



Agenda Date: 5/25/16
Agenda Item: 8A

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF 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. 48:3-87(T)</u> – A PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SRECS TO CERTIFIED BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES)	
)	DOCKET NO. EO12090862V
)	
VINELAND CONSTRUCTION COMPANY NATIONAL FREIGHT PENNSAUKEN)	
)	DOCKET NO. QO15111315

Party of Record:

John S. Krauser, Vineland Construction Company

BY THE BOARD:¹

This Order concerns an application by Vineland Construction Company (“Vineland” or “Applicant”) for certification pursuant to L. 2012, c. 24, (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection t”). Vineland seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SRECs”) for the proposed National Freight Pennsauken solar electric generation facility to be located in Pennsauken Township, Camden County, New Jersey. Vineland submitted the required documentation to enable a New Jersey Department of Environmental Protection (“NJDEP”) determination as to whether the proposed site is a brownfield as set forth in the Solar Act.

¹ Commissioner Dianne Solomon recused herself due to a possible conflict of interest, and did not participate in the deliberations on this matter.

BACKGROUND

On July 23, 2012, the 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. 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[.]” 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.

² I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090860V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards, Docket No. EO12090861V; I/M/O 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, Docket No. EO12090880V; 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 Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; Docket No. EO12090862V; and I/M/O 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; Docket No. EO12090863V (October 10, 2012) (“October 10 Order”).

The October 10 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 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 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 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 the 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 the NJDEP has determined no further remedial or protective action is necessary. January 24 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 24 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 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 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 SREC Registration Program ("SRP") within ten (10) 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.

³ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; and I/M/O 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; Docket No. EO13010009V (January 24, 2013) ("January 24 Order").

SREC REGISTRATION

In the January 24 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." January 24 Order at 13. However, because this requirement was in conflict with the SREC Registration rules at N.J.A.C. 14:8-2-4, on July 19, 2013, the Board reversed that portion of the January 24 Order and required developers to comply with the SREC Registration rules at N.J.A.C. 14:8-2-4.⁴

The SRP requires a solar electric generation project to submit a registration within ten (10) days of executing a contract to install a solar system or to purchase panels for solar system. The SRP also requires the project to construct within one (1) year because the SRP registration number expires, with only one (1) six (6) month extension. N.J.A.C. 14:8-2.4(f)-(g).

In a Board Order dated June 18, 2014, the Board waived those requirements and set an amended schedule for Subsection t applications.⁵ June 18 Order at 6-7. Accordingly, the Board directed that Subsection t applicants must register with the SRP within fourteen (14) days of the Board's order approving conditional or full certification of a project. Ibid. 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) applicants supported applying a similar process for the registration of a Subsection t applicant.⁶ The purpose for submission of a timely SRP registration is transparency to the pipeline of proposed solar facilities, providing notice of the capacity and number of proposed new market entrants to all participants in the New Jersey SREC-market.

In addition, the Board extended the SRP registration period from one (1) year to two (2) years. June 18 Order at 7. Construction of solar facilities on properly closed sanitary landfill facilities, 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 a one (1) year SRP process may mean the developers cannot complete the construction process prior to the expiration of their registrations. A two (2) year construction period is intended to recognize the longer construction period for Subsection t projects, thereby supporting the goals of the Solar Act.

⁴ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; I/M/O Standard Alternative - Brick Township Landfill, Docket No. EO13050389V; and I/M/O Syncarpha Capital – Bernards Township Landfill, Docket No. EO13050388V (July 19, 2013).

⁵ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; and I/M/O PVNavigator, LLC – Somerdale Road (Owens Corning) Landfill, Docket No. QO14010014V (June 18, 2014) ("June 18 Order").

⁶ 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) and (S) - Proceedings to Establish the Processes for Designation of Certain Grid Supply Projects as Connected to the Distribution System – Subsection (Q) Approvals, BPU Docket No. EO12090880V (August 21, 2013).

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by Vineland that the proposed National Freight Pennsauken solar facility, to be located in Pennsauken, New Jersey, be certified as eligible for SRECs pursuant to Subsection t. Vineland filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a brownfield, area of historic fill, or properly closed landfill facility. The NJDEP reviewed the application and supplied an advisory memorandum 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, the information certified by Vineland in its application and the January 24 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
Vineland Construction Company	QO15111315	National Freight Pennsauken	3905 River Road, Block 201, Lots 8 and 17, Pennsauken	Camden	Brownfield	12.8	PSE&G

On November 19, 2015, Vineland submitted an application to the Board to have its project certified as located on a brownfield pursuant to Subsection t of the Solar Act. Vineland's 12.8 MWdc project is proposed to be located at the National Freight Pennsauken site, 3905 River Road in Pennsauken, New Jersey. In Section E of the application, Vineland described the project as being located on thirty (30) acres; however, in Section F(b)(22), Vineland indicated that it was seeking certification for thirty-nine and two-tenths (39.2) acres. Vineland indicated that the operations at the site commenced in the 1920s under the Rundle Manufacturing Company/Universal Rundle Corporation where porcelain enameled cast iron bathroom fixtures were manufactured. Vineland also stated that it has owned and operated the site as a warehouse and a distribution location for durable goods since approximately 1973. In response to Section F(b)(8), which asked if the site is currently vacant, Vineland warranted, certified and represented that it will have ceased these operations on or before December 31, 2015 and the on-site warehouse will be demolished.

