



Agenda Date: 3/24/17
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF)	
<u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u>)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF)	
<u>L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A PROCEEDING</u>)	
TO ESTABLISH A PROGRAM TO PROVIDE SRECS)	
TO CERTIFIED BROWNFIELD, HISTORIC FILL AND)	DOCKET NO. EO12090862V
LANDFILL FACILITIES)	
)	
WHITMAN COMPANY)	
OAK AVENUE LANDFILL)	DOCKET NO. QO160090837

Party of Record:

Barry Skoultschi, Chief Executive Officer, Whitman Company

BY THE BOARD:

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

BACKGROUND

On July 23, 2012, the Solar Act was signed into law by Governor Chris Christie. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities (“Board”) to conduct proceedings to establish new standards and to develop new programs to implement the statute’s directives. By Order dated October 10, 2012, the Board

directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act.¹

The Solar Act, specifically, Subsection t, provides that:

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

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

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

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

In an Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly

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(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility, Docket No. EO12090860V; I/M/O the Implementation of L.2012, C.24; N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards, Docket No. EO12090861V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System, Docket No. EO12090880V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities, Docket No. EO12090862V; and I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(W) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts, Docket No. EO12090863V (October 10, 2012) ("October 10 Order").

closed sanitary landfill facilities.² The certification process for projects seeking approval pursuant to Subsection t provides three (3) potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which the NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which the NJDEP has determined no further remedial or protective action is necessary. (January 24 Order at 12-13). The process incorporates the expertise of the NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site. Ibid.

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

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

Projects certified under Subsection t of the Solar Act are subject to all of the Board's rules; the statutory language exempts such projects from the need for further Board designation as "connected to the distribution system" but does not remove any of the Board's oversight authority. For example, 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. 14:8-2-4.³

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; 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").

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; 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).

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.⁴ (June 18 Order at 6-7). Accordingly, the Board directed that Subsection t applicants must register with the SRP within fourteen (14) days of the Board's order approving conditional or full certification of a project. Ibid. Staff's experience with implementing the Board's directives with respect to the conditionally approved projects of N.J.S.A. 48:3-87(q) applicants supported applying a similar process for the registration of a Subsection t applicant.⁵ 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.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by Whitman that the proposed Oak Avenue Landfill solar facility, to be located in Galloway Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection t. Whitman filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a brownfield, area of historic fill, or properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on the land use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP's determination, the information certified by Whitman in its application and the January 24 Order, Staff recommends that the Board grant conditional certification, as explained further below.

⁴ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities, Docket No. EO12090862V; and I/M/O PVNavigator, LLC – Somerdale Road (Owens Corning) Landfill, Docket No. QO14010014V (June 18, 2014) ("June 18 Order").

⁵ 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).

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
Whitman	Q016090837	Oak Avenue Landfill	Block 1171, Lot 17 Galloway Road Galloway Township, NJ 08205	Atlantic	Landfill	3.66	ACE

Oak Avenue Landfill – (Galloway) – Docket. No. Q016090837

On or about September 7, 2016, Whitman submitted its application to the Board to have its project certified as being located on a properly closed sanitary landfill facility pursuant to Subsection t of the Solar Act. Applicant's 3.66 MWdc project is proposed to be constructed on the Oak Avenue Landfill, which is owned by Galloway Township. The landfill is located in Galloway Township, Atlantic County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated the Oak Avenue Landfill is an approximately thirty (30) acre landfill, located on an approximately seventy (70) acre parcel. The Oak Avenue Landfill ceased receiving municipal solid waste in 1991. NJDEP originally issued a Closure and Post-Closure Plan Approval for the landfill on August 4, 1994. The Closure and Post-Closure Plan Approval was modified on several occasions in 1996, 2003 and 2008 before Galloway Township implemented closure. Documentation certifying that closure of the Oak Avenue Landfill was complete was received by NJDEP in October and November 2011. By letter dated April 5, 2012, NJDEP determined that the Oak Avenue Landfill was properly closed as per the Closure and Post-Closure Plan Approval. According to NJDEP, the post-closure period commenced as of October 20, 2011, with required post-closure maintenance, including groundwater monitoring per N.J.A.C. 7:14A-1, periodic site inspections, and methane gas monitoring.

