



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. 2012, C. 24</u> , THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>L. 2012, C. 24</u> , 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
)	
HESP SOLAR, LLC)	
MOUNT ARLINGTON BOROUGH LANDFILL)	DOCKET NO. QO18040429

Party of Record:

Daniel Grohman, HESP Solar, LLC

BY THE BOARD:

This Order concerns an application by HESP Solar, LLC ("HESP Solar" or "Applicant") for certification pursuant to L. 2012, c. 24 ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection (t)"). HESP Solar seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located at the Mount Arlington Borough Landfill in Mount Arlington, Morris County, New Jersey. HESP Solar 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 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; 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; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; 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; 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; 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; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

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. 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. 2013 N.J. PUC LEXIS 27 at 31-33.

The January 24, 2013 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 33. 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.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by HESP Solar that its proposed solar facility, to be located in Mount Arlington, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). HESP Solar filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. The NJDEP reviewed the application and supplied an advisory memorandum to Staff on November 19, 2018 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 HESP Solar in its application, and the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

² I/M/O 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 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, 2013 N.J. PUC LEXIS 27 (Jan. 24, 2013).

Developer	Docket Number	Project Designation	Location / Town	County	Landfill, Brownfield, or Historic Fill	Array (MWdc)	EDC
HESP Solar, LLC	QO18040429	Mount Arlington Borough Landfill	Block 8, Lot 3 Mount Arlington, NJ 07856	Morris	Landfill	2.2925	JCP&L

HESP Solar, LLC – Mount Arlington Borough Landfill – Docket No. QO18040429

On April 16, 2018, HESP Solar 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 2.2925 MWdc project is proposed to be constructed on 6.74 acres of land owned by Mount Arlington Borough. The landfill is located on an approximately 36.611-acre³ site, specifically, Block 8, Lot 3, on Berkshire Avenue in Mount Arlington Borough, Morris County, New Jersey.

Staff forwarded the application to the NJDEP for review and a recommendation as described above. NJDEP indicated that the Mount Arlington Borough Landfill accepted municipal, bulky, and vegetative waste until it ceased operations in December 1990. The Department issued a Sanitary Landfill Closure and Post-Closure Plan Approval to the Borough of Mount Arlington on July 21, 1992. Closure activities were complete in 2005. In 2015, the Borough applied for an amendment to the Closure and Post-Closure Plan Approval and included a professional engineer's certification of completion of closure. On August 21, 2015, the Department issued a modified Closure and Post-Closure Plan Approval, which requires the Borough to continue to maintain and monitor the landfill during the post-closure care period. On December 30, 2016, the NJDEP's Division of Land Use issued a Highlands Preservation Area Approval authorizing the redevelopment of 7.44 acres of land for the installation of solar array fields.

NJDEP noted that the solar installation will constitute the construction of improvements on a closed landfill pursuant to the law, and, accordingly, the property owner will need to obtain an Approval from the NJDEP's Division of Solid and Hazardous Waste, as well as any permits identified by the Department, and approval from any other applicable state or federal agency. The NJDEP stated that, for example, if applicable, the property owner may need to ensure compliance and obtain any relevant approvals regarding the Highlands Preservation Area, such as satisfying any pre-construction conditions required by the New Jersey Highlands Council, prior to construction of the solar electric power generation facility. The NJDEP stated that approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to ongoing maintenance and monitoring during the post-closure period. Consistent with the above requirements, the NJDEP noted that the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap.

³ We note that there were discrepancies in the application concerning the property acreage. Page 5 of the application notes that the property acreage is 36.611. Page 4 of Exhibit B notes that the "plan area" is 35.64 acres, approximately 10 acres of which is the former landfill, and the remaining 25.64 is the forested land.

The NJDEP indicated that the August 21, 2015 modified Closure and Post-Closure Plan Approval requires Mount Arlington Borough to conduct site inspections and submit inspection reports on a quarterly basis, but the Department has yet to receive any inspection reports for the facility. The NJDEP stated that the Borough will need to address these issues to be in compliance with post-closure requirements.

