



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF) <u>L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
IN THE MATTER OF THE IMPLEMENTATION OF) <u>L.</u> 2012, <u>C.</u> 24, <u>N.J.S.A.</u> 48:3-87(T) – A PROCEEDING) TO ESTABLISH A PROGRAM TO PROVIDE SRECS) TO CERTIFIED BROWNFIELD, HISTORIC FILL AND) LANDFILL FACILITIES)	DOCKET NO. EO12090862V
FWCC, LLC) CLAY PITS – OLD BRIDGE)	DOCKET NO. QO14060631

Party of Record:

Steven P. Gouin, Esq., Giordano, Halleran & Ciesla, P.C., on behalf of FWCC, LLC
Gary Cicero, on behalf of CEP Old Bridge, LLC

BY THE BOARD:

BACKGROUND

The Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 to -107 was enacted on February 9, 1999. Among its purposes was to lower the high cost of energy and improve the quality and choices of service for all the State’s consumers, N.J.S.A. 48:3-50a(1). EDECA established the framework for the deregulation and restructuring of the State’s electric and natural gas utilities, and set certain directives and timetables regarding the implementation of electric retail choice. The New Jersey Board of Public Utilities (“Board”) was given broad authority and discretion, based on its expertise, to implement and oversee the transition from a regulated to a competitive power supply marketplace.

The Solar Act of 2012, a bi-partisan effort to stabilize the solar market, was signed into law by Governor Chris Christie on July 23, 2012, and took effect immediately. L. 2012, c. 24, § 3 (“Solar Act”). The law amends N.J.S.A. 48:3-51 and N.J.S.A. 48:3-87, which are provisions of EDECA.

The Solar Act, specifically, N.J.S.A. 48:3-87(t)(1) ("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 [Solar Renewable Energy Credits] SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered "connected to the distribution system" [and] shall not require such designation by the board[.]

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

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

By Order dated October 10, 2012, the Board, amongst other items, directed Staff to initiate a proceeding to fulfill the mandate of the Solar Act. Staff met with Staff of the New Jersey Economic Development Authority and the NJDEP. On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by Commissioner Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

In an Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities.¹ The certification process for projects seeking approval pursuant to Subsection t provides three (3) potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which the NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which the NJDEP has determined no further remedial or protective action is necessary. (January 24 Order at 12-13). The process incorporates the expertise of the NJDEP to confirm a potential

¹ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities, Docket No. EO12090862V; and I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(U) – A Proceeding to Establish a Registration Program for Solar Power Generation Facilities, Docket No. EO13010009V (January 24, 2013) ("January 24 Order").

project's classification for eligibility and to account for the state of remediation of the project site. Ibid.

The January 24 Order states that certification would be limited to those areas delineated by the NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited and the NJDEP reviews this material in making its recommendation.

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

Projects certified under Subsection t of the Solar Act are subject to all of the Board's rules; the statutory language exempts such projects from the need for further Board designation as "connected to the distribution system" but does not remove any of the Board's oversight authority. For example, projects must comply with the rules at N.J.A.C. 14:8-2.4 and applicable Board orders concerning registration with the SREC Registration Program ("SRP"). The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

SREC REGISTRATION

In the January 24 Order, the Board ruled that only those projects that have received a full certification would be eligible to register in the SRP; "full certification is a pre-requisite to consideration for acceptance into the SRP." (January 24 Order at 13). However, because this requirement was in conflict with the SREC Registration rules at N.J.A.C. 14:8-2-4, on July 19, 2013, the Board reversed that portion of the January 24 Order and required developers to comply with the SREC Registration rules at N.J.A.C. 14:8-2-4.²

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

In a Board Order dated June 18, 2014, the Board waived those requirements and set an amended schedule for Subsection t applications.³ (June 18 Order at 6-7). Accordingly, the Board directed that Subsection t applicants must register with the SRP within fourteen (14) days of the Board's order approving conditional or full certification of a project. Ibid. Staff's experience with implementing the Board's directives with respect to the conditionally approved

² I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities, Docket No. EO12090862V; I/M/O Standard Alternative - Brick Township Landfill, Docket No. EO13050389V; and I/M/O Syncarpha Capital – Bernards Township Landfill, Docket No. EO13050388V (July 19, 2013).

³ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities, Docket No. EO12090862V; and I/M/O PVNavigator, LLC – Somerdale Road (Owens Corning) Landfill, Docket No. QO14010014V (June 18, 2014) ("June 18 Order").

projects of N.J.S.A. 48:3-87(q) applicants supported applying a similar process for the registration of a Subsection t applicant.⁴ The purpose for submission of a timely SRP registration is transparency to the pipeline of proposed solar facilities, providing notice of the capacity and number of proposed new market entrants to all participants in the New Jersey SREC market.

In addition, the Board extended the SRP registration period from one (1) year to two (2) years. (June 18 Order at 7). Construction of solar facilities on properly closed sanitary landfill facilities, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer completion periods. Strict compliance with a one (1) year SRP process may mean the developers cannot complete the construction process prior to the expiration of their registrations. A two (2) year construction period is intended to recognize the longer construction period for Subsection t projects, thereby supporting the goals of the Solar Act.

CLAY PITS (OLD BRIDGE) – DOCKET NO. QO14060631

On June 25, 2014, FWCC, LLC (“FWCC”) filed an application and supporting documentation to enable a NJDEP determination as to whether its ten (10) megawatt (“MW dc”) Clay Pits solar facility project (“Project”) proposed to be located on Industrial Drive, in Old Bridge, New Jersey was a brownfield. Specifically, the application identified the name of the site as Clay Pits, the owner of the site as FWCC, and the address as 14 Industrial Drive, Block 1051, Lot 2.11, on the tax maps of the Township of Old Bridge, County of Middlesex, and State of New Jersey, 08857. NJDEP reviewed the application and supplied two (2) advisory memoranda to Staff, dated August 28, 2014 and December 19, 2014, on the classification and the closure or remediation status of the proposed site. NJDEP advised Board Staff that FWCC identified the site as a former clay mining and brick manufacturing site. Samples taken at the site indicated the presence of nickel and arsenic that were above NJDEP’s Direct Residential Soil Remediation Standards. Following remediation of the site, NJDEP issued an unrestricted use no further action (“NFA”) letter for the entire site on October 13, 2010.

NJDEP stated that the NFA letter acknowledged the completion of the Preliminary Assessment, Site Investigation (“PA/SI”), and Remedial Action for the site pursuant to the NJDEP’s applicable regulations. NJDEP advised that an unrestricted use NFA means that a remedial action has been implemented at the site which does not require the continued use of engineering or institutional controls to meet the applicable minimum remediation standards. NJDEP also advised that, accordingly, there are no restrictions under the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:108-1 through -31, and the regulations promulgated thereunder, on the use and redevelopment of the site. NJDEP further noted that it does not consider a site a brownfield if future use is entirely unrestricted. Accordingly, NJDEP concluded that the site was not a brownfield, as it has been remediated to unrestricted use under the NJDEP’s Site Remediation Program.

On the basis of the NJDEP’s determination, the information contained in the application, and the January 23 Order, the Board denied certification of the Clay Pits solar facility project by Order dated February 11, 2015 (“February 11, 2015 Order”).

⁴ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012 Docket No. EO12090832V and I/M/O the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(Q), (R) and (S) - Proceedings to Establish the Processes for Designation of Certain Grid Supply Projects as Connected to the Distribution System – Subsection (Q) Approvals, BPU Docket No. EO12090880V (August 21, 2013).

Thereafter, on March 30, 2015, FWCC filed an appeal of the Board's February 11, 2015 Order, which was assigned Docket No. A-3453-14T3 (the "Appeal"). While the matter was on appeal, on January 28, 2016, FWCC entered in an Amended and Restated Solar Ground Lease Agreement ("Lease") with CEP Old Bridge, LLC ("CEP" or "Applicant") pursuant to which FWCC assigned to CEP all of its rights, title and interest in and the right to develop, seek approvals, sign contracts, construct, own and operate the Project. The Lease further provided for the assignment of the appeal by FWCC to CEP and the preparation by CEP of an amended application to the Board for the purpose of settling the appeal.

