



Agenda Date: 9/18/13
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

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
)	
SOLAR WIND ENERGY, LLC. INDUSTRIAL LAND RECLAIMING (ILR) LANDFILL)	
)	DOCKET NO. EO13060499V
)	
ZONGYI SOLAR AMERICA COMPANY, LTD. TINTON FALLS SOLAR FARM)	
)	DOCKET NO. EO13070626V

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Richard Ragan, Solar Wind Energy, LLC.
Ming Zeng, Zongyi Solar America Company, Ltd.

BY THE BOARD:

BACKGROUND

On July 23, 2012, L. 2012, c. 24 (“Solar Act”) was signed into law by Governor Chris Christie. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities (“Board”) to conduct proceedings to establish new standards and to develop new programs to implement the directives. On October 4, 2012, the Board directed Board staff (“Staff”) to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act. Dkt. No. EO12090832V (“October 4 Order”).

Subsection (t) of the Solar Act provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered "connected to the distribution system" [and] shall not require such designation by the board[.] . . . [F]or projects certified under this subsection, the board shall establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility.

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

The Solar Act defines the terms "brownfield", "area of historic fill," and "properly closed landfill." A "brownfield" is "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant." N.J.S.A. 48:3-51. "Historic fill" is "generally large volumes of non-indigenous material, no matter what date they were placed on the site, used to raise the topographic elevation of a site[.]" Ibid. A "properly closed sanitary landfill facility" means "a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the [DEP.]" Ibid.

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

In an Order dated January 23, 2013, Docket. No. EO12090862V ("January 23 Order"), the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and landfills. The certification process for projects seeking approval pursuant to subsection (t) provides three potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which the NJDEP has determined require further remedial action or, in the case of properly closed landfills, additional protective measures, and full certification may be granted for projects located on sites for which the NJDEP has determined no further remedial or protective action is necessary. January 23 Order, at 12-13. The process incorporates the expertise of the NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site. Ibid.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfills was necessary in order to initiate the certification process and directed Staff to work with NJDEP to develop an application. Id. at 13. On or about April 10, 2013, Staff distributed, via the public renewable energy stakeholder email distribution list and posted to the NJCEP and BPU websites, a subsection (t) application form. This order considers two applications that were filed with the BPU.

The Board further found that the Solar Act requires the development of an incentive to offset the increased costs of siting solar generation facilities on the areas covered by subsection (t) and directed Staff to continue working with the NJDEP, the NJEDA, and the stakeholders to develop a process to determine appropriate incentives. Ibid. The Board further directed Staff to coordinate any incentive developed with the incentives to be provided to solar projects located on landfills pursuant to the Electric Distribution Companies' ("EDC") SREC financing programs. Ibid.

Financial incentives for projects developed under subsection (t) are found in the programs developed by the EDCs in response to the Board's Order of May 23, 2012, Docket EO11050311V. The EDCs continue to maintain EDC SREC financing programs. For example, on May 29, 2013, the Board approved a settlement stipulation for Public Service Electric and Gas' ("PSE&G") Solar 4 All Extension program and its Solar Loan III program. I/M/O Petition of PSE&G for Approval of an Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1, Docket No. EO12080721 (May 31, 2013); I/M/O Petition of PSE&G for Approval of a Stipulation Solar Loan III Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, Dkt. No. EO12080726 (May 31, 2013). The Solar 4 All program provides an incentive for PSE&G to invest over \$200 million for 42 megawatts ("MW") of solar on properly closed landfills and brownfields. The Solar Loan III program includes a carve-out for landfills and brownfields from the program's total capacity with the goal of facilitating private sector ownership of solar on landfills and brownfields. In addition, the other three EDCs have filed petitions for extensions of their SREC-based finance programs which each contain provisions for solar projects on landfills and brownfields.

Given the existing solar market conditions where the supply of SRECs significantly exceeds the demand created by the solar RPS, Staff sees no valid reason to create additional incentives to be funded by the ratepayer. At the Board's Agenda meeting of June 21, 2013, Staff recommended that no funding be provided for any solar rebates through the New Jersey Clean Energy Program ("NJCEP").¹

On July 19, 2013, the Board conditionally approved the first two applications for solar generation facilities seeking eligibility to create SRECs pursuant to the Solar Act's subsection (t). N.J.S.A. 48:3-87(t). The Board approved Staff recommendations to change the subsection (t) process for conditionally approved projects with respect to the applicant's requirements in the SREC Registration program based upon experience with the process established.

¹ I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Years 2014 through 2017 Clean Energy Program Docket No. EO11050324V (June 21, 2013).