Staff forwarded the application to NJDEP for review and a recommendation. NJDEP advised that site investigations performed by ENVIRON Corporation and reported in the 1997 Remedial Investigation Report and Supplemental Remedial Action Workplan and the 2011 Remedial Investigation Report and Remedial Action Workplan ("RIR/RAW") identified contamination at the site. NJDEP further advised that, as summarized in the Case Inventory Document from the 2011 RIR/RAW, areas of concern include soils within the fenced areas contaminated with antimony, arsenic and lead; and groundwater contaminated with antimony, arsenic, lead and cadmium. The 2011 RIR/RAW proposed a soil remedy consisting of capping as an engineering control and a ground water remedy consisting of monitored natural attenuation. A draft deed

notice was also prepared as an institutional control, and will be filed with the Camden County Clerk's office once the engineering controls are in place. According to the New Jersey Environmental Management System Activity Tracking, the RIR/RAW was approved by the NJDEP on March 15, 2012. NJDEP also advised that the Applicant indicated that the RIR/RAW will be amended to include demolition of the on-site warehouse, and that the building sub-slab will remain in place to act as an additional cap or engineering control.

Upon review of the application, NJDEP determined that the 39.2-acre area on which the solar electric power generation facility will be located constitutes a "brownfield" as defined by the Solar Act. However, NJDEP advised that the solar facility project will be installed on property that requires remediation. According to NJDEP, the property owner and the owner/operator of the solar installation must ensure that the solar installation: (a) does not exacerbate the contamination at the property; (b) does not interfere with any necessary remediation of the property; and (c) does not disrupt or change, without prior written permission from the NJDEP, any existing or future engineering or institutional control that is part of a remedial action for the contaminated site.

Based on the information provided and certified by Vineland in the application and NJDEP's determination, Staff recommends that the Board grant conditional certification of the proposed project.

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 Vineland regarding the remediation at the site and cessation of operations and demolition of the on-site warehouse, as well as the analysis provided by NJDEP, the Board **FINDS** that the project described in Vineland's application is located on property defined as a "brownfield." Accordingly, the Board **GRANTS** conditional certification of the proposed 12.8 MWdc project and **DIRECTS** Vineland to register with the SRP within fourteen (14) days of the Board's order.

The Board **FINDS** that the Applicant must address NJDEP requirements and **DIRECTS** Vineland 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.

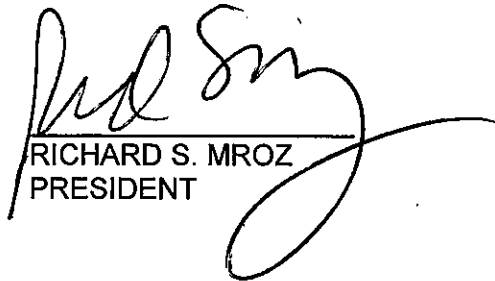
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten (10) days of installation contract execution at N.J.A.C. 14:8-2.4(c) and the registration length of one year at N.J.A.C. 14:8-2.4(f) for the National Freight Pennsauken project. The Board **FURTHER GRANTS** a modification of one (1) year provided in the current SRP to two (2) 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 June 4, 2016.

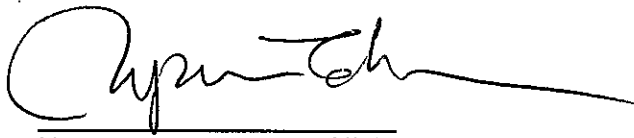
DATED: *May 25, 2016*

BOARD OF PUBLIC UTILITIES
BY:

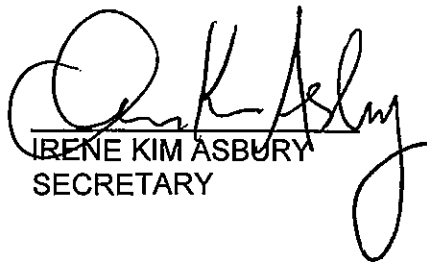

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

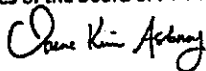

MARY-ANNA HOLDEN
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
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 SRECS TO CERTIFIED
BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES;
VINELAND CONSTRUCTION COMPANY NATIONAL FREIGHT PENNSAUKEN

Docket Nos. EO12090832V, EO12090862V and QO15111315

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