Project Description

On or about November 15, 2016, CEP submitted an amended application to the Board and NJDEP to have the Project certified as being located on a brownfield or area of historic fill pursuant to Subsection t of the Solar Act. The amended application described the Project as a 9.2 MW ac, 11 MW dc system on 28.6 acres, and identified the name of the site as Old Bridge Solar Farm, the owner of the site as FWCC, and the address as Block 1051, Lot 2.12, in the Township of Old Bridge. The amended application stated that no street address had been assigned by the municipality. According to a February 2, 2017 letter, the Old Bridge Township Engineer assigned an address for Old Bridge Tax Lot 2.12, Block 1051 as 27 Industrial Drive, Keyport, New Jersey 07735.

NJDEP reviewed the amended application and supplied an advisory memorandum to Staff on the classification and remediation status of the proposed location of the solar facility project. On February 17, 2017, NJDEP advised that while it could not confirm the acreage of the proposed facility based on the information and maps provided, based on the solar site plan annexed to the amended application, all of the solar panels are proposed to be installed on areas that are either historic fill or otherwise contaminated. Accordingly, NJDEP determined that the solar facility as rendered in the solar Site Plan annexed to the amended application, is located on land meeting the definition of either "brownfield" or "historic fill" as defined by Subsection t of the Solar Act. In addition, based on the amended application, the contamination and historic fill predate the October 13, 2010 NFA letter. Therefore, NJDEP rescinded the NFA letter on February 7, 2017. On the basis of the NJDEP's determination, the information certified by CEP in its application and the January 24 Order, Staff recommends that the Board grant conditional certification, as explained further below. Staff further recommends that the Board approve the Settlement entered into by the Parties, which incorporates conditions for full certification based on NJDEP's recommendation as to remediation and other related requirements and is also set forth in further detail below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MW dc)	EDC
CEP Old Bridge, LLC	QO14060631	Clay Pits	Block 1051, Lot 2.12 Industrial Drive Old Bridge, NJ 08857, also known as 27 Industrial Drive, Keyport, NJ 07735	Middlesex	Brownfield/ Area of Historic Fill	11	JCP&L

Settlement Agreement⁵

Subsequent to the filing of the amended application, the Division of Law on behalf of Staff engaged in settlement discussions with FWCC while the appeal was pending. On March 17, 2017, FWCC, CEP and Staff (collectively, "Parties") executed the attached settlement agreement ("Settlement") which provides in relevant part:

1. At the next regularly scheduled Board agenda meeting after execution of the Settlement, subject to scheduling considerations, Staff shall recommend that the Board approve the Settlement and thereby grant the project conditional certification so that the project can be deemed conditionally "connected to the distribution system" in accordance with the Solar Act and eligible to earn SRECs under the terms set forth in the Settlement.
2. To obtain full certification from Board Staff, CEP must demonstrate that it has:
 - a. Submitted a fully executed Post-Construction NJDEP Compliance Certification to Staff;
 - b. Within 180 days of the effective date of the Board Order Approving the Agreement:
 - i. Submitted to the Board and to NJDEP the Remedial Action Work Plan ("RAWP"), certified in accordance with N.J.A.C. 7:26C-1.5, which has been submitted to the Board uncertified as part of the amended application and thereafter CEP shall proceed to implement the RAWP as provided by law;
 - ii. Submitted a Confirmed Discharge Notification form to the NJDEP;
 - iii. Submitted a Licensed Site Remediation Professional retention form to the NJDEP;
 - iv. Submitted an updated PA/SI and PA/SI Form to the NJDEP that are certified in accordance with N.J.A.C. 7:26C-1.5. In addition, within 180 days of the effective date of the Board Order Approving the Settlement Agreement, CEP shall show that it has:
 1. Amended the PA/SI Form to correct Section B, acknowledging that a NFA letter had been issued for the site;
 2. Amended the PA/SI to correct that the justification for the presence of historic fill is based on recent onsite investigation, rather than mapping performed by the New Jersey Geological Survey; and

⁵ Although described at some length in this Order, should there be any conflict between this summary and the Settlement Agreement, the terms of Settlement Agreement control, subject to the findings and conclusion in this Order. Each paragraph is numbered to coincide with the paragraphs in the Settlement Agreement.

