



Agenda Date: 6/7/23
Agenda Item: 8A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
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 THE 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 SUBSECTION (T) OF THE)	DOCKET NO. QO19010068
SOLAR ACT OF 2012)	
)	
SOUTHERN OCEAN WARETOWN SOLAR FARM, LLC -)	
SUBSECTION (T), BLOCK 6, LOTS 4.04 & 4.05; BLOCK)	DOCKET NO. QO20100660
7, LOTS 1.01, 2, 3, 5 & 6.01)	

Parties of Record:

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

BY THE BOARD:¹

This Order concerns an application by Southern Ocean Waretown 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 Southern Ocean Waretown Landfill site, Block 7, Lot 1.01 on 1060 Wells Mills Road, Ocean Township, Ocean 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

¹ Commissioners Guhl-Sadovy and 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.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” 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.

² 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).

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 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.⁴

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, 2019.⁵ 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.

³ 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").

⁴ January 24, 2013 Order at 31–33.

⁵ 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.⁶ 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 proposal⁷ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁸ 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.⁹ 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.¹⁰ 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.¹¹ Moreover, the TI rules require compliance with all rules and regulations of the SRP at N.J.A.C. 14:8-2.4.¹²

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.¹³ 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).

⁶ 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”).

⁷ 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”).

⁸ 52 N.J.R. 1048(a) (May 18, 2020).

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

¹⁰ N.J.A.C. 14:8-10.4(a).

¹¹ N.J.A.C. 14:8-10.4(h).

¹² N.J.A.C. 14:8-10.4(i).

¹³ 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”).

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 "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.¹⁴ 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 October 16, 2020, Staff received the Southern Ocean Waretown Solar Farm, LLC application for inclusion in the TI Program. The application was amended on August 18, 2021, increasing the capacity of the Project to 18.7776MW (dc) and limiting the Project to the proposed landfill portion of the property on Block 7, Lot 1.01 only.^{15,16} Staff transmitted a copy of the application to NJDEP for review and advice on August 30, 2021.

At issue is the request by CEP Renewables that its proposed Southern Ocean Waretown Solar Farm, LLC solar facility, to be located in Ocean 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 96.24 acres of the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on February 14, 2023 on the land use classification and on remediation status of the proposed site. NJDEP noted that the Department's geospatial analysis of the array encompasses closer to 34 acres than the 96.24 acres identified in the application and Electrical Site Plan, and that the array extends beyond Block 7, Lot 1.01.

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 grant conditional certification for the solar generation facility proposed for Block 7, Lot 1.01 as explained further below.

¹⁴ December 2019 Order at 33.

¹⁵ The original application included surrounding blocks and lots (Block 6, Lots 4.04 and 4.05; Block 7, Lots 1.01, 2, 3, 5 and 6.01).

¹⁶ The maps provided by CEP Renewables in both the original application packet and the amended application are incorrect and do not reflect the actual tax map boundaries, having a misalignment between the boundaries and the proposed site. NJDEP in its review confirmed boundaries by performing a geospatial analysis. Based on its analysis, DEP assessed only Block 7, Lot 1.01, which was the property defined in the amended application, but which does not include all of the proposed construction shown on the developer's site map. The original application did include these lots (Block 6, lots 4.04, 4.05; Block 7, Lots 1.01, 2, 3, 5, 6.01), but, as noted above, was also inaccurate.

CEP Renewables/Southern Ocean Waretown Solar Farm LLC – Docket No. QO20010660

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield or Historic Fill	Array Size (MWdc)	EDC
Southern Ocean Waretown Solar Farm, LLC (CEP Renewables)	QO20010660	Southern Ocean Sanitary Landfill	Block 7, Lot 1.01 1060 Wells Mills Road, Waretown, Ocean Twp, 08758	Ocean	Landfill	18.7776	ACE

NJDEP provided the following description of the site background and findings from a review of the application. The Applicant is proposing an 18.7776 MWdc grid supply solar farm at the Southern Ocean Waretown Landfill site in Ocean Township, Ocean 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 96.24 acres as rendered in the revised Electrical Site Plan map provided in the application package.

From the early 1950’s to 1988, a sanitary landfill was operated on the site. From at least 1960 to 1971, the Township of Ocean owned and operated the Southern Ocean Landfill (“SOLF”) on an unlined portion of its property. The Township transferred the property to Southern Ocean Landfill, Inc. (“SOLI”), a private entity, who then operated the approximately 50-acre unlined landfill until 1987. In the mid-1980’s SOLI constructed an approximately 12-acre double-lined landfill on the property which operated from 1987 through 1988. Although disposal operations ceased in 1988, the SOLF was not immediately properly closed.

Sometime in the late 1990’s, SOLI entered into an agreement with United Environmental Services (“UES”) to construct a final cap on the lined landfill. On May 5, 2000, NJDEP approved a SOLI/UES plan to cap the lined landfill. As-built drawings and a professional engineer’s certification of completion of the approved capping plan on the lined landfill were provided to the Department on May 20, 2004. On September 29, 2004, the Department of Law and Public Safety, Division of Law issued a letter stating that the NJDEP accepts the certification of landfill capping.

