



Agenda Date: 7/24/24
Agenda Item: 8E

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 <u>L.</u>)	ORDER
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)	DOCKET NO. QO19010068
)	
ESKY SOLAR – APPLICATION FOR SOLAR ACT)	
SUBSECTION (T), BLOCK 57, LOT 9 (PARTIAL), LOT)	DOCKET NO. QO21081089
12, LOT 12.01 AND LOT 13)	
)	
IN THE MATTER OF THE PETITION OF NJR CLEAN)	
ENERGY VENTURES III CORPORATION FOR A)	
DECLARATORY RULING INTERPRETING THE)	
OCTOBER 25, 2023 ORDER OR, IN THE)	
ALTERNATIVE, WAIVING THE TIMEFRAME IN THE)	
OCTOBER 25, 2023 ORDER FOR SUBMITTING THE)	
INITIAL TI PROGRAM REGISTRATION)	DOCKET NO QW24030164

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Mark Valori, Vice President, NJR Clean Energy Ventures III Corporation
Robert Pohlman, Vice President, NJR Clean Energy Ventures III Corporation

BY THE BOARD:

This Order concerns a Motion for Reconsideration submitted by NJR Clean Energy Ventures III Corporation (“NJR” or “Petitioner”) regarding the denial of conditional certification to generate Transition Renewable Energy Certificates (“TRECs”) for the portion of a proposed 12.5 megawatt (“MW”¹) solar electric generation facility (“Project”) to be located on Block 57, Lot 9 at the Henry Harris Landfill site, 279 Bridgeton Pike, Harrison Township, Gloucester County, New Jersey (“Petition”). The Petitioner also sought a waiver to the registration timeline, as directed by Board Order issued October 25, 2023, for the portion of the Project that received conditional certification for eligibility to generate TRECs, located at Block 57, Lots 12, 12.01 and 13.² By this Order, the

¹ All capacities listed are measured in direct current (dc).

² In re the Implementation of L. 2023, c. 24, the Solar Act of 2012; In re the Solar Transition Pursuant to P.L. 2018, c. 17; In re ESKY Solar – Application for Solar Act Subsection (t), Block 57, Lot 9 (Partial), Lot

Board denies the Motion for Reconsideration for the portion of the Project located on Block 57, Lot 9, and grants a waiver to the registration timeline established in the October 2023 Order for the portion of the Project located on Block 57, Lots 12, 12.01 and 13.

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. 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.³

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 term “properly closed sanitary landfill facility.” 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” N.J.S.A. 48:3-51.

Toward implementing the October 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the New Jersey Department of Environmental Protection (“NJDEP”)

12, Lot 12.01 and Lot 13; BPU Docket Nos. EO12090832V, QO19010068, QO21081089, Order dated October 25, 2023 (“October 2023 Order”).

³ 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, Docket Nos. EO12090832V, EO12090860V, EO12090861V, EO12090880V & EO12090862V, Order dated October 10, 2012 (“October 2012 Order”).

held a public hearing on November 9, 2012, and invited written comments through November 23, 2012.

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.⁴ 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 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.⁵

The January 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.

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", "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing that the Board close the Solar Renewable Energy Certificate ("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, 2019.⁶ 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.

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.⁷ 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

⁴ 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, BPU Docket Nos. EO12090832V, EO12090862V, Order dated January 24, 2013 ("January 2013 Order").

⁵ January 2013 Order at 31–33.

⁶ 51 N.J.R. 138(e) (Jan. 22, 2019).

⁷ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 ("December 6, 2019 Order").

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 proposal⁸ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁹ 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.¹⁰ 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.¹¹ The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On June 9, 2021, Governor Murphy signed L. 2021, c.169 ("Solar Act of 2021") into law, effective immediately. The Solar Act directed the Board to create both a solar facilities program for smaller projects, with administratively set incentive values, and a solicitation process for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five (5) MW. The Board took a major step forward to implementing the Solar Act on July 28, 2021, voting unanimously to create the Successor Solar Incentive ("SuSI") Program, intended to replace the TI Program.

On August 25, 2021, Staff received the NJR application for inclusion in the TI Program. NJR requested that the proposed Stags Leap Ranch Development, LLC solar facility be certified as eligible for TRECs pursuant to Subsection (t) and filed an application with supporting documentation to enable a NJDEP determination as to whether fifty-four (54) acres of the proposed site was a properly closed sanitary landfill facility as defined by the Solar Act of 2012. NJR proposed a 12.5 MWdc grid supply solar farm on fifty-four (54) acres at the Henry Harris Landfill site, specifically at Block 57, Lots 9, 12, 12.01 and 13, in Harrison Township (Mullica Hill), Gloucester County, New Jersey ("Property").