3. Included in the PA/SI information regarding the Solid Waste enforcement action (PEA030004 - U73) and the fact that the NJDEP has as of the date of this Agreement deemed the matter satisfied and the penalty paid; and
 - c. Within 180 days of the effective date of the Board Order Approving the Agreement, submitted a Remedial Investigation Report prepared in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
 - d. Within the timeframe set forth in Paragraph 10 of the Settlement Agreement, or twenty-four (24) months after the effective date of the Board Order Approving the Settlement Agreement, submitted a Final Remediation Document prepared in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and
 - e. Contacted the NJDEP Land Use Program to evaluate the extent of wetlands on the site and obtain any necessary permits.
3. In the event CEP does not execute and deliver the RAWP nor submit all reports and forms that must be filed within the 180-day period as provided in the Settlement or implement the RAWP in a timely manner pursuant to the terms of the RAWP, then and in that event the obligation on the part of the Staff to provide full certification shall be deemed forfeited and of no further force and effect. In addition, the obligation of Board Staff to provide full certification is also contingent on CEP providing reports and information relating to the projects which are accurate, up-to-date, and consistent with the information in the amended application that was material to NJDEP's recommendation.
4. The Settlement Agreement does not alter or affect the obligation of the person responsible for conducting the remediation to otherwise comply with any regulatory or mandatory remediation timeframes pursuant to N.J.A.C. 7:26C-3.
5. Staff shall issue full certification to the Project upon CEP's demonstration that the Project:
 - 1) As built, does not go beyond the areas of development as the same are delineated and depicted in the site plan that is a part of the amended application;
 - 2) Does not and will not disrupt or change without the written permission of the NJDEP any engineering and or institutional controls that is part of the remedial action for the site; and
 - 3) Does not otherwise interfere with the remediation of the site but is otherwise a part of the remediation of the site as forth in the RAWP.

6. With the development of the project, CEP shall create as built drawings for the use of the Board and shall allow for on-site inspections to allow the Board and or the NJDEP to ensure compliance with the RAWP, with the procedures for such inspections being set forth in more detail in the RAWP.
7. After CEP shall have received full certification and satisfied all SRP requirements, the Board Staff shall issue a New Jersey Certification Number to the project for the purposes of SREC creation provided that all requirements of N.J.A.C. 14:8-2.4 are met.
8. CEP shall construct and provide documentation of the electric distribution company's authorization to energize the project within twenty four (24) months of the effective date of the Board Order Approving the Settlement Agreement.
9. From and after the first calendar quarter following the effective date of the Board Order Approving the Settlement Agreement, CEP shall commence filing quarterly milestone reporting forms with the SRP.
10. The appeal is to be deemed settled as of the effective date of the Board Order Approving the Settlement Agreement.
11. Within ten (10) days of the effective date of the Board Order Approving the Settlement Agreement, FWCC will file a stipulation of dismissal that dismisses the appeal with prejudice.

DISCUSSION AND FINDINGS

The Board is mindful of the State's public policy favoring reasonable and appropriate settlements. See Herrera v. Twp. of S. Orange Vill., 270 N.J. Super. 417, 424 (App. Div. 1993). As summarized by the New Jersey Supreme Court, public policy favors the settlement of disputes because, among other things, settlement spares the parties the risk of an adverse outcome and the time and expense of protracted litigation, and also preserves overstretched judicial resources. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 253-254 (2013).

After review, the Board **FINDS** that the terms of the Settlement are fair and reasonable. Under the terms of the Settlement, the Parties have agreed that the Clay Pits solar facility project will be constructed on land that meets the definition of a brownfield or area of historic fill pursuant to Subsection t of the Solar Act, and that FWCC will dismiss the appeal with prejudice. Thus, the Settlement eliminates the need for additional litigation over the Subsection t process.

Accordingly, the Board **HEREBY ADOPTS** the Settlement in its entirety, incorporating the terms thereof into this Order as if fully set forth herein, and **HEREBY DIRECTS** the Parties to comply with the terms of the Settlement.

The Board further **FINDS** that, as required by Subsection t, Staff transmitted the amended application discussed above to NJDEP for a determination of eligible classification and status of remediation on the proposed site. Based on the information provided by NJDEP, the Board **FINDS** that the Project as rendered in the solar Site Plan annexed to the amended application is located on land meeting the definition of either "brownfield" or "historic fill" as defined by Subsection t of the Solar Act.

