



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)	ORDER GRANTING
<u>L. 2012, C. 24, THE SOLAR ACT OF 2012</u>)	PETITION FOR
)	CLARIFICATION AND
IN THE MATTER OF THE IMPLEMENTATION OF)	INCREASED SYSTEM SIZE
<u>L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A PROCEEDING</u>)	
TO ESTABLISH A PROGRAM TO PROVIDE SRECS)	DOCKET NO. EO12090832V
TO CERTIFIED BROWNFIELD, HISTORIC FILL AND)	
LANDFILL FACILITIES)	DOCKET NO. EO12090862V
)	
SYNCARPHA GEMS, LLC)	
GEMS LANDFILL)	DOCKET NO. QO18010052

Parties of Record:

Jim Laskey, Norris McLaughlin, for **Syncarpha GEMS, LLC**
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

This Order concerns the May 28, 2020 petition by Syncarpha GEMS LLC (“Syncarpha” or “Petitioner”) to the New Jersey Board of Public Utilities (“Board” or “BPU”) for a clarification or amendment to the Board’s Order of November 21, 2019. At the November 13, 2019 agenda meeting, the Board granted conditional certification of eligibility for Solar Renewable Energy Certificates (“SREC”) to the application submitted by Syncarpha for the Gloucester Environmental Management Services, Inc. (“GEMS”) Landfill pursuant to Subsection (t) of the Solar Act of 2012.¹ The Petitioner seeks clarification that the GEMS project (“Project”) eligibility for SRECs may be transferred to the Transition Incentive Program. This Order also addresses the revised application for the project, submitted on June 2, 2020, through which Syncarpha seeks to increase the capacity of the proposed solar electric generation facility from 4.2 MWdc to 4.5 MWdc.

¹ In re 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, Syncarpha Gems, LLC Gems Landfill, BPU Docket No. Q018010052, Order dated November 13, 2019 (“Syncarpha Order”), revised November 21, 2019.

Syncarpha represents that the increase to the capacity would not increase the footprint of the project as identified in the original application that is addressed in the Syncarpha Order.

BACKGROUND

Subsection t

On July 23, 2012, the Solar Act was signed into law. The Solar Act amended certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act required the Board to conduct proceedings to establish new standards and to develop new programs to implement the statute's directives.

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[.]

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

The Solar Act also added specific definitions for the term "connected to the distribution system."² These definitions emphasized the special status of facilities approved pursuant to Subsection t. The only definition that turned upon the type of land on which a solar facility was located dealt with the types of properties identified in that subsection: "Connected to the distribution system" means, for a solar electric power generation facility, that the facility: . . . (6) is 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." N.J.S.A. 48:3-51.

The Board approved a certification process for projects seeking approval pursuant to Subsection t that provided for full certification, conditional certification, or denial of certification.³ Conditional certification may be granted for projects located on sites that 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.

² The Board has made connection to the distribution system a prerequisite for eligibility to SRECs. N.J.A.C. 14:8-2.4.

³ In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; In re the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(t) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L.2012, c.24, N.J.S.A 48:3-87(u) – A Proceeding to Establish a Registration Program for Solar Power Generation Facilities, 2013 N.J. PUC LEXIS 27 (Jan. 24, 2013).

Subsection t Application

On January 17, 2018, Syncarpha submitted an 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 4.2 MWdc project was proposed to be located on 21 acres of land owned by Gloucester Township at Block 14003, Lots 25 and 26 at 0 Dixon Lane in Gloucester Township, Camden County, New Jersey. On November 13, 2019, on the basis of NJDEP's determination and the information certified by Syncarpha in its application, the Board granted conditional certification of eligibility for SRECs to Syncarpha. On November 21, 2019, the Board issued a Revised Order clarifying that full certification for the solar project for SREC eligibility was not conditioned upon the project's achievement of commercial operations prior to the Board's closure of the SREC program upon attainment by the State of 5.1% of its retail electricity sales from solar electric generation facilities ("5.1% Milestone"). The Syncarpha Order directed Petitioner to demonstrate that it had satisfied all outstanding NJDEP requirements. Syncarpha's acceptance letter from the SREC Registration Program ("SRP") set a deadline to submit a final as-built registration package of December 20, 2021. In the petition under review, Syncarpha seeks a Board determination of eligibility for the Syncarpha project for the Transition Incentive Program.

During the pendency of the Petitioner's application for SREC eligibility, on May 23, 2018, Governor Murphy signed P.L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law ("Clean Energy Act" or "CEA" or "Act"), effective immediately. The CEA effected many changes to the legal and regulatory framework for solar development, including directing the closure of the SREC program no later than June 2021, reducing the SREC term or "qualification life" to 10 years, and imposing a cap on the cost to ratepayers of certain Class I renewable energy requirements.