Staff transmitted a copy of the application to NJDEP for review and advice on December 10, 2021. NJDEP reviewed the application and supplied an advisory memorandum to Staff on June 5, 2023 on the history, land use classification and the remediation status of the proposed site. NJDEP determined that the proposed Property, specifically Block 57, Lot 9, is partially located on "land that has been actively devoted to agricultural or horticultural use, which has been valued, assessed, and taxed pursuant to the Farmland Assessment Act of 1964 at any time within the 10-year period prior to July 24, 2012" and thus is not eligible for solar under Subsection (t). NJDEP also determined that the portion of the Property located on Block 57, Lots 12, 12.01 and 13 constitute a "properly closed sanitary landfill."

⁸ 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").

⁹ 52 N.J.R. 1048(a) (May 18, 2020).

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

¹¹ December 2019 Order.

By the October 2023 Order, 2023, on the basis of NJDEP’s determination, the information certified by NJR in its application, records obtained by the Division of Law, and the Subsection (t) process approved in the January 2013 Order, the Board found that the portion of the project on Block 57, Lot 9 was ineligible for solar development. The Board denied the application for eligibility for certification on this portion of the Property. Additionally, the Board granted conditional certification for the portion of the Property identified by NJDEP as being located on a “properly closed sanitary landfill,” specifically Block 57, Lots 12, 12.01 and 13. The Board directed NJR to “submit a revised application package within 30 days of the effective date of this order, including updated site plan maps reflecting array placement within Block 57, Lots 12, 12.01 and 13; to submit initial TI Program registration within fourteen days of the revised application 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.”

MOTION FOR RECONSIDERATION

On November 15, 2023, NJR filed a Motion for Reconsideration of the Board’s October 2023 Order (“November 2023 Motion”). By the November 2023 Motion, NJR sought reconsideration of the Board’s denial of conditional certification for eligibility to generate TRECs pursuant to Subsection (t) of the Solar Act of 2012 for the proposed solar facility located on Block 57, Lot 9. This portion has a nameplate capacity of 4.3 MWdc. The Petitioner argued that the Board erred in accepting Staff’s recommendation on the land use classification and taxation status and did not fully consider the regulatory record associated with the Property. The Petitioner sought to provide additional evidence to demonstrate that the denied portion of the Property should be considered part of the properly closed sanitary landfill. Petitioner stated that Block 57, Lot 9 has “always” been considered as a part of the Henry Harris Landfill by the NJDEP, based on the history of the site, including a “Landfill Closure Approval” issued by NJDEP and dated February 7, 2006, “which identified the subject landfill as being located on Block 57, Lots 7, 9, 12, 12.01 and 13.” The Petitioner also pointed to a letter issued by NJDEP on March 28, 2023, stating that “[Office of Brownfield and Community Revitalization] has determined that the landfill can now be considered properly closed.”¹²

¹² Petition at Exhibit F.

The Petitioner acknowledged that Block 57, Lot 9 was classified as “3B Qualified Farm Property;” however, it argued that Block 57, Lot 9 should not have been classified as such because no active farming occurred due to the presence of the former Henry Harris Landfill. The Petitioner stated that “Block 57, Lot 9 was actively part of a historical landfilling operation and was contaminated as result of such landfilling operation,” thus distinguishing it from another matter in which the Board denied certification on the basis of classification as qualified farmland.¹³ Petitioner contended that the situation is more similar to that addressed in another matter, wherein the Board approved a proposed solar facility on a parcel that had been taxed as “3B Qualified Farm Property” but had also been contaminated by discharge from industrial activity.¹⁴ Noting that the Board had conditioned its approval in that matter on, among other things, documentation that an amount equal to the difference between property tax payable for “industrial” versus “3B Qualified Farm Property” had been paid to the municipality or to charity, the Petitioner represented that it is “amenable to paying any difference in the tax assessment as if Block 57, Lot 9 were classified as ‘Commercial’ or ‘Industrial.’”

PETITION FOR DECLARATORY RULING

On March 6, 2024, NJR submitted a petition to the Board seeking a declaratory ruling interpreting the timing of the submission of the initial registration packet in the TI Program as laid out in the Board’s October 2023 Order, or in the alternative seeking a waiver of the fourteen (14)-day registration submission requirement in the October 2023 Order for the portion of the Project that received conditional certification for eligibility to generate TRECs - Block 57, Lots 12, 12.01 and 13 (“March 2024 Petition”). The October 2023 Order directed the Petitioner “to submit an revised application package within 30 days of the effective date of this order, including updated site plan maps reflecting array placement within Block 57, Lots 12, 12.01 and 13; to submit initial TI Program registration within 14 days of the revised application and to complete construction within 30 months...”¹⁵ The Petitioner stated that the requirement to submit a revised detailed application package after conditional certification of the project created confusion regarding the interpretation of the direction to register within fourteen (14) days of the revised application.