The Board **FINDS** that the NJDEP requirements must be addressed and thus **GRANTS** conditional certification. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements and the applicable terms of the Settlement Agreement have been satisfied and that there are no outstanding requirements. The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification have been satisfied. After the Applicant has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

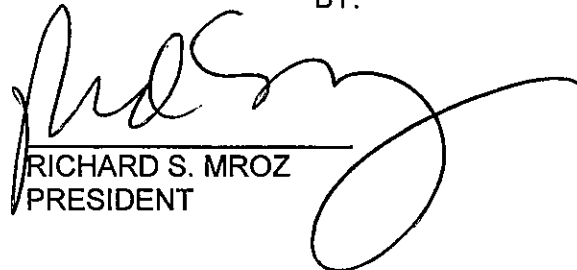
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten (10) days of installation contract execution at N.J.A.C. 14:8-2.4(c) and the registration length of one (1) year at N.J.A.C. 14:8-2.4(f) for the project. The Board **DIRECTS** CEP to submit an SREC Registration within fourteen (14) days of the effective date of this Order. The Board **FURTHER GRANTS** a modification of one (1) year provided in the current SRP to two (2) years for construction to accommodate the longer construction period for Subsection t projects.

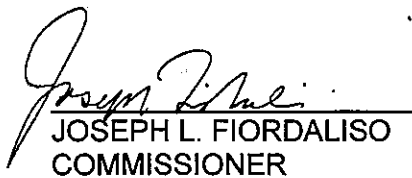
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans as represented in the application, and the SRP registration.

The effective date of this Order is April 3, 2017.

DATED: 3/24/17

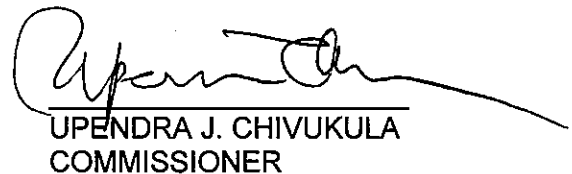
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

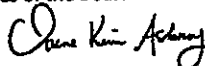

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, THE SOLAR ACT OF 2012 –

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A
PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SRECS TO CERTIFIED
BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES

FWCC, LLC. CLAY PITS - OLD BRIDGE

DOCKET NOS. EO12090832V, EO12090862V & QO14060631

SERVICE LIST

Steven P. Gouin, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
sgouin@ghclaw.com

Michael A. Bruno, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
mbruno@ghclaw.com

Gary Cicero
CEP Old Bridge, LLC
20 A South Beers Street
Holmdel, NJ 07733
garycicero@cepsolar.com

Michael P. Torpey, Esq.
A.F.T. Associates, LLC
15 West Front St., 1st Floor
Trenton, NJ 08608
Mtorpey.aft@gmail.com

Mark S. Bellin, Esq.
77 Mantoloking Road
Brick, NJ 08723
marksbellin@aol.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Irene Kim Asbury, Secretary
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
irene.asbury@bpu.nj.gov

Marisa Slaten, Esq., Director
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
marisa.slaten@bpu.nj.gov

Benjamin S. Hunter
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
benjamin.hunter@bpu.nj.gov

Rachel Boylan, Esq.
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
rachel.boylan@bpu.nj.gov

Megan Lupo, Esq.
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
megan.lupo@bpu.nj.gov

Felicia Thomas-Friel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
fthomas@rpa.state.nj.us

Allison E. Mitchell
Office of Clean Energy
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
allison.mitchell@bpu.nj.gov

Sarah Steindel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
ssteindel@rpa.state.nj.us

Caroline Vachier, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
caroline.vachier@dol.lps.state.nj.us

Steven P. Gouin, Esquire
NJ Attorney #018772010
GIORDANO, HALLERAN AND CIESLA P.C.
125 Half Mile Road - Suite 300
Red Bank, New Jersey 07701
Telephone: (732) 741-3900
Facsimile: (732) 224-6599
Attorney for FWCC, LLC,

IN THE MATTER OF IMPLEMENTATION : SUPERIOR COURT OF NEW JERSEY
OF L. 2012, C. 24, THE SOLAR ACT : APPELLATE DIVISION
OF 2012; and IN THE MATTER OF THE :
IMPLEMENTATION OF L. 2012, C. 24, : DOCKET NOS. A-3453-14T3
N.J.S.A. 48:3-87(T)A PROCEEDING :
TO ESTABLISH A PROGRAM TO PROVIDE :
SRECS TO CERTIFIED BROWNFIELD, :
HISTORIC FILL, AND LANDFILL : ON APPEAL FROM:
FACILITIES :
: NEW JERSEY BOARD OF PUBLIC
APPELLANT: : UTILITIES
: FWCC, LLC : DOCKET NOS. EO12090832V,
CLAY PITS - OLD BRIDGE : EO12090862V, QO14060631
:
: SETTLEMENT AGREEMENT
:
:
:

THIS SETTLEMENT AGREEMENT is entered into on this 17th
day of March, 2017, by FWCC, LLC ("FWCC"), CEP OLD
BRIDGE, LLC ("CEP"), and the Staff of the New Jersey Board of
Public Utilities ("Board Staff", collectively the "Parties").

BACKGROUND

1. FWCC is the developer of that certain grid supply solar farm designated as PJM W4-060 (the "Project"). On June 25, 2014, FWCC submitted an application to the New Jersey Board of Public Utilities ("Board" or "BPU") to have the Project certified as located on a brownfield site pursuant to N.J.S.A. 48:3-87(t) ("Subsection T of the Solar Act") (the "Application") and as such would be eligible to generate solar renewable energy certificates ("SRECS"). The proposed Project size was 10 MW dc (the "System"). The Application identified the name of the site as Clay Pits, the owner of the site as FWCC, and the address as 14 Industrial Drive, Block 1051, Lot 2.11, on the tax maps of the Township of Old Bridge, County of Middlesex, and State of New Jersey, 08857. The Application was denied by the Board in an Order dated February 11, 2015 and effective February 23, 2015. On March 27, 2015, FWCC filed an Appeal to the Appellate Division from the Board Order by way of Docket No. A-3453-14T3 (the "Appeal").

2. On January 28, 2016, FWCC entered in an Amended and Restated Solar Ground Lease Agreement with CEP pursuant to which FWCC is to assign to CEP all of its rights, title and interest in and the right to develop, seek approvals, sign contracts, construct, own and operate the System. The Lease further contemplates the assignment of the Appeal by FWCC to CEP and the

preparation by CEP of an amended Application to BPU for the purpose of settling the Appeal.

3. On November 15, 2016, CEP submitted to the Board and to the New Jersey Department of Environmental Protection ("NJDEP") an amended Application with the request that the Project, now described as 9.2 MW ac, 11 MW dc on 28.6 acres, be deemed to be located on a brownfield site or area of historic fill and be granted conditional certification under Subsection T of the Solar Act. The amended Application identified the name of the site as Old Bridge Solar Farm, the owner of the site as FWCC, and the address as Block 1051, Lot 2.12, in the Township of Old Bridge. The amended Application also stated that no street address had been assigned by the municipality. According to a February 2, 2017 letter, the Old Bridge Township Engineer assigned an address for Old Bridge Tax Lot 2.12, Block 1051 as 27 Industrial Drive, Keyport, New Jersey 07735.

4. NJDEP reviewed the amended Application to determine whether the proposed solar facility is located on land meeting the definition of either "brownfield" or "historic fill" as defined by Subsection T of the Solar Act. On February 17, 2017, NJDEP advised that while it could not confirm the acreage of the proposed facility based on the information and maps provided, based on the solar Site Plan annexed to the amended Application, all of the solar panels are proposed to be installed on areas

that are either historic fill or otherwise contaminated. Accordingly, NJDEP determined that the solar facility as rendered in the solar Site Plan annexed to the amended Application, is located on land meeting the definition of either "brownfield" or "historic fill" as defined by Subsection T of the Solar Act. In addition, based on the amended Application, the contamination and historic fill predate a No Further Action letter issued on October 13, 2010. Therefore, NJDEP rescinded the No Further Action letter on February 7, 2017.