The January 23 Order states that certification would be limited to those areas delineated by the NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited and the NJDEP reviewed this material in making its recommendation.

Projects certified under subsection (t) of the Solar Act are subject to all of the Board's rules; the statutory language exempts such projects from the need for further Board designation as "connected to the distribution system" but does not remove any of the Board's oversight authority. For example, following receipt of conditional certification, once a contract for facility installation has been executed, these projects will need to be registered in the Board's SREC Registration Program ("SRP") within ten days. The size and location of the subject project would then be reflected in the public reporting of solar development pipeline data.

SREC Registration

In the January 23 Order, the Board ruled that only those projects that have received a full certification would be eligible to register in the SRP; "full certification is a pre-requisite to consideration for acceptance into the SRP". However, the Board found that this requirement is in conflict with the SREC Registration rules at N.J.A.C.14:8-2.4, which require a solar electric generation project to submit a registration within 10 days of executing a contract to install a solar system or to purchase panels for solar system. Staff believes it is important for the Board to maintain the requirement that an applicant submit a registration for a project within 10 days of contract execution. As a result, the Board found that applicants comply with the requirements of the SREC Registration rules at N.J.A.C. 14:8-2.4 and the deadlines set forth therein.

STAFF RECOMMENDATIONS

Project Descriptions

This Order deals with Staff's recommendation on two projects: the ILR Landfill proposed to be located in Edison and the Tinton Falls Solar Farm constructed in Tinton Falls. The applicants seeking certification submitted the required documentation to enable a NJDEP determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed landfill. The NJDEP reviewed each application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of each proposed site. On the basis of the NJDEP's determination, information contained in the application, and the January 23 Order, Staff is recommending conditional certification for ILR Landfill and full certification for Tinton Falls Solar Farm, as explained further below.

Application Date	Submitted by	Contact Address	Developer	Project/ Designation Address	Location Town	County	Applicant's Characterization of the Site	Array Size (MWdc)	EDC	Staff Recommendation
6/4/2013	Richard Ragan	30 Jackson Road, Suite C3 Medford, NJ 08055	Solar Wind Energy LLC.	ILR Landfill	1 Nixon Drive Edison, NJ 08820	Middlesex	Landfill	12.8	PSE&G	Conditionally Certify
7/1/2013	Ming Zeng	99 Tormee Drive Tinton Falls, NJ 07712	Zongyi Solar America Company, Ltd	Tinton Falls Solar Farm	99 Tormee Drive Tinton Falls, NJ 07712	Monmouth	Brownfield	19.9	JCP&L	Fully Certify

ILR Landfill – (Edison Township) – Dkt. No. EO13060499V

On June 4, 2013, Solar Wind Energy, LLC ("SWE") submitted an application to the Board to have the project identified as Industrial Land Reclaiming (ILR) Landfill certified as located on a properly closed landfill pursuant to subsection (t) of the Solar Act. Applicant's 12.8 MWdc

project is located in Edison Township, New Jersey. On its application, SWE represented that the ILR Landfill project is proposed to be located on a sanitary landfill which began accepting waste in 1964 and ceased operations in 1985.

Staff forwarded the application to the DEP for review and a recommendation as described above. DEP advised Board Staff that it reviewed the application and found that the applicant listed block and lots which were "not within the landfill waste limits". However, the DEP found that the applicant's proposed solar site plan indicated that the applicant "intends only to install (solar) panels within the landfill waste limits." The DEP also informed Board Staff that another modification to the landfill's Closure Plan will be required prior to installation of the solar array and additional DEP permits such as Land Use and Flood Hazard permits will likely be required for the project depending on site specific characteristics. Staff recommends that the project be conditionally approved and that the applicant be required to submit to Staff an amended application listing only block and lot numbers within the landfill waste limits.

Based on the information provided in the application and DEP's indication that additional protective measures are necessary, Staff recommends conditional certification. Full certification is conditioned upon the ILR Landfill project developers satisfying DEP permit requirements for construction of the solar facility. Staff further recommends that the applicant comply with the requirements and time limits established in the SREC Registration Program.

Tinton Falls Solar Farm – (Tinton Falls) – Dkt. No. EO13070626V

On July 1, 2013, Zongyi Solar America Company, Ltd. ("Zongyi") submitted an application to the Board to have its Tinton Falls Solar Farm project certified as located on a brownfield pursuant to subsection (t) of the Solar Act. Zongyi's 19.9MWdc project is located in the Borough of Tinton Falls, New Jersey. On its application, Zongyi represented that its project was located on a former sand and gravel mining operation.

