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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 SOLAR TRANSITION PURSUANT TO <u>L.</u> 2018, <u>C.</u> 17 – APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012)))))))	DOCKET NO. QO19010068
MARINA ENERGY, LLC FLORENCE LAND RECONTOURING LANDFILL)))	DOCKET NO. QO20120738

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Fred Rohs, Marina Energy LLC

BY THE BOARD:

This Order concerns an application by Marina Energy LLC (“Marina Energy” or “Applicant”) for certification pursuant to L. 2012, c. 24 (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection (t)”). Marina seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located on the Florence Land Recontouring (“FLR”) Landfill in Florence Township in Burlington County, New Jersey. Applicant alleges that the proposed site is a “properly closed sanitary landfill facility” as defined in the Solar Act.

BACKGROUND

On July 23, 2012, the Solar Act was signed into law. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. 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 Department of Environmental Protection . . ." Ibid.

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the New Jersey Department of Environmental Protection ("NJDEP" or "Department"). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by then-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

¹ In re the Implementation of L. 2012, C. 24, The Solar Act of 2012; 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; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System; In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Implementation of L.2012, C.24, N.J.S.A 48:3-87(W) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

sanitary landfill facilities.² 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 NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which NJDEP has determined no further remedial or protective action is necessary. The process incorporates the expertise of 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.³

The January 24, 2013 Order states that certification would be limited to those areas delineated by NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited, and NJDEP reviews this material in making its recommendation.

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 33. On or about April 10, 2013, Staff distributed, via the public renewable energy stakeholder email distribution list, and posted to the New Jersey Clean Energy Program and BPU websites a Subsection (t) application form.

On May 23, 2018, Governor Murphy signed L. 2018, c. 17, codified at N.J.S.A. 48:3-51 to -87 into law ("Clean Energy Act" 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 Solar Renewable Energy Certificate ("SREC") program by 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 mandated that the Board close the SREC Registration Program ("SRP") once it determined that 5.1% of the kilowatt-hours sold in the state had been generated by solar electric power generators connected to the distribution system ("5.1% Milestone") or, in the alternative, by no later than June 2021. On December 18, 2018, the Board approved the adoption of rule amendments to close the SREC market to new applications upon attainment of the 5.1% Milestone. The new rules took effect upon publication in the New Jersey Register on January 22, 2019.⁴ Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

On December 6, 2019, the Board established a Transition Incentive Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and efficient manner.⁵ The Transition Incentive Program provides eligible projects with Transition Renewable Energy Certificates ("TRECs") for each megawatt hour of electricity produced. Incentives are

² In re the Implementation of L. 2012, c. 24, The Solar Act of 2012; 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; 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, Order dated January 24, 2013 (January 24, 2013 Order).

³ January 24, 2013 Order at 31-33.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

⁵ In re a New Jersey Solar Transition Pursuant to P.L. 2018 c. 17, BPU Docket No. QO19010068, Order dated December 6, 2019 ("December 2019 Order").

tailored to specific project types by the use of factors, which are applied to a base incentive rate to provide a particular project type with the full incentive amount or a set percentage of that amount depending on the costs and anticipated revenue streams for the project type. Projects certified pursuant to Subsection (t) receive a factor of 1.0 and thus the full amount of the base incentive.

At a Special Agenda Meeting held on April 27, 2020, the Board approved a Transition Incentive rule proposal⁶ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁷ On September 10, 2020, the Board adopted the rule proposal, and the rules became effective on October 5, 2020 when published in the New Jersey Register.⁸ The rule 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.⁹

Projects certified under Subsection (t) are subject to all of the Board’s SRP and TI rules; the statutory language exempts such projects from the need for further Board designation as “connected to the distribution system” but does not remove any of the Board’s oversight authority. For example, projects seeking TREC eligibility must comply with the TI rules at N.J.A.C. 14:8-10, and applicable Board orders concerning registration with the Transition Incentive Program.¹⁰ The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by Marina Energy that its proposed solar facility, to be located in Florence, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). Marina filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff dated May 13, 2021, on the land use classification and the closure or remediation status of the proposed site. On the basis of NJDEP’s determination, the information certified by Marina Energy in its application, and the Subsection (t) process approved in the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

⁶ In re a Rulemaking Proceeding to Amend the Renewable Portfolio Standard Rules and Create New Rules Establishing a Transition Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No.

QX20030253 (“TI Rule Proposal”).

⁷ 52 N.J.R. 1048(a) (May 18, 2020).

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

⁹ N.J.A.C. 14:10.4(a).

¹⁰ December 2019 Order at 33.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
Marina Energy	QO20120738	Florence Land Recontouring Landfill	Block 173, Lot 1, 2, 3.02 and 3.03 Recovery Road aka, Cedar Lane Extension or Jacksonville Road Florence Township, NJ 08518	Burlington	Landfill	7.4	PSE&G

Marina Energy, LLC – Florence Land Recontouring Landfill – Docket No. QO20120738

On December 2, 2020, Marina Energy 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 7.4 MWdc project is proposed to be located on 29 acres owned by A&S Transportation Company at Block 173, Lots 1, 2, 3.02 and 3.03 on Recovery Road, also known as Cedar Lane Extension or Jacksonville Road in Florence Township, Burlington County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised in a May 13, 2021 memorandum that the property described in the application was the subject of a previous Subsection (t) application submitted to the Board on July 14, 2014 (Docket # Q014070714). The previous application sought conditional certification for a 3.9 MW dc solar array, and on January 21, 2015, the Board conditionally certified the application and the project was registered in the SREC registration program. However, the project experienced interconnection challenges that led to the expiration of the project’s SREC registration. The applicant advises in its cover letter for this new Subsection (t) application that the interconnection issues previously experienced have been resolved.