NOW, THEREFORE, THE PARTIES AGREE THAT:

1. At the next regularly scheduled Board agenda meeting after execution of this Settlement Agreement, subject to scheduling considerations, Board Staff shall recommend that the Board approve this Settlement Agreement and thereby grant the Project Conditional T Certification so that the Project can be deemed conditionally "connected to the distribution system" in accordance with the Solar Act and eligible to earn SRECs under the terms set forth below.
2. To obtain full certification from Board Staff, CEP must demonstrate that it has:
 - a. Submitted a fully executed Post-Construction NJDEP Compliance Certification to Board Staff;

b. Within 180 days of the effective date of the Board Order Approving the Settlement Agreement:

- i. Submitted to the Board and to NJDEP the Remedial Action Work Plan (the "RAWP"), certified in accordance with N.J.A.C. 7:26C-1.5, which has been submitted to the Board uncertified as part of the amended Application and thereafter CEP shall proceed to implement the RAWP as provided by law;
- ii. Submitted a Confirmed Discharge Notification form to the NJDEP;
- iii. Submitted a Licensed Site Remediation Professional retention form to the NJDEP;
- iv. Submitted an updated Preliminary Assessment/Site Investigation Report ("PA/SI") and PA/SI Form to the NJDEP that are certified in accordance with N.J.A.C. 7:26C-1.5. In addition, within 180 days of the effective date of the Board Order Approving the Settlement Agreement, CEP shall show that it has:

1. Amended the PA/SI Form to correct Section B, acknowledging that a No

Further Action letter had been issued for the site;

2. Amended the PA/SI to correct that the justification for the presence of historic fill is based on recent onsite investigation, rather than mapping performed by the New Jersey Geological Survey; and

3. Amended the PA/SI to reflect the existence of a Solid Waste enforcement action (PEA030004 U73) and the fact that the NJDEP has as of the date of this Agreement deemed the matter satisfied and the penalty paid.

c. Within 180 days of the effective date of the Board Order Approving the Settlement Agreement, submitted a Remedial Investigation Report prepared in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

d. Within the timeframe set forth in Paragraph 10 hereinafter, or 24 months after the Effective Date of the Board Order Approving the Settlement

Agreement, submitted a Final Remediation Document prepared in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and

e. Contacted the NJDEP Land Use Program to evaluate the extent of wetlands on the site and obtain any necessary permits.

3. In the event CEP does not execute and deliver the RAWP nor submit all reports and forms that must be filed as provided hereinabove or implement the RAWP in a timely manner pursuant to the terms of the RAWP, then and in that event the obligation on the part of the Board Staff to provide full certification shall be deemed forfeited and of no further force and effect. In addition, the obligation of Board Staff to provide full certification is also contingent on CEP providing reports and information relating to the Project which are accurate, up-to-date, and consistent with the information in the amended Application that was material to NJDEP's recommendation.

4. This Settlement Agreement does not alter or affect the obligation of the person responsible for conducting the

remediation to otherwise comply with any regulatory or mandatory remediation timeframes pursuant to N.J.A.C. 7:26C-3.

5. Board Staff shall issue full certification to the Project upon CEP's demonstration that the Project: 1) as built, does not go beyond the areas of development as the same are delineated and depicted in the site plan that is a part of the amended Application; 2) does not and will not disrupt or change without the written permission of the NJDEP any engineering and or institutional controls that are part of the remedial action for the site; and 3) does not otherwise interfere with the remediation of the site but is otherwise a part of the remediation of the site as set forth in the RAWP.
6. With the development of the Project, CEP shall create as built drawings for the use of the Board and shall allow for on-site inspections to allow the Board and or the NJDEP to ensure compliance with the RAWP, with the procedures for such inspections being set forth in more detail in the RAWP.
7. After CEP shall have received full certification and satisfied all SREC Registration Program ("SRP") requirements, the Board Staff shall issue a New Jersey Certification Number to the project for the purposes of

SREC creation provided that all requirements of N.J.A.C. 14:8-2.4 are met.

8. Pursuant to N.J.A.C. 14:8-2.4(c), a solar electric generation project must submit a registration within 10 days of executing a contract to install a solar system or to purchase panels for a solar system. Board Staff shall recommend that the Board extend the date by which CEP must submit its initial registration package from 10 days to 14 days of the effective date of the Board Order Approving the Settlement Agreement.
9. Within 14 days of the effective date of the Board Order Approving the Settlement Agreement, CEP shall submit the SRP registration package reflecting a capacity which does not exceed 11 MW dc. It is understood that given the status of the Project that certain of the facts set forth in the SRP application may be amended or modified as the Project nears commencement of construction, but in no event shall the Project exceed 11 MW dc.
10. Pursuant to N.J.A.C. 14:8-2.4(f), a solar generation electric generation project must be constructed within 1 year of SRP Registration. Board Staff shall recommend that the Board extend the current 1 year SRP Registration length under the Renewable Portfolio Standards rules, N.J.A.C. 14:8-2.1 to -2.11 ("RPS

rules"), to a 2 year SRP Registration length to accommodate the longer construction period for projects filed pursuant to Subsection T of the Solar Act. Any enlargement of the SRP Registration length under the RPS rules will not further extend the 2 year SRP Registration length for the Project.