Following the issuance of the October 2023 Order, on November 30, 2023, Petitioner submitted the revised application package including the updated site plan maps reflecting array placement only within Block 57, Lots 12, 12.01 and 13. On January 25, 2024, counsel for Petitioner received notice from an attorney for the Board that the initial TI Program registration had not been received by the Program Manager within fourteen (14) days of submitting the revised application package. Counsel for Petitioner advised that the Petitioner interpreted the Order to require the submission of the TI Program registration within fourteen (14) days of the “Board Staff’s review and approval of the revised application package submitted on November 30, 2023, rather than within fourteen days of submitting the revised application.” In the March 2024 Petition, NJR stated that the October 2023 Order was ambiguous regarding the required registration submission, as the

¹³ In re of 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 Brownfields, Areas of Historic Fill, and Landfill Facilities – Millennium Land Development, LLC (Love Lane), 443 N.J. Super 73 (App. Div. 2015) (“Millenium”).

¹⁴ In re 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 – Holland Solar Farm, LLC/Hughesville Mill – Application for Subsection (t), Block 2, Lot 1.02, Docket Nos. QO19010068 & QO20050345, Order dated March 3, 2021 (“Holland”).

¹⁵ October 2023 Order at 10.

Petitioner believed that the revised site plan would need approval by the Board or Staff due to material changes to the Project in the redesign, including “changes to panel placement, total capacity, and electrical design.”

Under the terms of the October 2023 Order, this failure to submit a timely registration package would make the project ineligible to participate in the TI Program and to receive the associated solar incentives. Due to what it characterizes as the “unique” nature of the Subsection (t) conditional certification and its clear intention to advance the project, Petitioner requested that the Board issue a declaratory ruling that NJR is permitted to submit the initial TI Program registration within fourteen (14) days of approval of the revised application for the Project, and waive the fourteen (14) day registration requirement from the October 25, 2023 Order. In the alternative, Petitioner requested a waiver of the fourteen-day registration timeline set forth in the October 2023 Order.

STAFF RECOMMENDATIONS

The Subsection (t) application and assessment process, as laid out in the January 2013 Order, relies on collaborative effort between NJDEP and the Board. While the Board may grant or deny conditional certification for eligibility to generate TRECs to projects located on brownfields, properly closed sanitary landfills and sites of historic fill, the process necessarily incorporates the expertise of the NJDEP to confirm the land use classification for eligibility and to account of the state of remediation of the project site. The information regarding the prior use of Block 57, Lot 9 contained in that documentation had already been documented and considered by the NJDEP in the assessment of the subsection (t) application and provided to the Board in an advisory memorandum dated June 5, 2023.¹⁶

NJDEP first considered the Minimum Qualification Requirements, as detailed in Section I on page 1 of the Subsection (t) application. These requirements state, in part, that: “Projects that are proposed to be located on land that has been actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (N.J.S.A. 54:4-23.1 et seq.) *at any time* within the ten (10) year period prior to July 24, 2012 will not be eligible for designation as being located on a brownfield, an area of historic fill, or a properly closed sanitary landfill facility for purposes of qualifying for SRECs under Subsection t.” (emphasis added) NJDEP notes that tax records from Gloucester County obtained by the Division of Law confirm that part of the property located on Block 57, Lot 9 was taxed as 3B Qualified farmland pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 (C.54:4-23.1 et seq.).¹⁷ These records clearly demonstrate a change in taxation status for Block 57, Lot 9 to 3B Qualified Farmland, indicated by “Approved 2006 FLA” in the image below. Tax records show that this portion of the Property continued to be assessed as 3B Qualified Farmland through 2012.

¹⁶ Appendix – DEP advisory memorandum.

