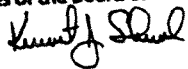
  
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ATTEST:

  
KENNETH J. SHEEHAN  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities



Docket No. EO12090832V – In the Matter of the Implementation of L. 2012, C.24, The Solar Act of 2012;

Docket No. EO12090862V – 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 Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and

Docket No. QO14121408 – In the Matter of KDC Solar Green Power, LLC – B & J Warren & Sons Landfill

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