



Agenda Date: 6/17/15
Agenda Item: 8C

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)
)
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 BROWNFIELD, HISTORIC FILL AND)
LANDFILL FACILITIES)
)
FIBERVILLE ESTATES, LLC.)
HUGHESVILLE MILL SITE)

DOCKET NO. EO12090832V

DOCKET NO. EO12090862V

DOCKET NO. QO15010070

Party of Record:

Stanley Sackowitz, Fiberville Estates, LLC

BY THE BOARD:

This Order concerns the Fiberville Estates LLC (“Fiberville”) application for certification pursuant to L. 2012, C. 24, (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection t”) for the proposed Hughesville Mill solar electric generation facility to be located at Block 2, Lot 1.02 and Block 4, Lot 1, Holland Township Hunterdon County, New Jersey. The applicant seeking certification submitted the required documentation to enable a New Jersey Department of Environmental Protection (“NJDEP”) determination as to whether the proposed site was a brownfield and whether additional considerations were required before full certification pursuant to Subsection t of the Solar Act could be obtained.

BACKGROUND

On July 23, 2012, the 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. BPU Docket No. EO12090832V (“October 4, Order”).

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[.] [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, 2012 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 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, 2013 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, 2013 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, 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 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 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 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 will then be reflected in the public reporting of solar development pipeline data.

SREC REGISTRATION

In the January 23, 2013 Order, the Board ruled that only those projects that have received a full certification would be eligible to register in the Solar Renewable Energy Certificates ("SREC") Registration Program ("SRP"); "full certification is a pre-requisite to consideration for acceptance into the SRP." January 23, 2013 Order at 13. However, because this requirement was 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) (hereinafter "June 18, 2014 Order"). Subsection (t) applications must register with the SRP within fourteen (14) 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, BPU 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, 2014 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 completion 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, thereby supporting the goals of the Solar Act.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is Fiberville's request that the proposed Hughesville Mill solar electric generation facility, to be located in Holland Township, New Jersey, be certified as a brownfield 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 project is located on 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 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, 2013 Order, Staff is recommending conditional certification for the solar facility proposed for Hughesville Mill, as explained further below.

Hughesville Mill Site – (Holland Township) – No. Q015010070

On January 12, 2015, Fiberville submitted an application to the Board to have its project certified as being located on a brownfield pursuant to Subsection (t) of the Solar Act. Applicant's 9 MW dc project is proposed to be constructed on 80-acres of the 126-acre Hughesville Mill site, which is owned by Fiberville in Holland Township, Hunterdon County, New Jersey. Hughesville Mill is a former paper mill, which was constructed in 1893. The site is currently vacant.

Staff forwarded the application to NJDEP for review and a recommendation was received as described above. NJDEP advised Board Staff that it reviewed the application and found that the proposed solar facility is located on a site that meets the definition of a "brownfield" pursuant to Subsection (t) and N.J.S.A. 48:3-51. The 80 acre portion of the property known as Area of Concern K ("AOC K") was used as spray fields for processing waste water. According to NJDEP, the Hughesville Mill site in its entirety is an "industrial establishment" subject to the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et al and/or N.J.A.C. 7:26B-1.4.

On June 17, 2010, the Licensed Site Remediation Professional ("LSRP") retained to conduct the remediation issued an unrestricted use Response Action Outcome ("RAO") for AOC K. On April 20, 2015, the LSRP amended the RAO for AOC K to correct an administrative error regarding the block and lot number of AOC K and to provide notice that other areas at the Hughesville Mill site have been identified with "Known Onsite Contamination Sources Not Yet Remediated."

NJDEP determined that "the Hughesville Mill Site, in its entirety, is subject to ISRA and as such is treated as one site. Since an unrestricted use RAO has been issued for AOC K and

contamination remains at this site, the entire Hughesville Mill Site constitutes a 'brownfield' according to the Solar Act.”

Therefore, should the Board accept Staff's recommendation to grant conditional certification, Staff also recommends that the the applicant be directed to submit the SRP registration package to the Board within fourteen days of the effective date the Order; and, that the SREC Registration period for this project be modified from one year to two years, consistent with the June 2014 Order.

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.

The Board **FINDS** that NJDEP has not required additional remediation or conditions for construction of the proposed solar facility on area AOC K. The Board **DIRECTS** Staff to issue full certification to the project upon the applicant's demonstration that the project, as-built, does not go beyond the limits of AOC K, and that the project does not and will not disrupt or change, without prior written permission from the NJDEP, any engineering or institutional control that is part of a remedial action for the site, and does not otherwise interfere with any remediation at the site. The applicant shall file as-built documentation and allow for an on-site inspection. 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.

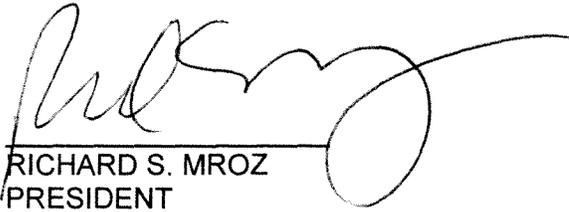
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten days of installation contract execution at N.J.A.C. 14:8-2.4(c) and the registration length of one year at N.J.A.C. 14:8-2.4 (f) for the Hughesville Mill project. The Board **FURTHER GRANTS** a modification of the one year registration period provided in the current SRP to two years to accommodate the longer construction period for Subsection t projects. The Board **DIRECTS** the applicant to submit the SRP registration package within fourteen days of the effective date of this order.

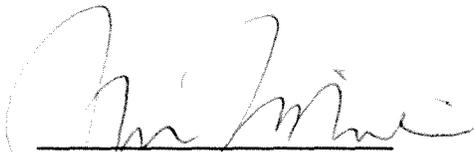
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans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

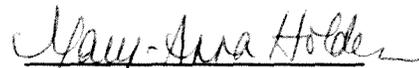
This Order shall be effective on June 26, 2015.

DATED: June 18, 2015

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

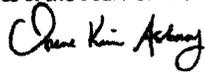

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DIANNE SOLOMON
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ATTEST: 
IRENE KIM ASBURY
SECRETARY

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; Fiberville Estates, LLC.

Docket Nos. EO12090832V, EO12090862V, and QO15070070

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