Based on the information provided in the application and the NJDEP's determination that the proposed solar array, as rendered in the drawing titled "Overall Proposed Site Plan," 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 the NJDEP for a determination of eligible land use type and status of remediation on the proposed site. The NJDEP has determined that the 6.74 acres requested for Subsection (t) certification on Block 8, Lot 3, as rendered in the "Overall Proposed Site Plan," is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." Based on information provided by the NJDEP, the Board **FINDS** that the Mount Arlington Borough Landfill project is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that the NJDEP has determined that property owner will need to obtain an Approval from the NJDEP's Division of Solid and Hazardous Waste, as well as any permits identified by the NJDEP, and approval from any other applicable state or federal agency, prior to construction of the solar electric power generation facility. The Board also **FINDS** that approval for construction of improvements on the closed landfill must address "impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to ongoing maintenance and monitoring during the post-closure period." The property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap of the Mount Arlington Borough Landfill. In addition, the property owner must satisfy any outstanding requirements under the modified Closure and Post-Closure Plan Approval for the Mount Arlington Borough Landfill.

The Board **FINDS** that the NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of the Applicant's proposed solar electric generation facility, to be located at the Mount Arlington Borough Landfill at Block 8, Lot 3 in Mount Arlington Borough, Morris County, New Jersey, with an array size not to exceed 2.2925 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that there are no outstanding requirements under the modified Closure and Post-Closure Plan Approval and that all NJDEP or federal requirements have been satisfied. To obtain full certification, the Board **ALSO DIRECTS** the Applicant to demonstrate to Staff that the Applicant has ensured compliance and obtained any relevant approvals regarding the Highlands Preservation Area, such as satisfying any pre-construction conditions required by the New Jersey Highlands Council, prior to construction of the solar electric power generation facility.

In addition, to obtain full certification, the Board **DIRECTS** HESP Solar to submit an initial SRP registration package within fourteen (14) days of the effective date of this order in accordance with N.J.A.C. 14:8-2.4(c) and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-2.4(c), (i). The Board **DIRECTS** Staff to issue full certification to the project upon

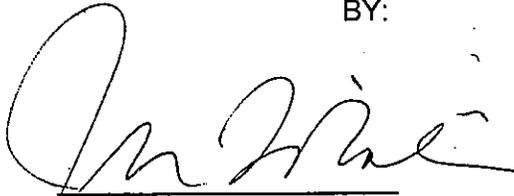
the Applicant's demonstration that all requirements for full certification have been satisfied. After the Applicant has received full certification and satisfied all SRP requirements, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation, provided that all requirements of N.J.A.C. 14:8-2.4 are met.

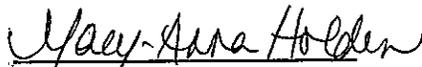
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection (t), provided that the facilities are constructed in accordance with NJDEP requirements, the plans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

This Order shall be effective on December 28, 2018.

DATED: 12/18/18

BOARD OF PUBLIC UTILITIES
BY:

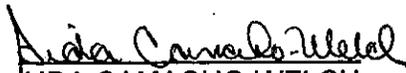

JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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; HESP Solar, LLC – Mount Arlington Borough Landfill

Docket Nos. EO12090832V, EO12090862V, and QO18040429

SERVICE LIST

HESP Solar, LLC

Daniel Grohman
400 Rella Boulevard, Suite 160
Suffern, NY 10901
dgrohman@hespsolar.com

Borough of Mount Arlington

Carolyn Rinaldi
419 Howard Boulevard
Mount Arlington, NJ 07856
crinaldi@mtalringtonboro.com

Division of Rate Counsel

140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.state.nj.us

Felicia Thomas-Friel, Esq.
ftthomas@rpa.state.nj.us

Sarah Steindel, Esq.
ssteindel@rpa.state.nj.us

Deputy Attorney General

Caroline Vachier, DAG
Division of Law
Department of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
caroline.vachier@law.njoag.gov

Board of Public Utilities

44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch
Secretary of the Board
board.secretary@bpu.nj.gov

Ken Sheehan, Esq., Director
Division of Clean Energy
ken.sheehan@bpu.nj.gov

Sherri Jones, Assistant Director
Division of Clean Energy
sheri.jones@bpu.nj.gov

Benjamin S. Hunter, Manager
Division of Clean Energy
benjamin.hunter@bpu.nj.gov

Jamal Garner, Environmental Engineer
Division of Clean Energy
jamal.garner@bpu.nj.gov

Stacy Ho Richardson, Esq.
Counsel's Office
stacy.richardson@bpu.nj.gov