¹⁷ The Division of Law, on behalf of Staff, obtained tax records for Block 57 Lot 9, for the years 2002-2012 showing the tax classification. The records were obtained on November 5, 2021, pursuant to an OPRA requested submitted to the Gloucester County Tax Assessor. These documents can be found under Docket number QO21081089 on the Board’s Public Document search, located at the following link: <https://publicaccess.bpu.state.nj.us/>

TAXING DISTRICT NO. 08 HARRISON TWP		REAL PROPERTY TAX LIST 2006			COUNTY NO. 08 GLOUCESTER		PAGE NO. 253				
1	2	3	4	5	6	7	8	9	10	11	12
BLOCK NO.	LOT NO.	OWNER'S NAME	ADDRESS	EXEMPTIONS	AMOUNT	TAXABLE VALUE	EXEMPTIONS	TAXABLE VALUE	TAX	TAX	TAX
57	7.09	1.00AC 15P16 RANCH	2 HEDENBERG, KARL E & LINDA 260 CLEMS RUN MULLICA HILL NJ	08062 R1 33	41000 72000 113000	113000	V 1 01 F01	113000	250.00	4095.98	2947.99
57	7.10	1AC 25F	2 MITCHELL JOHN E & FELICIA F 244 CLEMS RUN MULLICA HILL NJ	08062 R1 33	41000 149300 190300	190300	F01	190300	.00	7318.94	5659.47
57	7.11	1.89AC 15F	2 PROROK JOSEPH & BRENDA 248 CLEMS RUN MULLICA HILL NJ	08062 R1 33	45000 141100 186100	186900	F01	186900	.00	7188.17	5591.89
57	7.12	6.00AC 15P26 RANCH	2 KINGETT CHARLES & PATRICIA 246 CLEMS RUN MULLICA HILL NJ	01175 08062 R1 33	63900 103200 167100	164900	F01	164900	.00	6442.06	3221.53
57	7.13	1.01AC 25F	2 HEGGAN CAROL A 258 CLEMS RUN MULLICA HILL NJ	08062 R1 33	45200 119700 164900	164900	F01	164900	.00	6242.25	3171.53
57	7.14	2.99 AC 25F	2 GRANT ELIZABETH B 258 CLEMS RUN MULLICA HILL NJ	08062 R1 33	45200 85100 130300	134300	F01	134300	.00	5165.18	2582.59
57	7.15	1.00AC 15F	2 BURGER FRANK C & JUDITH M 286 CLEMS RUN MULLICA HILL NJ	01175 08062 R1 33	41000 107900 148900	148900	F01	148900	.00	5726.69	2993.39
57	7.16	1.01AC 15F	2 COTELLARD BARBARA 254 CLEMS RUN MULLICA HILL NJ	01175 08062 R1 33	41000 148800 147800	147800	F01	147800	.00	5684.39	2842.20
57	7.17	1.84AC 25F	2 SOMERS MICHAEL G & BESKE BARBARA 266 CLEMS RUN MULLICA HILL NJ	01175 08062 R1 33	41000 137400 178400	178400	F01	178400	.00	6861.27	3438.64
57	7.18	2.0 ACS 2.5-7.3AG	2 PENNELL LES 396 CLEMS RUN MULLICA HILL NJ	08062 R1 33	44600 148800 193200	193200	F01	193200	.00	7438.27	3715.24
57	8	1.00AC 25F	3A LANDIS MICHAEL E & BERNADETTE 330 HARRISONVILLE RD MULLICA HILL NJ	08062 R1 33	41000 123900 164900	164900	F01	164900	.00	6342.09	3171.93
57	8	6.43AC QFARM APPROVED 2006 FLA 6.4300	3B LANDIS MICHAEL E & BERNADETTE 330 HARRISONVILLE RD MULLICA HILL NJ	08062 R1 33	3900 0 3900	3900	F01	3900	.00	140.99	78.88
57	8.01	6.00AC	1 GALE DAVID R & BARBARA 7 S ST WOODBURY NJ	08996 R1 33	71000 0 71000	71000	F01	71000	.00	2738.66	1355.33
57	9	37.85AC APPROVED 2006 FLA 37.8500	3B SMITH STEVEN & CHRISTINE 2012 FISHPOUND RD HARRISONVILLE NJ	08060 R1 33	22700 0 22700	22700	F01	22700	.00	8515.20	2327.88
PAGE TOTALS				V01 250	588300	1299400	1887700	BLK 57	LOT 9		

The application for Farmland Assessment, which is filed with and approved by a municipal tax assessor, provides the following qualifications to applicants:

- The land has been actively devoted to agricultural or horticultural use for at least two years immediately preceding the tax year for which farmland assessment is requested. (N.J.S.A. 54:4-23.6)
- The land area actively devoted to agricultural or horticultural use is not less than five (5) acres, exclusive of the land upon which the farmhouse is located...
- Gross sales, fees or payments average at least \$1,000 annually on the first five (5) acres, except for lands under a Woodland Management Plan where gross sales remain at \$500 for the first five acres, and average \$5 per acre on all acreage above five acres, except 50 cents per acres on woodland & wetland above five acres. For woodlands and wetlands under a NJ Forest Stewardship Plan, no income need be generated, but the prescriptions of the plan must have been followed. (N.J.S.A. 54:4-23.5.)

