



Agenda Date: 7/22/15
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 LANDFILL FACILITIES)	
)	DOCKET NO. EO12090862V
)	
DIX SOLAR, LLC. FORT DIX #1 LANDFILL)	DOCKET NO. QO15010095

Party of Record:

Wendy De Wolf, Dix Solar LLC.

BY THE BOARD:

This Order concerns the proposed Fort Dix #1 Landfill solar electric generation facility to be located in Pemberton Township, Burlington County, New Jersey.

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 statute’s 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”).

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 [DEP.]” 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 location where the solar facility is proposed to be sited and the NJDEP reviewed this material in making its recommendation.

In addition, the Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfills 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, except as set forth elsewhere in this Order. Although the statutory language of the Solar Act exempts such projects from the need for further Board designation as "connected to the distribution system," it does not remove any of the Board's oversight authority. For example, following receipt of conditional certification, a project must register in the Board's SREC Registration Program ("SRP"). N.J.A.C. 14:8-2.4. 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 23 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 23 Order at 13. However, because this requirement is 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 23 Order and required developers to comply with the SREC Registration rules at N.J.A.C.14:8-2.4. Docket Nos. EO12090862V, EO13050389V, EO13050388V ("July 19 Order").

The SRP requires a solar electric generation project to submit a registration within ten 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 year because the SRP registration number expires, with only one six 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. I/M/O PVNavigator, LLC – Somerdale Road (Owens Corning) Landfill, Docket No. QO14010014, at 6-7 (June 18, 2014) ("June 18 Order"). Subsection t applications must register with the SRP within fourteen 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) ("Subsection q") applicants supports applying a similar process for the registration of a Subsection t applicant. 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) & (S) - Proceedings to Establish the Processes for Designation of Certain Grid Supply Projects as Connected to the Distribution System – Subsection (Q) Approvals, Docket No. 2090880V (August 21, 2013). 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 year to two years. June 18 Order, at 7. Construction of solar facilities on properly closed sanitary landfills, brownfields and areas of historic fill are known to have additional permitting and construction challenges which may result in longer competition periods. Strict compliance with a one-year SRP process may mean the developers cannot complete the construction process prior to the expiration of their registrations. A two-year construction period is intended to recognize the longer construction period for Subsection t projects and thereby support the goals of the Solar Act.

STAFF RECOMMENDATION

Project Description

As stated above, at issue is the request by Dix Solar, LLC (“Dix” or “Applicant”) that the proposed Fort Dix #1 Landfill solar electric generation facility, to be located in Pemberton Township, Burlington County, New Jersey be certified as being located on a properly closed sanitary landfill facility and, therefore, eligible for SRECs pursuant to Subsection t. The Applicant submitted the required documentation to enable a NJDEP determination as to whether the proposed project is located on a brownfield, area of historic fill, or properly closed sanitary landfill. The NJDEP reviewed the application and supplied an advisory memo to Board Staff on the classification and closure or remediation status of the proposed site. On the basis of the NJDEP’s determination, information contained in the application, and the requirements of the January 23 Order, Staff is recommending conditional certification for the solar facility proposed for Fort Dix #1 Landfill, as explained further below.

Fort Dix #1 Landfill Site – (Pemberton Township) – No. QO15010095

On January 22, 2015, Dix 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 16.81 MW dc project is proposed to be constructed on the Fort Dix Landfill owned by United States Air Force (“USAF”) in Pemberton Township, Burlington County, New Jersey. In its application, Dix represented that the Fort Dix #1 Landfill ceased operations as a landfill in approximately 1984.

Staff forwarded the application to NJDEP for review and a recommendation was received as described above. NJDEP noted that the Fort Dix Landfill had been listed on the Federal National Priorities List (“NPL”). The NPL site is confined to the 126-acre landfill at the Fort Dix military facility, which was operated as a sanitary landfill from 1950 until 1984. The landfill was closed under the oversight of the United States Environmental Protection Agency (“USEPA”) and NJDEP’s Site Remediation Program. NJDEP further indicated that the United States Army and the USEPA signed a Record of Decision on September 24, 1991. In 2012, the USEPA deleted the Fort Dix Landfill from the NPL. Based on NJDEP’s review of the application, NJDEP determined that the Fort Dix #1 Landfill constitutes a “properly closed sanitary landfill facility” according to the Solar Act.