11. CEP shall construct and provide documentation of the electric distribution company's authorization to energize the Project within 24 months of the Effective Date of the Board Order Approving the Settlement Agreement.
12. From and after the first calendar quarter following the effective date of the Board Order Approving the Settlement Agreement, CEP shall commence filing quarterly Milestone Reporting Forms with the SRP.
13. The Appeal is to be deemed settled as of the effective date of the BPU Order Approving the Settlement Agreement.
14. Within 10 days of the effective date of the Board Order Approving the Settlement Agreement, FWCC will file a stipulation of dismissal that dismisses the Appeal with prejudice.
15. This Settlement Agreement shall be binding on all parties, their respective agents, successors, assigns,

and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

16. This Settlement Agreement represents the entire integrated agreement between all Parties and the resolution of all matters set forth in the Appeal.

17. This Settlement Agreement shall become effective upon the effective date of a Board Order approving same and the execution hereof by all Parties.

18. By signing this Settlement Agreement, the signatories represent that they have the authority to bind the Parties to this Settlement Agreement.

19. Except with respect to any rights pursuant to this Settlement Agreement which the Parties acknowledge is subject to Board approval, each of the Parties hereby waives, releases, relinquishes, and discharges each other Party and its and their affiliates, subsidiaries, predecessors, successors, and representatives, counsel and agents and its and their heirs, successors, and assigns from any and all claims, liabilities, suits, damages, actions, or manner of actions, whether in contract, tort, or otherwise which either Party ever had, or now has or hereafter may have against the other Party or any of them, whether the same be in administrative proceedings, in arbitration, in law, at

equity, or mixed, arising from or relating to any act or omission, or thing or matter of any kind whatsoever, by or on behalf of the other party or any of them prior to the date hereof which arise out of, underlie or are related to the Project.

20. No Party admits having engaged in any wrongful conduct or having violated the rights of any other Party hereto. The Parties agree that nothing in this Settlement Agreement constitutes or shall be deemed to constitute any admission of wrongdoing.

21. The waiver by any Party of a breach or violation of any provision of this Settlement Agreement shall not operate as or be construed to be a waiver of any subsequent breach of this Settlement Agreement. Further, no Party shall be deemed to have waived any provision of or right under this Settlement Agreement unless such waiver is set forth in writing signed by the Party against whom waiver is asserted.

22. This Settlement Agreement shall not be construed more strictly against any Party hereto merely by the virtue of the fact that the Settlement Agreement may have been drafted or prepared by such Party or its counsel, it being recognized that all of the Parties hereto have contributed substantially and materially to the

preparation of such document and that this Settlement Agreement has been the subject of negotiations between the Parties and as product of that negotiation.

23. Each of the Parties agrees to execute any and all additional documents necessary to effectuate the intent and purpose of this Settlement Agreement.

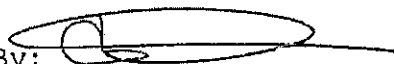
24. The construction, interpretation, and enforcement of this Settlement Agreement shall at all times and in all respects be governed by the laws of the State of New Jersey, without reference to the State of New Jersey's choice of law or conflict of law provisions or principles.

25. This Settlement Agreement may be executed in one or more counterparts, any of which, if originally executed, shall be binding upon the Parties signing thereon, and all of which taken together shall constitute one and the same instrument.

Signature Page Follows.

STAFF OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES

DATED: 3/17/17

BY: 
Caroline Vachier, DAC

FWCC, LLC

DATED:

BY: 
Matthew Clemente, Managing Member

CEP OLD BRIDGE, LLC

DATED:

By: _____

Docs #2596638-v1

STAFF OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES

DATED:

By: _____

FWCC, LLC

DATED:

By: _____

CEP OLD BRIDGE, LLC

DATED: March 17, 2017

By: Gary Cicero
GARY CICERO, CEO

Docs #2596638-v1