



Agenda Date: 3/19/14  
Agenda Item: 8E

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

IN THE MATTER OF THE IMPLEMENTATION OF	)	ORDER
L. 2012, C. 24, THE SOLAR ACT OF 2012	)	DOCKET NO. EO12090832V
	)	
IN THE MATTER OF THE IMPLEMENTATION OF	)	
L. 2012, C. 24, <u>N.J.S.A.</u> 48:3-87(T) – A PROCEEDING	)	
TO ESTABLISH A PROGRAM TO PROVIDE SOLAR	)	
RENEWABLE ENERGY CERTIFICATES TO	)	
CERTIFIED BROWNFIELD, HISTORIC FILL AND	)	DOCKET NO. EO12090862V
LANDFILL FACILITIES	)	
	)	
VANGUARD ENERGY PARTNERS, LLC	)	
INDUSTRIAL LAND RECLAIMING LANDFILL	)	DOCKET NO. QO13111136

**Party of Record:**

**John G. Valeri, Jr., Esq.,** Wolff Samson, P.C.

**BY THE BOARD:**

Vanguard Energy Partners, LLC (“Vanguard”) moves for reconsideration of the January 29, 2014 Order issued by the New Jersey Board of Public Utilities (“Board”) in the above-captioned matter (“January 29 Order”) conditionally certifying its solar electric power generation facility (“project”) as being located on a properly closed landfill pursuant to L. 2012, c. 24 (“Solar Act”), codified as N.J.S.A. 48:3-87(t) (“subsection t”).

**BACKGROUND**

As described in more detail in the January 29 Order, the Solar Act, a bi-partisan effort to stabilize the solar market, was signed into law by Governor Chris Christie on July 23, 2012, and took effect immediately. The law amends N.J.S.A. 48:3-51 and N.J.S.A. 48:3-87, provisions of the Electric Discount and Energy Competition Act (“EDECA”), which requires, among other things, that retail sellers of electricity comply with the State’s renewable portfolio standards (“RPS”). The RPS encourages the production of renewable energy. The Solar Act also requires the Board to conduct proceedings to establish new standards and to develop new programs to implement the 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. Dkt. No. EO12090832V (“October 4 Order”).

Subsection t of the Solar Act 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 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 has met with Staff of the New Jersey Economic Development Authority ("NJEDA") and the New Jersey Department of Environmental Protection ("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 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 Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfills was necessary in order 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 will need to be registered in the Board's SREC Registration Program ("SRP") within ten days. The size and location of the subject project would 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 SRP; "full certification is a pre-requisite to consideration for acceptance into the SRP." However, the Board found that 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 10 days of executing a contract to install a solar system or to purchase panels for solar system. Subsequently, 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. Staff believes it is important for the Board to maintain the requirement that an applicant submit a registration for a project within 10 days of contract execution. As a result, the Board found that applicants comply with the requirements of the SREC Registration rules at N.J.A.C. 14:8-2.4 and the deadlines set forth therein. Docket. Nos. EO12090862V, EO13050389V, EO13050388V ("July 19 Order").

### ***Project Description***

On November 19, 2013, Vanguard 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. Vanguard proposes to construct a 12.063 MWdc project on a landfill owned by Industrial Land Reclaiming, Inc. ("ILR"), which is located in Edison, New Jersey. In its application, Vanguard represented that the ILR landfill ceased operations on March 25, 1985.

Staff forwarded the application to NJDEP for review and an advisory recommendation. NJDEP advised Board Staff that it reviewed the application and found that proposed site began accepting municipal waste in 1957 and ceased in 1985. January 29 Order at 5. NJDEP indicated that it had approved the Closure and Post-Closure Care Plan ("Closure Plan") in 1988. Ibid. A modification to the original Closure Plan was approved by NJDEP in 1997. Ibid. However, NJDEP advised Staff that, in order to install the solar array proposed, a modification to the Closure Plan will be necessary, as well as any other permits identified by NJDEP once the solar design plans are submitted. Ibid.

In addition, NJDEP 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

during the post-closure and source of funding” must be accounted for to construct the solar project. Id. at 6.

