



Agenda Date: 4/15/15
Agenda Item: 8H

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

CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF)	
L. 2012, C. 24, THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF)	
L. 2012, C. 24, <u>N.J.S.A. 48:3-87(T)</u> – A PROCEEDING)	
TO ESTABLISH A PROGRAM TO PROVIDE SRECS)	
TO CERTIFIED BROWNFIELD, HISTORIC FILL AND)	DOCKET NO. EO12090862V
LANDFILL FACILITIES)	
)	
CLEANLIGHT POWER AND ENERGY, LLC)	
PATTERSON AVENUE (MAKRANCY FARMS, INC.))	DOCKET NO. QO14101129
LANDFILL ¹)	

Party of Record:

Karen Lichtin, CleanLight Power and Energy, LLC

BY THE BOARD:

BACKGROUND

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

¹ During the pendency of this proceeding, an official from Cleanlight Power and Energy, LLC, requested that the name on its application be changed to CleanLight Power and Energy, Hamilton, LLC. Staff agreed to this request, provided the Company re-submitted those portions of its application which included its name to reflect the new name. Neither Staff nor the Board’s Market Manager has received such a resubmittal.

The Solar Act, specifically N.J.S.A. 48:3-87(t) (“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[.] . . . [F]or projects certified under this subsection, the board shall establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility.

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

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

The October 4 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 (“NJEDA”) and the New Jersey Department of Environmental Protection (“NJDEP”). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by Commissioner Joseph Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

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

land use classification for eligibility and to account for the state of remediation of the project site. Ibid.

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

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

Projects certified under Subsection t of the Solar Act are subject to all of the Board's rules; the statutory language exempts such projects from the need for further Board designation as "connected to the distribution system" but does not remove any of the Board's oversight authority. For example, following receipt of conditional certification, once a contract for facility installation has been executed, these projects will need to be registered in the Board's SRP within ten days. N.J.A.C. 14:8-2.4. The size and location of the subject project would then be reflected in the public reporting of solar development pipeline data.

STAFF RECOMMENDATIONS

Project Description

This Order deals with the request by CleanLight Power and Energy, LLC ("CleanLight" or "applicant") that the Patterson Avenue (Makrancy Farms, Inc.) Landfill solar electric generation facility proposed to be located in Hamilton Township, New Jersey be certified as eligible for SRECs pursuant to Subsection t. The applicant seeking certification submitted the required documentation to enable a NJDEP determination as to whether the proposed site was a brownfield, area of historic fill, or properly closed landfill. The NJDEP reviewed the application and supplied an advisory memo to Board Staff on the land use classification and the closure or remediation status of the proposed site. On the basis of the NJDEP's determination, information contained in the application, and the January 23 Order, Staff recommends that the Board deny certification for the Makrancy Farms, Inc. Landfill, as explained further below.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
CleanLight Power + Energy, LLC	QO14101129	Makrancy Farms Landfill	966 Kuser Road Hamilton, NJ 08619	Mercer	Landfill	5	PSE&G

Patterson Avenue (Makrancy Farms, Inc. Landfill– (Hamilton Township) – Docket No. Q014101129

On October 6, 2014, CleanLight submitted an application to the Board to have its project certified as being located on a properly closed landfill pursuant to Subsection t of the Solar Act. Applicant's 5MW dc project is proposed to be constructed on the Patterson Avenue Landfill owned by Makrancy Farms, Inc. in Hamilton Township, New Jersey. In its application, CleanLight represented that the Patterson Avenue Landfill ceased operations in 1977.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised Board Staff that it reviewed the application and found that the site does not meet the definition of a "properly closed sanitary landfill facility" pursuant to N.J.S.A. 48-3:87(t)(1), which reads:

[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], pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility subsequent to the termination of operations.

[N.J.S.A. 48-3:87(t)(1) (emphasis supplied).]

NJDEP advised that on April 3, 1979, the NJ DEP Solid Waste Administration issued a letter stating that the landfill is "now closed in accordance with the rules and regulations of the Solid Waste Administration." However, since the issuance of that letter, NJDEP has identified groundwater contamination and other environmental issues requiring the oversight of its Site Remediation Program. NJDEP has determined that significant remedial work and submissions of permit applications, for example but not limited to Remedial Action Permits for soils and ground water pursuant to the N.J.A.C. 7:26C-7, are necessary before this landfill can be considered properly closed under the Solar Act. Accordingly, NJDEP does not recommend that the Board conditionally approve this site as a properly closed landfill at this time.

Based on the information provided in the application and NJDEP's determination that additional remedial measures are necessary before the site proposed for the solar development can be considered a properly closed landfill as that is defined in the Solar Act, Staff recommends that the Board deny conditional certification at this time.

FINDINGS AND CONCLUSIONS

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

Based on information provided by NJDEP, the Board **FURTHER FINDS** that the Patterson Avenue Landfill project is not located on land meeting the definition of a "properly closed landfill." The Board also **FINDS** that NJDEP has determined that the current remediating party

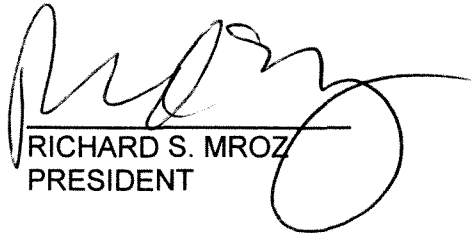
must take several more steps before the Patterson Avenue Landfill can be considered properly closed and that "[t]he remedial work necessary is significant[.]"

For these reasons, the Board **HEREBY FINDS** that the project does not qualify for certification under Subsection t and, as such, the Board **HEREBY DENIES** the request for certification of the project identified as Patterson Ave Landfill.

This Order shall be effective on April 25, 2015.

DATED: 4/15/15

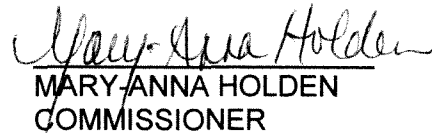
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



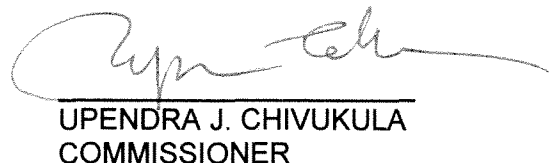
JOSEPH L. FIORDALISO
COMMISSIONER



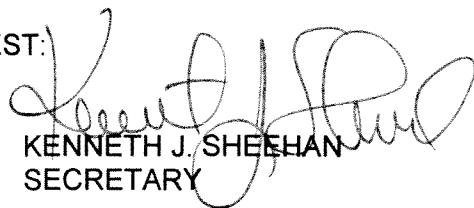
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COMMISSIONER



DIANNE SOLOMON
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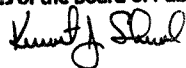


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 

KENNETH J. SHEEHAN
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; CleanLight Power and Energy, LLC Patterson Avenue (Makrancy Farms, Inc.) Landfill

Docket Nos. EO12090832V, EO12090862V, and QO14101129

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