Thus, the approval of the 2006 Farmland Assessment and accompanying change in taxation status noted above demonstrates that Block 57, Lot 9 had been actively devoted to agricultural or horticultural use since 2004 in order to qualify for approval of 3B tax assessment. Staff

considers that the change in taxation status to 3B Qualified Farmland in 2006 demonstrates that the farmland assessment was specifically and deliberately applied for, as an application for farmland assessment must be completed annually by the property owner and submitted to the tax assessor in order to be taxed assessed as 3B Qualified Farmland.

The definition of agricultural use provided in the Farmland Assessment application¹⁸ is extensive: “Land is considered to be in *agricultural use* when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops, grains and feed crops...fur animals, trees and forest products; when devoted as sustainable forestland...” The application further defines land use classes that are considered actively devoted including cropland harvested (i.e., “land from which a crop is harvested in the current year”) and non-appurtenant woodland, which is “woodland devoted exclusively as sustainable forestlands or to the production for sale of trees and forest products.” The Farmland Assessment application requires owners to submit a Woodland Management Plan or NJ Forest Stewardship Plan with the Farmland Assessment. Staff notes that in 2012, Block 57, Lot 9 was owned by Fred Smith Orchards, Inc. and that the documents accompanying the Henry Harris Subsection (t) application include a Woodland Management Plan prepared for that block and lot “to meet the specifications for farmland assessment.”¹⁹ The Woodland Management Plan includes a stand map for the Block 57, Lot 9, dated January 1, 2012. This stand map is the same map that the property owner used in the 2021 Farmland Assessment application. That map documents the forested land in stand no. 1 as well as an area demarcated “cropland.”²⁰ Farmland Assessment applications for the property dated from 2018 to 2021 list both “cropland harvested” and “non-appurtenant woodland” as land use classes, and include acreage harvested for field crops including rye, wheat and hay, and woodland products of fuelwood (cords).²¹

The Board considered this information in finding that Block 57, Lot 9 was ineligible for certification as a properly closed sanitary landfill facility. The Petitioner’s contentions fail to provide new information to negate the above evidence, show “error” or change the fact that the site of its proposed solar facility is not eligible for TI incentives under the Board’s rules or the requirements of the application that NJR signed. In light of the taxation status history and the documentation of agricultural activity on the property, the argument of mistaken tax assessment lacks merit; the applications for farmland assessment demonstrate that the site of the proposed facility was “actively devoted to agricultural or horticultural use” during the ten (10)-year period preceding the passage of the Solar Act of 2012. The Board’s decision is also consistent with its rulings for certification pursuant to Subsection (t).²²

¹⁸ See Current Farmland Applications, pages 24 & 26. These documents can be found under Docket number QO21081089 on the Board’s Public Document search, located at the following link: <https://publicaccess.bpu.state.nj.us/>

¹⁹ See Woodland Management Plan, cover letter signed by Craig Kane, dated May 22, 2012. These documents can be found under Docket number QO21081089 on the Board’s Public Document search, located at the following link: <https://publicaccess.bpu.state.nj.us/>

²⁰ Page 36 of Woodland Management Plan.

²¹ See Current Farmland Applications.

²² In re 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 – Miller Bros. Glassboro Boro SLF, BPU Docket No. QO22060410, Order dated January 10, 2024 (motion for reconsideration pending) (“Miller Bros. Order”).

Further, the Board has in the past refused to certify applications pursuant to Subsection (t) for properties that had been assessed as farmland, and the Appellate Division affirmed one such denial in its Millenium decision.²³ The Millenium Court held that “[s]ubsection (s) unambiguously precludes a subsection (t) application for a solar project on this property, because it is agricultural land that was valued, assessed and taxed as farmland within the ten-year period prior to the effective date of the Solar Act.” Petitioner attempted to distinguish its property from that addressed in Millenium, noting that unlike the Millenium facts, the contamination resulted from landfill operations rather than pesticide use and that there was evidence of landfill operations on its property whereas there had been no evidence of industrial use on the Millenium property. Petition at 16 and 17. However, these efforts lack merit. As detailed above, the tax records and the Farmland Assessment applications in the record support NJDEP’s determination that the property located on Block 57, Lot 9 constitutes qualified farmland under the Solar Act. Petitioner also asserted that the record does not contain certifications from the property owner that the property was in active agricultural use, petition at par. 18, however, the property owner, Brian Horne, certified that Block 57, Lot 9, “will continue to be devoted to an agricultural or horticultural use” for the years 2019 through 2021 in submitting farmland assessment applications.²⁴ In order to receive farmland assessment, the property owner certified applications for farmland assessment each year dating back to 2002, certifying that the property met the statutory requirements for farmland assessment.