The CEA mandates that the Board close the SRP to new applications once it determines that 5.1% of the kilowatt-hours sold in the State have been generated by solar electric power generators connected to the distribution system ("5.1% Milestone"), or in the alternative by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication in the New Jersey Register on January 22, 2019.⁴ On January 8, 2020, the Board adopted N.J.A.C. 14:8-2.4(b)(7)(ii), which clarified that solar facilities that submitted a complete registration or application for designation or conditional certification on or before October 29, 2018, but had not commenced commercial operations prior to the 5.1% Milestone, will be eligible for a 15-year SREC qualification life subject to its maintaining all other eligibility requirements. The new rules took effect upon publication in the New Jersey Register on February 3, 2020.⁵

Transition Incentive

On December 6, 2019, the Board established a Transition Incentive Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.⁶ The Transition Incentive Program provides eligible projects with Transition Renewable Energy Certificates ("TRECs") for each megawatt hour of electricity produced. Incentives are tailored to specific project types by the use of factors, which are applied to a base incentive rate

4 51 N.J.R. 138(e).

5 52 N.J.R. 146(b).

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

to provide a particular project type the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects certified pursuant to Subsection t receive a factor of 1.0 and thus the full amount of the base incentive.

On March 27, 2020 the Board issued an Order addressing additional aspects of the SRP closure and the transfer of solar projects to the Transition Incentive program.⁷ In this Order, consistent with past Orders and rulemaking related to the SRP closure, the Board differentiated between projects which applied for conditional certification pursuant to Subsection t on or before October 29, 2018 and those which applied after October 29, 2018. Projects that had applied on or before October 29, 2018 and received a conditional registration for two years retained their SREC eligibility regardless of the date of attainment of the 5.1% Milestone, so long as they submit post-construction certification packages within two years of their SRP conditional registration. The SRP Closure Order also stated that projects that had applied for SRECs after October 29, 2018 and had yet to commence commercial operations by the date the 5.1% Milestone would not be eligible for SRECs, but would be able to transfer their registration to the Transition Incentive Program. However, this Order was silent on the ability of projects that applied prior to October 29, 2018 to transfer to the Transition Incentive Program.

At a Special Agenda Meeting held on April 27, 2020, the Board approved an amended Transition Incentive rule proposal⁸ that codified this treatment and which was published on May 18, 2020.⁹ Proposed N.J.A.C. 14:8-10. The rule proposal provides that the transition incentive “shall be available to projects that submitted a complete SREC Registration Program registration or a complete subsection t application after October 29, 2018” (emphasis added) but that have not received a Permission to Operate at the time that the 5.1% Milestone is achieved. The rule proposal, like the SRP Closure Order, is silent as to the ability projects that had submitted a complete Subsection t application before October 29, 2018 to transfer to the Transition Incentive program.

THE PETITION

On May 28, 2020, Syncarpha submitted a petition seeking clarification of or an amendment to the Order dated November 21, 2019 that conditionally certifies the Project as eligible for SRECs. Petitioner seeks an Order stating that the Project is eligible to transfer to the Transition Incentive program and qualifies for TRECs. The petition references the fact that the Board addressed the Project Subsection (t) application prior to the Board’s action establishing the Transition Incentive Program. The petition also notes that the SRP Closure Order does not address the class of projects that had applied for designation as connected to the distribution system pursuant to Subsection (t) prior to October 29, 2018.

⁷ In re the Closure of the SREC Registration Program Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated March 27, 2020 (“SRP Closure Order”).

⁸ In re the Matter of a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QX20030253 (“TI Rule Proposal”).
952 NJR 1048(a).

Additionally, on June 2, 2020, Syncarpha submitted a revised Subsection t application seeking to increase the capacity of the Project. In the cover letter submitted with the revised application, Syncarpha states that the increased capacity will be located on the same footprint as that identified in the original application.¹⁰ The Petitioner argues that since the revised application is proposed for the same parcel granted conditional certification in November, additional review by the NJDEP is not required. Additionally, as the revised application would be considered an application submitted after October 29, 2018, Petitioner believes that it would be eligible to participate in the Transition Incentive Program without need to pursue the Petition filed on May 28, 2020.

STAFF RECOMMENDATIONS

Staff agrees with Petitioner that the silence of prior Board Orders and the TI Rule Proposal about the treatment of Subsection t projects with applications submitted prior to October 29, 2018 does not evidence an intention to preclude these projects from transferring into the Transition Incentive program if they so desire. Staff recommends that the Board find that Petitioner can register its project in the Transition Incentive Program with the goal of establishing eligibility for the project to receive TRECs. Staff also recommends that the Board direct Petitioner to submit a registration in the TREC portal, in order to facilitate compliance with the Transition Incentive rules at proposed N.J.A.C. 14:8-10.4(d). Should Staff determine that a registration submitted in the TREC portal meets the program requirements, Staff recommends that the Board require that project to commence commercial operations by the later of: the date in the Order granting conditional certification, plus any extensions, or April 30, 2021, consistent with the Transition Incentive Rule Proposal at N.J.A.C. 14:8-2.10(d).