NJDEP further indicated that the proposed solar installation will constitute the construction of improvements on a closed landfill, and therefore “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 on-going maintenance and monitoring during the post-closure period” must be addressed.

Based on the information provided in the application and NJDEP’s determination that environmental impacts must be addressed, Staff recommends that the Board grant conditional certification of the proposed project. Full certification is conditioned upon the project developers demonstrating that construction of the project is consistent with NJDEP’s standards for landfill disruption.

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. Based on the information provided by NJDEP, the Board **FINDS** that the 96 acres described in Dix’s application are located on land meeting the definition of a “properly closed sanitary landfill facility”. The Board **FINDS** that the Applicant must address environmental impacts from construction of the proposed solar facility and, thus, conditional certification is appropriate. To obtain full certification the Board **FINDS** that the Applicant must demonstrate to Staff that it has satisfied NJDEP’s standards for landfill disruption. The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant’s demonstration that it has satisfied all requirements for full certification. 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 days of installation contract execution at N.J.A.C. 14:8-2.4 (c) and the registration length of one year at N.J.A.C. 14:8-2.4(f) for the Fort Dix #1 Landfill project. The Board **DIRECTS** Dix to submit an SREC Registration within fourteen days of the effective date of the Order. The Board **FURTHER GRANTS** a modification of one year provided in the current SRP to two 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 August 1, 2015.

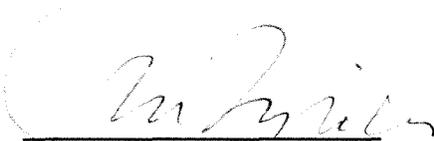
DATED:

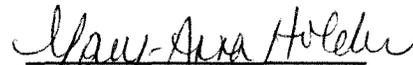
July 23, 2015

BOARD OF PUBLIC UTILITIES

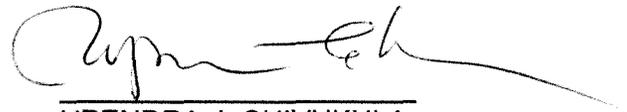
BY:


RICHARD S. MROZ
PRESIDENT

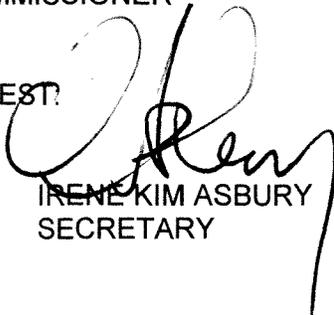

JOSEPH L. FIORDALISO
COMMISSIONER


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; Dix Solar, LLC.

Docket Nos. EO12090832V, EO12090862V, and QO15010095

SERVICE LIST

Wendy De Wolf
Dix Solar, LLC
20 Park Plaza
Boston, MA 02116
wdewolf@emienergy.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Felicia Thomas-Friel, Esq.
Division of Rate Counsel
140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
ftomas@rpa.state.nj.us

Sarah Steindel, Esq.
Division of Rate Counsel
140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
ssteindel@rpa.state.nj.us

Caroline Vachier, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
Post Office Box 45029
Newark, NJ 07102-45029
Caroline.Vachier@dol.lps.state.nj.us

Irene Kim Asbury, Secretary
Office of the Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Irene.asbury@bpu.state.nj.us

Elizabeth Ackerman, Director
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
elizabeth.ackerman@bpu.state.nj.us

Benjamin S. Hunter
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
b.hunter@bpu.state.nj.us

Allison E. Mitchell
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
allison.mitchell@bpu.state.nj.us

Megan Lupo, Esq., Legal Specialist
Counsel's Office
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
megan.lupo@bpu.state.nj.us