Petitioner claims that its facts resemble those of Holland, noting that in that Order the Board certified the subject property despite a previous tax classification as 3B – Qualified Farm Property because the land had not been actively farmed and the contamination resulted from historic landfill operations. Petition at 20. Petitioner is mistaken. The Board found the Holland facts to be distinguishable from those of Millenium because the NJDEP had determined that the land proposed for solar development constituted a brownfield and because those acres had not been taxed as qualified farmland during the period identified by the statute, the ten years prior to passage of the Solar Act of 2012. Holland at 8-9. In the matter under review, the NJDEP determined that the subject property did not constitute a properly closed sanitary landfill, and the record shows that this property was taxed as qualified farmland during the statutorily prohibited period.

Thus, Staff recommends that the Board deny the Petitioner’s November 2023 Motion for eligibility of the portion of the Property located on Block 57, Lot 9.

Turning to the March 2024 Petition, Staff believes the Board’s long-standing policy of prioritizing the development of solar on marginalized lands, including landfills, is relevant. The Energy Master Plan of 2008 recommended that the Board direct solar development activity away from farmland and open space to locations on landfills and brownfields, and these policies were implemented in part through the subsection (t) provisions in the Solar Act of 2012. Pursuant to the Clean Energy Act of 2018 and the Solar Act of 2021, the Board established the permanent

²³ 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 Brownfields, Areas of Historic Fill, and Landfill Facilities - Millenium Land Development, LLC (Love Lane), 443 N.J. Super 73 (App. Div. 2015) (“Millenium”).

²⁴ See Current Farmland Applications, pages 8, 21 & 25. These documents can be found under Docket number QO21081089 on the Board’s Public Document search, located at the following link: <https://publicaccess.bpu.state.nj.us/>

Community Solar Energy Program (“CSEP”) by Board Order dated August 16, 2023.²⁵ The CSEP further evidences the Board's policy preference for siting solar on landfills and other marginalized land. The Legislature, through the Solar Act of 2021, also emphasized solar siting on marginalized lands; this act expanded the definition of contaminated sites and loosened the restrictions on landfill closure status. The Solar Act of 2021 also directed the Board to establish the Competitive Solar Incentive (“CSI”) Program, which it did by Order dated December 7, 2022.²⁶ The CSI Program includes a competitive market tranche dedicated to grid supply solar facilities located on sites that meet the new definition of contaminated sites and landfills.

Staff believes that the portion of the Project for which the Board granted conditional certification, specifically Block 57, Lots 12, 12.01 and 13, aligns with the intent of the legislature and supports the goals of the TI Program and New Jersey’s transition to clean solar energy. In this context, Staff suggests that the Board consider the March 2024 Petition for a declaratory judgment or, in the alternative, a waiver of the requirement in the October 2023 Order that Petitioner submit its registration to the TI Program within fourteen (14) days of filing its revised application package.

Staff does not recommend that the Board grant the motion for declaratory judgement. Petitioner has not made a convincing argument that the directive to “submit initial TI Program registration within fourteen days of the revised application” is ambiguous and could justifiably be read, as Petitioner read it, to mean “submit initial TI Program registration within fourteen (14) days of *Staff’s approval of the revised application.*” The addition of the requirement to first revised and resubmit its application did not include and did not imply the need for an additional Staff approval prior to complying with the clear directive to register within fourteen (14) days.

In the alternative, Petitioner has asked for a waiver of the fourteen (14)-day registration requirement. Staff believes that there are valid arguments for the Board to grant this waiver. First, Staff acknowledges NJR’s perseverance in advancing the project through the lengthy and time-consuming development process required for landfill projects. Most relevant to the current discussion, Petitioner met with Staff subsequent to the issuance of the October 2023 Order and timely complied with the Board’s direction to submit a revised application package, including an updated site plan, within thirty (30) days of the Order. Staff believes that Petitioner’s failure to complete the simpler and more ministerial task of registering with the TI Program within fourteen (14) days of submitting the revised application package was due to an unjustified but sincere misinterpretation of the registration directive. Given that this project as redesigned does comport with the directive given in the October 2023 Order for array placement within the Property and the Board’s consistent policies favoring solar development on marginalized lands as being in the public interest of New Jersey ratepayers, Staff recommends that the Board grant the Petitioner’s alternative request for a waiver of the fourteen (14)-day deadline for registration.