Staff forwarded the application to the DEP for review and a recommendation as described above. The DEP advised Board Staff that it reviewed the application and found that the site does not meet the definition of a brownfield, but it does qualify as an area of historic fill. The activity which resulted in the presence of contamination at the site is a result of fill brought to the property to raise the elevation after the mining operations had ceased. The DEP further advised that subsequent to the discovery of contamination found in the course of initial field work necessary to install the solar equipment, the applicant hired a Licensed Site Remediation Professional ("LSRP"), as required by DEP. The LSRP conducted the necessary remediation and issued a Response Action Outcome ("RAO"). The RAO indicates that all the remediation has been conducted to a level that is acceptable to the Department. The DEP also issued a Remedial Action Permit which requires ongoing monitoring and maintenance of the capped areas of the site as well as regular reporting on the effectiveness of the remedy at the site. Since the DEP reports that no other permits were required and the project has completed construction, Staff recommends full certification of the solar facility pursuant to subsection (t).

The Tinton Falls Solar Farm was issued an SREC Registration Program ("SRP") acceptance letter, a conditional registration pursuant to N.J.A.C. 14:8-2.4 (f) 4, by the SRP processing team on November 14, 2011. The applicant submitted "as-built" paperwork for the completed project in compliance with N.J.A.C. 14:8-2.4 (i) - (j) before the expiration of its conditional registration. The completed solar installation was authorized to energize by JCP&L on November 28, 2012. However, the project developers were not able to demonstrate the project's compliance with N.J.A.C. 14:8-2.4 (j)6. With the passage of the Solar Act on July 23, 2012, the project as a grid supply solar facility required Board approval of eligibility for SRECs by designation as

"connected to the distribution system." N.J.S.A 48:3-49. Staff instructed the SRP processing team to hold the conditional registration and not to issue an expiration letter, pending the project's application for Board approval pursuant to the appropriate provisions of the Solar Act.

Staff estimates the solar project has produced approximately 21,000 MWh since it was supplied a "Notice of Energization," a standard form issued to grid supply solar facilities by JCP&L. Staff recommends that the Board find the SRP registration by the Tinton Falls Solar Farm was filed and the project completed on a timely basis and the registration was properly held pending resolution of compliance with the grid supply solar facility eligibility provisions of the recently enacted Solar Act of 2012. Staff further recommends that the commencement of the "qualification life" as defined in N.J.A.C. 14:8-2.2 begin on the date that "Notice of Energization" was provided by JCP&L.

Staff notes that a similarly situated project, NJClean Energy Ventures ("NJCEV"), had applied for conditional registration in the SRP prior to the passage of the Solar Act on July 23, 2012 and completed construction after this date. The NJCEV project submitted an application to the Board for eligibility for SRECs pursuant to subsection (s) on December 17, 2012 and received Board approval of its application on April 29, 2013 (I/M/O L. 2012, C. 24, NJ Clean Energy Ventures (NJCEV), W2-065, Docket No. EO12121142V). The Board approved the project's application, directed Staff to continue processing the facility's SRP registration, and issue a NJ Certification Number for purposes of SREC creation. Staff completed the SRP process for NJCEV and issued the NJ Certification Number with an effective start date for the qualification life starting on the date the project was "authorized to energize" consistent with the SREC Registration rules at N.J.A.C. 14:8-2.2.

Staff recommends that the Board follow the same procedure outlined above for the Tinton Falls Solar Farm which applied for conditional registration prior to the Solar Act but did not become operational until after the Solar Act. Staff makes this recommendation because the definition of "qualification life" is ambiguous as applied to applicants under the Solar Act. "Qualification life," as defined in N.J.A.C. 14:8-2.2 was intended to apply to net-metered solar projects, not grid supply solar projects. After July 23, 2012, grid supply solar developers must obtain both Board approval pursuant to the Solar Act and authorization to energize from the appropriate electric utility company.

To clarify the definition of "qualification life" as applied to subsection (t) applicants, Staff further recommends that qualification life be defined as the date of authorization to energize or the date upon which an application for Board approval is filed, whichever is later. Staff recommends that the Board direct Staff to add this provision in the public rulemaking proceedings which have commenced to codify the Solar Act in the RPS rules.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that Staff has consulted with the DEP with regard to the development of an application for certification of solar generation as being located on brownfields, areas of historic fill, and properly closed sanitary landfills. The Board **FINDS** that Staff transmitted the two application discussed above to the DEP for a determination of eligible land use type and status of remediation on the proposed sites.

ILR Landfill

Pursuant to the January 23 Order, conditional certification may be granted when "specific action must be taken to protect the integrity of the closed landfill or otherwise prevent contamination

and full certification will be recommended when the conditions imposed have been met.” January 23 Order at 13. Because DEP has described additional permits or permit equivalents that must be obtained before the ILR Landfill project may begin construction, the Board **FINDS** that conditional certification is appropriate.