In addition, Staff recommends that the Board reiterate its direction in the Syncarpha Order that all conditions in the original conditional certification order must be addressed and that the property owner and operator of the solar facility is responsible for ensuring that all future operations continue to protect the integrity of the landfill cap.

Finally, Staff recommends that the Board grant Petitioner's request to increase the system size of the Syncarpha GEMS Landfill project to 4.5 MWdc based on Petitioner's representation that there will be no increase in the Project's footprint. Staff notes that NJDEP staff confirmed that, for this project, additional NJDEP review is not required since the improvement footprint is not increasing. Moreover, such approval is consistent with the Board's policy of encouraging siting solar generation on landfill locations to the maximum extent practicable to further the State's clean energy goals and the health of New Jersey citizens.

¹⁰ Block 14003, Lots 25 and 26 consistent with the Administrative Consent Order entered into with the New Jersey Department of Environmental Protection ("NJDEP") on September 16, 2019.

DISCUSSION AND FINDINGS

The Board **FINDS** that Petitioner submitted a complete application pursuant to Subsection t prior to October 29, 2018.

Petitioner requests that its revised application and the associated increase in project capacity be approved without additional review by the NJDEP. As discussed in the Syncarpha Order, Staff transmitted the original application to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. Based on the information provided by the NJDEP, the Board found in that Order that the solar array proposed would be located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." The Board **FINDS** that the Petitioner submitted a revised Subsection t application for the Syncarpha GEMS Landfill project and that the revised application reflects an increase in proposed system capacity from 4.2 MWdc to 4.5 MWdc. The Board **FINDS** that the amended application is otherwise identical to the application conditionally certified by the Board on November 13, 2019. The Board **FINDS** that there is no increase to the footprint of the Project. The Board **THEREFORE APPROVES** an amendment to the conditional certification of the proposed project, as depicted in the revised application, to be located on 21 acres at GEMS Landfill at Block 14003, Lots 25 and 26 in Gloucester Township, Camden County, New Jersey, with an array size not to exceed 4.5 MWdc.

The Board **ALSO FINDS** that that it is in the public interest to allow projects, such as this one, certified or conditionally certified pursuant to Subsection t prior to October 29, 2018 that retain a valid (i.e. not yet expired) conditional certification and have not yet reached commercial operation to be treated comparably to Subsection t projects that were filed later by allowing these projects to transfer into the Transition Incentive Program and receive TRECs. As discussed above, the Legislature codified a policy preference for solar projects located on properly closed sanitary landfill facilities, brownfields, and areas of historic fill. N.J.S.A. 48:3-51, -87(t). The Board orders that address the treatment of Subsection t applications with respect to the closure of the SRP and the opening of the Transition Incentive program also evidence the policy preference for Subsection t solar facilities, repeatedly affirming the ability of Subsection t projects that submitted complete applications prior to October 29, 2018 to remain in the SRP regardless of the attainment of the 5.1% Milestone.

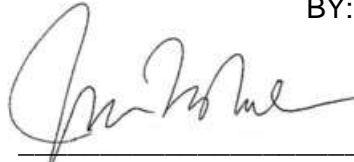
To obtain full certification, the Board **DIRECTS** Syncarpha to transfer its SRP registration to the Transition Incentive program prior to the Board's announcement of the opening of the Successor Incentive program, in accordance with proposed N.J.A.C. 14:8-10.4(d). The Board **FURTHER DIRECTS** Petitioner to commence commercial operations on the later of the date set by the Board Order granting the project conditional certification, plus any extensions that have been granted, or April 30, 2021, in accordance with proposed N.J.A.C. 14:8-10.4(d). 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 – including all NJDEP requirements and all TREC requirements at proposed N.J.A.C. 14:8-10.4 – provided that the Project achieves commercial operation as discussed above and is otherwise in compliance with applicable law. After the Applicant has received full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of TREC creation for a fifteen-year Qualification Life.

The Board **AFFIRMS** its previous orders granting conditional certification to this project. Except as modified by this Order, all conditions and requirements for this project and its host property remain in full force and effect.

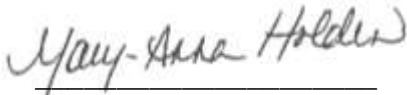
This Order shall be effective on July 25, 2020.

DATED: July 15, 2020

BOARD OF PUBLIC UTILITIES
BY:



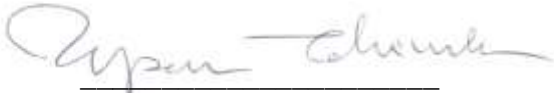
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AIDA CAMACHO-WELCH
SECRETARY

**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, 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, Docket No. EO12090862V**

**SYNCARPHA GEMS, LLC
GEMS LANDFILL
Docket No. QO18010052**

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