NJDEP also indicated that the Closure and Post-Closure Plan Approval for the Oak Avenue Landfill also requires Galloway Township to conduct site inspections and submit inspection reports on a quarterly basis. However, NJDEP informed Staff that it has yet to receive any inspection reports for the Oak Avenue Landfill. Furthermore, NJDEP informed Staff that, in accordance with the Closure and Post-Closure Plan Approval and N.J.A.C. 7:26-2A.9(f)6, an updated Closure and Post-Closure Financial Plan ("Financial Plan") must be submitted to NJDEP every two (2) years. NJDEP stated that, by letter dated April 23, 2014, it requested that Galloway Township submit an updated Financial Plan prior to June 30, 2014. However, an updated Financial Plan has not been received by NJDEP to date. Accordingly, Galloway Township will need to address these issues in order to be in compliance with post-closure requirements.

According to NJDEP, the solar installation will constitute the construction of improvements on the closed landfill. Accordingly, NJDEP advises that prior to construction of the solar electric generation facility, the property owner will need to obtain an Approval from the NJDEP's Division of Solid and Hazardous Waste, which will need to address impacts on the environmental controls in place at the site. NJDEP noted that these impacts may include, but are not limited to, the protection and/or re-establishment of the final cap/cover, leachate collection; gas collection and storm water collection systems, settlement slope stability, control of erosion, in addition to on-going maintenance and monitoring during the post-closure period. The property owner must also comply with any outstanding post-closure requirements, including, but not limited to, submission of biennial Financial Plans and quarterly inspection

reports as discussed above. NJDEP further advised that, consistent with these requirements, the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap. Finally, NJDEP indicated that Whitman and/or the property owner will need to obtain any other permits identified by the NJDEP.

Based on the information provided in the application and NJDEP's determination that the solar project as proposed is located on a "properly closed sanitary landfill facility" under the Solar Act, Staff recommends that the Board grant conditional certification of the proposed project.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that, as required by Subsection t, Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site.

NJDEP has determined that the proposed solar generation facility project at the Oak Avenue Landfill is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." Based on information provided by NJDEP, the Board **FINDS** that the Oak Avenue Landfill project as proposed is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP has determined that the property owner will need to obtain an approval from the NJDEP Division of Solid and Hazardous Waste, as well as any permits identified by the NJDEP, prior to construction of the solar electric power generation facility. The Board also **FINDS** that "environmental controls in place at the site, such as the protection or re-establishment of the final cap or cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to on-going maintenance and monitoring during the post-closure period" must be addressed in order to construct the solar project. In addition, the property owner must satisfy any outstanding requirements under the Closure and Post-Closure Plan Approval for Oak Avenue Landfill.

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 for landfill disruption have been satisfied and that there are no outstanding requirements under the Closure and Post-Closure Plan Approval. 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.

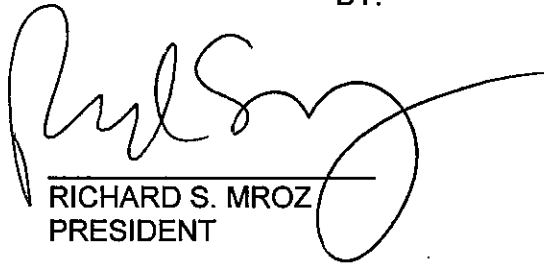
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten (10) days of installation contract execution at N.J.A.C. 14:8-2.4(c) and the registration length of one (1) year at N.J.A.C. 14:8-2.4(f) for the Oak Avenue Landfill project. The Board **DIRECTS** Whitman 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.

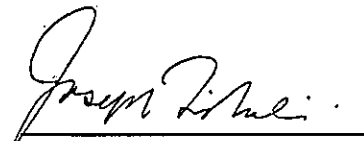
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans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

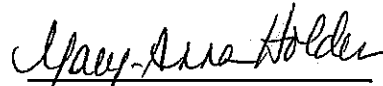
This Order shall be effective on April 3, 2017.

DATED: 3/24/17


BOARD OF PUBLIC UTILITIES
BY:

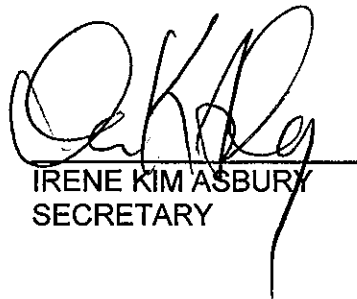

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

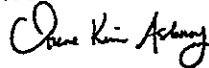

MARY-ANNA HOLDEN
COMMISSIONER


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 Brownfields, Historic Fill and Landfill
Facilities; Whitman Company – Oak Avenue Landfill

Docket Nos. EO12090832V, EO12090862V and QO16090837

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