Based on the information provided in the application and NJDEP’s indication that additional protective measures are necessary, Staff recommended that the Board grant conditional certification to Vanguard. Full certification was conditioned upon the project developers satisfying NJDEP permit requirements for construction of the solar facility—requirements which NJDEP will identify once Vanguard submits the solar design plans. January 29 Order at 5. Staff further recommended that Vanguard comply with the requirements and time limits established in the SREC Registration Program. Ibid.

In the January 29 Order, the Board found that the project was located on land meeting the definition of a “properly closed landfill.” The Board also found that NJDEP had determined that “the applicant must address impacts on environmental controls at the site, and address the ongoing problems with leachate/ground water system and, the proposed revised grading plan and storm water improvements to install the proposed facility” in order to construct the project. January 29 Order at 5.

The Board further found that the project had to satisfy the aforementioned NJDEP requirements and directed ILR to address the existing leachate/groundwater control system and grading for storm water improvements and demonstrate to Staff that it has satisfied all NJDEP requirements in order to obtain full certification. The Board directed Staff to issue full certification to the project upon satisfying all requirements for full certification. The Board further directed 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, and after it has received full certification and satisfied all SRP requirements. Ibid.

### **MOTION FOR RECONSIDERATION**

On February 12, 2014, Vanguard filed a “Notice of Motion for Reconsideration” of the Board’s January 29 Order, along with a “Statement of Alleged Errors or Fact” in support of the Motion for Reconsideration. Vanguard requests that the Board reconsider the January 29 Order to the extent that it classified the application as conditionally certified as opposed to fully certified. Notice of Motion for Reconsideration at 1; Statement of Alleged Errors of Law or Fact at 1.

Vanguard first argues that the ILR landfill is a “properly closed sanitary landfill facility” and, as such, the Board should have considered the project to be “connected to the distribution system” for purposes of qualifying for SRECs. Statement of Alleged Errors of Law or Fact at 2-3. Vanguard relies on a letter from NJDEP dated July 30, 2013 (“NJDEP Letter”) pertaining to the landfill’s closure status, which is attached as Exhibit A to Vanguard’s Motion for Reconsideration (hereinafter “Exhibit A”). Vanguard emphasizes that the NJDEP Letter states that the “ILR Landfill does meet the definition of [a] ‘properly closed sanitary landfill facility’ according to the Solar Act subsection t (N.J.S.A. 48:3-87(t) 1), in that performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by [DEP] in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility.” Vanguard’s Exhibit A at 1. Vanguard also points out that NJDEP made the determination that the ILR landfill met the definition of a “properly closed sanitary landfill facility” notwithstanding the fact that issues related to groundwater control system that developed after closure construction was completed had to be addressed by ILR as the landfill owner. Statement of Alleged Errors of Law or Fact at 2; Exhibit A at 1. Vanguard claims that the Board incorrectly stated in the January 29 Order that

Vanguard as the applicant, rather than ILR, was required to address impact on the environmental controls and ongoing problems with the leachate/groundwater control systems in order to install the proposed project and obtain full certification. Statement of Alleged Errors of Law or Fact at 3.

On this basis, Vanguard argues that the Board's findings of fact are erroneous since NJDEP found that the landfill was a "properly closed sanitary landfill facility" and any issues pertaining to the ground water control system were required to be addressed by ILR. Vanguard further references the Board's January 23 Order wherein the Board stated that full certification may be issued if remediation of the site has been completed, and "this fact alone" should have compelled the Board to issue Vanguard full certification. Statement of Alleged Errors of Law or Fact at 3-4.

Vanguard recognizes that the granting of full certification for the project by the Board does not eliminate any obligation to obtain and comply with permits required for the installation and operation of the project, but nonetheless notes that the NJDEP Letter does not state that the construction or the project would compromise the closure of the landfill or any post-closure requirements. It also asserts that granting full certification to construct the project will further the policy goal of the Solar Act in favoring the development of solar generation projects on landfills. *Id.* at 4.