DISCUSSION AND FINDINGS

As a threshold issue, the Board notes that Petitioner seeks to introduce new evidence in support of its motion for reconsideration. However, as Petitioner acknowledges, this evidence was available to it at the time it filed for conditional certification and throughout the pendency of that

²⁵ In re the Community Solar Energy Program, Order Launching the Community Solar Energy Program, BPU Docket No. QO22030153, Order Dated August 16, 2023.

²⁶ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169, Order Launching the CSI Program, BPU Docket No. QO21101186, Order dated December 7, 2022 (“CSI Order”).

proceeding. The courts have ruled that litigants may not use a motion for reconsideration to raise arguments which were available at the time of the initial proceeding but which through oversight or a tactical decision were not raised at that time. Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 461-62, (App. Div. 2002); see also Morey v. Wildwood Crest Borough, 18 N.J. Super. 335, 340-41 (App. Div. 1999) (holding that plaintiff is not entitled to reconsideration on the basis of evidence it had available and overlooked in its initial argument). Like the movants in the above matters, NJR was in possession of the facts it now raises in support of its argument prior to the issuance of the October 2023 Order. As the Board has held in previous orders, NJR is not entitled to reconsideration on such a basis.²⁷

Moreover, even if the specific documents cited by Petitioner were not referenced in the October 2023 Order, the history and status of Block 57, Lot 9 to which these documents speak, was considered in reaching the Board's ruling. Based on information provided by the Petitioner, NJDEP, and records obtained by the Division of Law, the Board had determined that the portion of the Property located on Block 57, Lot 9 had been actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.) within the ten (10) year period prior to July 24, 2012, and was not eligible for designation as a properly closed sanitary landfill for purposes of qualifying for SRECs under Subsection (t). The Board has recently denied eligibility to another Subsection (t) project under similar circumstances.²⁸ The Board **FINDS** that Petitioners have failed to demonstrate any palpable error of law or fact with regard to the taxation status of the Property or the Board's interpretation of the matter; thus the Board **DENIES** the Petitioner's November 2023 Motion.

The Board now turns to Petitioner's alternate request for relief, a waiver of the requirement that it register with the TI Program within fourteen (14) days of submitting a revised application. In general, the Board believes that strict compliance with its orders and regulations is critical to ensuring that programs are administered in a transparent, fair, and consistent manner. However, the Board must also consider whether the circumstances specific to this matter may justify a relaxation of this general rule. The Board is authorized to relax or waive its rules pursuant to N.J.A.C. 14:1-1.2, which provides that the rules may be liberally construed to permit the Board to carry out its statutory functions. In considering whether to grant a request for a waiver, the Board looks to the standards provided in this rule. In special cases upon a showing of good cause the Board may relax or permit deviations from the rule. N.J.A.C. 14:1-1.2(b). Additionally, the Board shall waive sections of the rule if it adversely affects ratepayers, hinders safe, adequate and proper service, or is in the interest of the general public. N.J.A.C. 14:1-1.2(b)(1).

The Board has a long-standing history of supporting solar development on marginalized land, ensuring that underused landfills, contaminated sites and areas of historic fill are put to productive use. The Board **FINDS** that NJR has actively advanced the Project in alignment with the

²⁷ See In re N.J. Solar Transition pursuant to P.L. 2018, C.17 -- Atlantic Cnty. Util. Auth. Motion for Reconsideration, Docket No. QO19010068, Order dated June 10, 2020; In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2019; In re Allocation of Renewable Portfolio Standards for Basic Generation Service Beginning June 1, 2019, Docket Nos. ER18040356 and EO18111250, Final Agency Determination dated May 28, 2019 (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 failed to take notice of a significant element of fact or law." (internal citations omitted).

²⁸ Miller Bros. Order.

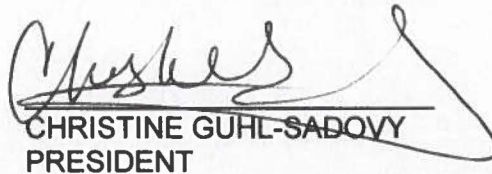
requirements of Subsection (t), resulting in the October 2023 Order granting conditional certification. The Board further **FINDS** that the Petitioner demonstrated extensive efforts to hold to the Board's directive with respect to the submission of the project redesign and modification required to satisfy the Subsection (t) qualifications, including promptly providing the updated site plan within the allotted time. The Board **FINDS** that the compliance with the timeline for the updated site plan and the public benefit of the solar generation facility planned for the Property outweigh the administrative mistake of the Petitioner.