In November 2001, in an effort to address the remaining closure issues at the site, NJDEP entered into an agreement with Ocean County to complete closure of the unlined landfill and conduct post-closure care activities at SOLF. The 2001 NJ State Budget appropriated \$15 million from the Sanitary Landfill Contingency Fund, which was granted to Ocean County to conduct the closure and post-closure care at SOLF. In the November 2001 agreement, Ocean County did not assume any liabilities of the landfill owner. On December 4, 2002, the Department approved the June 2002 Closure Plan for the unlined landfill. Final cover construction on the unlined landfill began in March 2003 and was completed in July 2004. On July 27, 2005, the Department approved the January 11, 2005, Final Closure Report for the unlined landfill, which completed proper closure of the SOLF. Currently, Ocean County continues post-closure maintenance and monitoring of the landfill using the remaining grant funds. Ocean Township provides additional post-closure maintenance through in-kind services.

The landfill extends onto multiple parcels (Block 6, Lots 4.01, 4.04, & 4.05; Block 7, Lots 1, 1.01, 2, 2.01, 3, 5, 6.01) totaling approximately 500 acres. However, the Applicant states they are solely proposing to construct the solar Project on 96.24 acres of Block 7, Lot 1 of the SOLF.

On February 10, 2000, Ocean Township designated the property as an “Area in Need of Redevelopment” and on February 10, 2011, the Township adopted the Southern Ocean Landfill Redevelopment Plan. As of May 14, 2020, the Applicant is the conditionally designated redeveloper of the property and the Project has been identified as consistent with the Redevelopment Plan. The Township is in support of this application and it is intended that once certain approvals are granted to this Project, the Applicant will acquire the parcels and tax certificates currently owned by the Township.

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.”

The solar installation will constitute the construction of improvements on a properly closed sanitary landfill, pursuant to the law and, accordingly, the Property owner will need to obtain an approval from the NJDEP Division of Sustainable Waste Management, as well as any permits identified by the Department, including the potential for land use permits and compliance with the storm water management rules (N.J.A.C. 7:8 et seq.), prior to construction of the solar electric power generation facility. The approval for construction of improvements on the closed landfill needs to 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. Consistent with the above requirements, the Property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap.

Additionally, NJDEP determined the terms of the consent decree for the Southern Ocean Landfill, filed on June 25, 2007, shall be resolved prior to obtaining full certification. The Applicant must contact NJDEP’s Office of Permitting and Project Navigation to determine which permits may be required for the Project.

Based on the information contained in the application and NJDEP’s findings, Staff recommends that the Board conditionally certify the Applicant’s 18.7776 MWdc Project as being located on a “properly closed sanitary landfill,” as that term is defined pursuant to Subsection (t). Staff recommends that as a condition of approval, the Board direct the Applicant to submit revised electrical maps showing the positioning of the solar generation facility on the approved Property to be located on the 34 acres at the Southern Ocean Waretown Landfill site at Block 7, Lot 1.01. The revised maps should show that the proposed solar electric generation facility can be fully installed on Block 7, Lot 1.01. Staff also recommends that the Board authorize Staff to require that the conditions for certification provided by the NJDEP be fully documented as satisfied by the Applicant prior to Staff’s issuance of full certification of the Project’s eligibility for TREC’s. In

addition, Staff recommends that the Board explicitly grant conditional certification and direct the Applicant to file its TREC registration within 14 days of the date of the Order.

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. NJDEP determined that the solar array proposed by CEP Renewables for Block 7, Lot 1.01, as documented in the Applicant's Electrical Site Plan map, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill." To be eligible for the creation of TRECs, the facility must not exceed 18.7776 MWdc and must be placed within the 34 acres of the properly closed sanitary landfill depicted in the application. Based on information provided by NJDEP, the Board **FINDS** that the Property proposed for the Southern Ocean Waretown Solar Farm, LLC Project located within Block 7, Lot 1.01 meets the Solar Act's definition of a "properly closed sanitary landfill."

The Board also **FINDS** that NJDEP determined that the Property owner will need to comply with State laws relevant to the Property for the solar installation, as well as any other permits identified by NJDEP, prior to construction of the solar electric power generation facility. The Board **FINDS** that NJDEP has stated that the construction of the solar installation on the properly closed sanitary landfill needs to address the remediation requirements of the Property.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of the Applicant's proposed solar electric generation facility, to be located on 34 acres at the Southern Ocean Waretown Landfill site at Block 7, Lot 1.01, in Ocean Township, Ocean County, New Jersey, with an array size not to exceed 18.7776 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

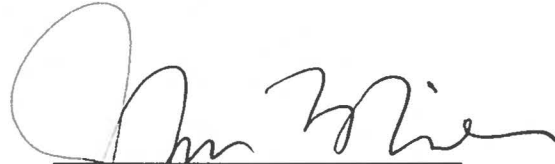
In addition, to obtain full certification, the Board **DIRECTS** CEP Renewables to submit an initial TI Program registration package within 14 days of the effective date of this order, including updated site plan maps reflecting array placement within Block 7, Lot 1.01, and to complete construction within 30 months in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3) as modified by the TI Extension Order. The Board **DIRECTS** Staff to issue full certification to the Project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all TREC eligibility requirements at N.J.A.C. 14:8-10.1 et seq. – have been satisfied. After the Applicant receives full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the Project for purposes of TREC creation for a 15-year Qualification Life.

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 site plans filed with the application, and the TREC registration.

The effective date of this Order is June 14, 2023.

DATED: June 7, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST: 

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 THE 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

SOUTHERN OCEAN WARETOWN SOLAR FARM LLC - SUBSECTION (T), BLOCK 6, LOTS 4.04 & 4.05; BLOCK
7, LOTS 1.01, 2, 3, 5 & 6.01

DOCKET NOS. EO12090832V, QO19010068, AND QO20010660

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