The NJDEP further advised that the FLR Landfill is comprised of 29 acres on a 90 acre site. The FLR Landfill was operated as a municipal solid waste disposal facility, licensed to accept sanitary and non-chemical waste by the State. NJDEP determined that the 29-acre area identified as the proposed location for the solar array constitutes a “properly closed sanitary landfill” pursuant to the Solar Act. The FLR Landfill was operated as a municipal solid waste disposal facility, licensed to accept sanitary and non-chemical waste by the State, from 1973 until 1981. The landfill was capped and closed for operations in 1981. From 1984 until May 2004, the site was considered a Superfund Site. The NJDEP, under a Cooperative Agreement with the United States Environmental Protection Agency (“EPA”), conducted a remediation pursuant to a 1986 Record of Decision with which NJDEP concurred. In May 2004, the EPA announced that the landfill was no longer considered a Superfund Site. Since that time NJDEP has been involved in handling all operation and maintenance (O&M) activities, including but not limited to, landfill cap maintenance and the operation of a leachate collection facility with offsite leachate disposal. NJDEP also initiated a cost recovery action to recover Department response costs from the site owner, A&S Transportation Co. and other entities.

NJDEP noted in its memorandum that because it is conducting O&M activities using public funds, and the remedy for this site must remain intact to ensure continued protectiveness, the property owner and solar developer are required to execute an Administrative Consent Order (ACO) with NJDEP. As of the date of NJDEP's recommendation memorandum, it had reached an agreement in principle on the ACO requirements with the property owner and solar developer.

Since the solar installation will constitute the construction of improvements on a closed landfill, pursuant to the law, the property owner will need to obtain a Landfill Disruption Permit from the NJDEP Division of Solid and Hazardous Waste, as well as any permits identified by the Department, prior to construction of the solar electric power generation facility.

To achieve full certification, the NJDEP recommends that the Board require the property owner and operator of the solar facility to execute an ACO with the Department's Site Remediation and Waste Management Program and to remain in compliance with the terms of the ACO. The ACO will include, but not be limited to, the requirement to conduct O&M activities for the landfill cap and storm water drainage; to hire a licensed site remediation professional; to obtain a Remedial Action Permit; to post a remediation funding source to guarantee the completion of required O&M activities; to remove solar panels at the conclusion of solar operations; and to allow the Department unimpeded access to the site to conduct sampling, monitoring and leachate collection and disposal operations.

Based on the information contained in the application and other relevant factors, Staff recommends that the Board conditionally certify the applicant's project as being located on a "properly closed sanitary landfill" pursuant to Subsection (t). Staff also recommends that the Board authorize staff to require that the conditions for certification provided by the NJDEP be fully documented as satisfied by the applicant prior to Staff's issuance of full certification of the project's eligibility for TRECs. In addition, Staff recommends that the Board direct the applicant to file its TREC registration within fourteen (14) days of the date of the Order and explicitly grant conditional certification.

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 determined that the solar array proposed for Block 173, Lots 1, 2, 3.02 and 3.03 as shown on the tax map of the Township of Florence, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." To be eligible for the creation of TRECs, the entire solar array must be placed solely within the twenty-nine (29) acres depicted in Attachment 2 to the application (Site Plan with Landfill Boundaries by Pro-Tech Energy Solutions, LLC, dated November 11, 2020, Figures 2 and 3). Based on information provided by NJDEP, the Board **FINDS** that the Florence Land Recontouring Landfill project is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP determined that the property owner and solar developer must execute an ACO with the Department's Site Remediation and Waste Management Program and remain in compliance with the terms of the ACO. The Board **FINDS** that the NJDEP has stated that the ACO will include, but not be limited to, the requirement to conduct O&M activities for the landfill cap and storm water drainage; to hire a licensed site remediation professional; to obtain a Remedial Action Permit; to post a remediation funding source to guarantee the completion of required O&M activities; to remove solar panels at the conclusion of solar operations; and to allow

the Department unimpeded access to the site to conduct sampling, monitoring and leachate collection and disposal operations.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of Applicant's proposed solar electric generation facility, to be located on 29 acres at Florence Land Recontouring Landfill at Block 173, Lots 1, 2, 3.02 and 3.03 in Florence Township, Burlington County, New Jersey, with an array size not to exceed 7.4 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

In addition, to obtain full certification, the Board **DIRECTS** Marina Energy to submit an initial Transition Incentive program registration package within 14 days of the effective date of this order, and to complete construction within two years in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all TREC eligibility requirements at N.J.A.C. 14:10-8, et seq. have been satisfied. After the Applicant receives full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of TREC creation for a 15-year Qualification Life.

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 site plans filed with the application, and the TREC registration.


This Order shall be effective on June 16, 2021.

DATED: June 9, 2021

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BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
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ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C. 24, THE SOLAR ACT OF 2012;
IN THE MATTER OF THE NEW JERSEY SOLAR TRANSITION PURSUANT TO L. 2018, C. 17
– APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS
PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012; MARINA ENERGY, LLC -
FLORENCE LAND RECONTOURING LANDFILL

DOCKET NOS. EO12090832V, QO19010068, and QO20120738

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