Having reviewed the totality of the circumstances in this matter, the Board **FINDS** good cause to provide relief to Petitioner. The Board **HEREBY GRANTS** the Petitioner's request that it be permitted to register its project, as configured in the revised application, in the TI Program and **WAIVES** the fourteen-day registration requirement set forth in the October 25, 2023 Order. The Board **DIRECTS** NJR to file a new TI Program initial registration package for the Project within fourteen (14) days of the effective date of this Order. The Board **FURTHER DIRECTS** the TI Program administrator to review the registration package and, if otherwise compliant with program requirements and the Board's rules, to accept the TI registration with an expiration date thirty (30) months from the date of the acceptance letter in accordance with N.J.A.C. 14:8-10.4(f)(4)(ii)(3) as modified by the TI Extension Order. The Board **STRONGLY ADVISES** NJR to carefully review all Board Orders, rules, and regulations pertaining to the TI Program, and to maintain strict compliance with all requirements going forward.

The effective date of this Order is July 31, 2024.

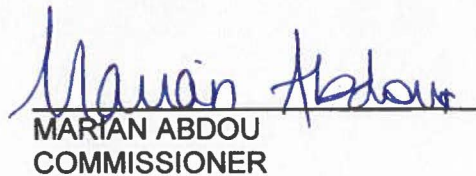
DATED: July 24, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT

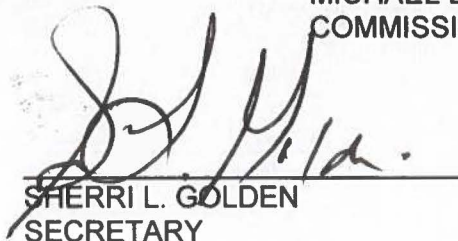


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST:


SHERRIL L. GOLDEN
SECRETARY

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

ESKY SOLAR – APPLICATION FOR SOLAR ACT SUBSECTION (T), BLOCK 57, LOTS 9 (PARTIAL), LOT 12, LOT 12.01 AND LOT 13

IN THE MATTER OF THE PETITION OF NJR CLEAN ENERGY VENTURES III CORPORATION FOR A DECLARATORY RULING INTERPRETING THE OCTOBER 25, 2023 ORDER OR, IN THE ALTERNATIVE, WAIVING THE TIMEFRAME IN THE OCTOBER 25, 2023 ORDER FOR SUBMITTING THE INITIAL TI PROGRAM REGISTRATION

DOCKET NOS. EO12090832V, QO19010068, QO21081089 AND QW24030164

SERVICE LIST

Riker Danzig LLP

Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981

Steven T. Senior, Esq.
ssenior@riker.com

James C. Meyer, Esq.
jmeyer@riker.com

Michael S. Kettler, Esq.
mkettler@riker.com

New Jersey Resources Corporation

John A. Soltesz III, Esq.
1415 Wyckoff Road
Wall, NJ 07719
jsoltesz@NJResources.com

NJR Clean Energy Ventures III Corporation

Robert Pohlman, Vice President
1415 Wyckoff Road
Wall, NJ 07719
rpohlman@NJResources.com

Mark Valori, Vice President
1415 Wyckoff Road
Wall, NJ 07719
mvalori@njresources.com

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Maura Caroselli, Esq.
mcaroselli@rpa.nj.gov

Mamie W. Purnell, Esq.
mpurnell@rpa.nj.gov

Andrew Gold, Esq.
agold@rpa.nj.gov

Carlena Morrison, Paralegal
cmorrison@rpa.nj.gov

New Jersey Division of Law

Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Steven Chaplar, DAG
steven.chaplar@law.njoag.gov

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Sherri Golden, Board Secretary
board.secretary@bpu.nj.gov

Bob Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Henry Gajda, Deputy Chief of Staff
henry.gajda@bpu.nj.gov

Division of Clean Energy

Veronique Oomen, Director
veronique.oomen@bpu.nj.gov

Stacy Ho Richardson, Esq., Deputy Director
stacy.richardson@bpu.nj.gov

Diane M Watson
diane.watson@bpu.nj.gov

Earl Thomas Pierce
earl.pierce@bpu.nj.gov

General Counsel's Office

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Rachel Boylan
rachel.boylan@bpu.nj.gov

Alex Cary
alexander.cary@bpu.nj.gov