Based on information provided by DEP, the Board **FINDS** that the ILR Landfill project is located on land meeting the definition of a “properly closed landfill.” The Board also **FINDS** that the DEP has determined that portions of the site identified by the applicant are outside of the area of the landfill’s waste limits and that the DEP identified the ILR Landfill project as subject to permit requirements.

Concerning the area where the solar facility may be constructed and maintain eligibility for certification under subsection (t), the Board **FINDS** that the ILR Landfill application does not comport with the solar site plan. The Board **DIRECTS** SWE to resubmit a revised subsection (t) application that is consistent with the solar site plan and the landfill’s waste limits.²

The Board **FINDS** that ILR Landfill project must satisfy DEP requirements and **DIRECTS** ILR Landfill project developers to demonstrate to Staff that it has satisfied all DEP requirements for full certification. The Board **DIRECTS** Staff to issue full certification to the ILR Landfill project upon the applicant’s demonstration that it has satisfied all requirements for full certification. Finally, and after it has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the ILR Landfill project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

Regarding the SREC Registration Program, the Board accepts Staff’s recommendation to require all applicants to comply with the requirements set forth in N.J.A.C. 14:8-2.4. The Board **FINDS** that requiring compliance with the Board’s SRP program will provide greater transparency and predictability to the solar market. The applicant is hereby **REQUIRED** to comply with the requirements set forth in N.J.A.C. 14:8-2.4.

Tinton Falls Solar Farm

Based on information provided by DEP, the Board **FINDS** that the Tinton Falls Solar Farm project is located on land meeting the definition of an “area of historic fill.” The Board also **FINDS** that the DEP has determined that the project has satisfied all DEP permits for construction of the completed solar installation. The Board **FINDS** that full certification for the Tinton Falls Solar Farm project is appropriate.

The Board **FINDS** that the Tinton Falls Solar Farm project has satisfied DEP requirements for the construction of the solar facility and **DIRECTS** Staff to issue full certification to the Tinton Falls Solar Farm project. The Board **FINDS** that the Tinton Falls Solar Farm project submitted post-construction certification package in compliance with the SREC registration requirements. After the Tinton Falls Solar Farm project has satisfied any remaining SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the Tinton Falls Solar Farm project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

² Additional Board approval is not required provided the amended application is consistent with the terms and conditions of this Order.

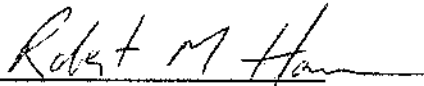
Concerning the definition of "qualification life," the Board **FINDS** that the regulations need to be amended to reflect that authorization to accrue SRECs requires Board approval under the Solar Act and approval to energize by the appropriate authority. The current definition of "qualification life" set forth in N.J.A.C. 14:2-2.2 does not reflect this two-pronged requirement, as it was written and codified prior to the Solar Act. Until such times as the regulations may be amended, the Board will apply the following definition of "qualification life" to applications submitted pursuant to the Solar Act:


"Qualification life" means, for any application filed with the Board pursuant to the Solar Act that does not have a notice to energize as of the date of this Order, the period beginning on the date of authorization to energize or the date upon which the Solar Act application for Board approval was filed, whichever is later, and ending on the first May 31 that is at least 15 years after the date of authorization to energize. A solar facility's qualification life applies to the facility itself, and to each piece of equipment included in the facility, regardless of any interruption in the solar facility's operation; or of any disassembly, relocation, sale or transfer of any piece of equipment included in the facility.

Therefore, the Board **DIRECTS** Staff to commence rulemaking proceedings toward amending the definition of qualification life with the Renewable Portfolio Standard rules to be consistent with the approval responsibilities provided the Board under the Solar Act.

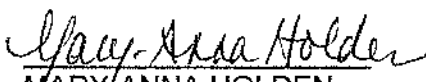
DATED: 9/18/13

BOARD OF PUBLIC UTILITIES
BY:



ROBERT M. HANNA
PRESIDENT

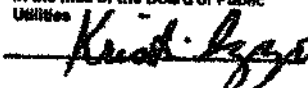

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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities


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 Brownfields, Historic Fill and Landfill
 Facilities; Solar Wind Energy, L.L.C. Industrial Land Reclaiming (ILR) Landfill; and
 Zongyi Solar American Company, Ltd. Tinton Falls Solar Farm
 Docket Nos. EO12090832V, EO12090880V, EO13060499V and EO13070626V

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