#### **DISCUSSION AND FINDING**

Under N.J.A.C. 14:1-8.6(a), a motion for reconsideration may be filed with the Board within fifteen days of the issuance of any final decision or order by the Board. The Order Adopting the Initial Decision was issued on January 29, 2014. Petitioner's Motion was filed with the Board on or about February 12, 2014. A motion for reconsideration requires the moving party to allege "errors of law or fact" that were relied upon by the Board in rendering its decision. N.J.A.C. 14:1-8.6(a)(1). In considering whether or not to grant a Motion for Reconsideration, the moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). A party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. See, e.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996).

N.J.A.C. 14:1-8.6 requires that a request for rehearing or reconsideration be done by a motion that enumerates the alleged errors of law or fact, and where an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously. Vanguard conformed to the requirements of the rule. Nonetheless, the Board will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. Here, the Board does not find that the issue raised by Vanguard regarding full certification is sufficient to warrant reconsideration or modification, but clarifies any confusion of Vanguard's claim in the January 29 Order that, Vanguard as the applicant, rather than ILR, was required to address impact on the environmental controls and ongoing problems with the leachate/groundwater control systems in order to install the proposed project and obtain full certification.

Regarding Vanguard's assertion that Board incorrectly stated in the January 29 Order that Vanguard as the applicant, rather than ILR, was required to address impact on the environmental controls and ongoing problems with the leachate/groundwater control system in order to install the proposed project and obtain full certification, the Board makes a clarification. The January 29 Order states that Vanguard, as the applicant, is required to address "the ongoing problems with leachate/ground water control system and the proposed revised grading plan and storm water improvements" in order to install the proposed solar facility. January 29 Order at 5. NJDEP has determined that the current issues associated with the groundwater control system that developed "after closure construction was completed" must be addressed by ILR. Exhibit A at 1. Accordingly, the Board clarifies that any operational issues that were previously identified by NJDEP remain the obligation of the landfill owner and must be addressed by ILR in its post-closure maintenance and monitoring period; measures required to implement the proposed solar facility are the obligation of Vanguard.

Regarding Vanguard's request for reconsideration on its certification, Vanguard claims that the project satisfies the requirements for full certification, rather than conditional certification, because NJDEP determined the project site meets the definition of a "properly closed sanitary landfill" and does not require any further remedial measures. This assertion, however, fails to recognize that conditional certification is warranted for projects located on "properly closed" landfills if and when NJDEP has determined require further additional *protective measures* (emphasis added) are necessary for the installation of a solar array on the landfill. January 23 Order at 10. The January 23 Order further recognized that conditional certification may specify the additional remedial action necessary in order to obtain full certification, and upon completion of those actions to the satisfaction of the NJDEP, and following review by the Board, full certification may be issued. ibid.

Here, it is undisputed that NJDEP has determined that the additional protective measure of a modification to the Closure Plan is necessary to be completed at the ILR landfill. As mentioned previously, NJDEP had 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 during the post-closure period and source of funding" must be accounted for in order to construct the project, i.e. installation of a solar array on the landfill. January 29 Order at 6.

The Board has reviewed the motion for reconsideration, the supporting documentation, and Staff's prior recommendation. The Board **FINDS** that it acted within its statutorily granted discretion to grant conditional certification to subsection t applications pursuant to the criteria developed by Board Staff.

Accordingly, the Board **HEREBY CLARIFIES** in part the January 29 Order and **HEREBY DENIES** Vanguard's request to grant it full certification in response to its application which the Board has previously granted conditional certification.

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 projects beyond designation under subsection t, provided that the facilities are constructed in accordance with DEP requirements, the plans as represented in the application, and the SRP registration.

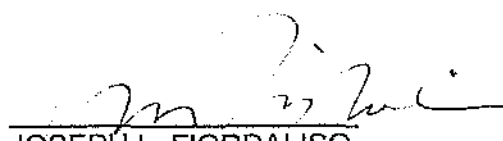
This Order shall take effect on March 28, 2014.

DATED: 3/19/14

BOARD OF PUBLIC UTILITIES  
BY:

  
DIANNE SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARYANNA HOLDEN  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
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 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

VANGUARD ENERGY PARTNERS, LLC INDUSTRIAL LAND RECLAIMING LANDFILL  
Docket Nos. EO12090832V, EO12090862V and QO13111136

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