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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
	)	
MOUNT OLIVE SOLAR FARM, LLC COMBE FILL NORTH LANDFILL	)	
	)	DOCKET NO. QO20060460

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Gary Cicero**, Mount Olive Solar Farm, LLC

BY THE BOARD:

This Order concerns an application by Mount Olive Solar Farm, LLC (“Mount Olive 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)”). Mount Olive Solar seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located at the Combe Fill North (“Combe”) Landfill in Mount Olive Township, Morris County, New Jersey. Mount Olive 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.<sup>1</sup>

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.

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<sup>1</sup> 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).

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 sanitary landfill facilities.<sup>2</sup> 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.<sup>3</sup> 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 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 P.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.<sup>4</sup>

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

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<sup>2</sup> 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).

<sup>3</sup> January 24, 2013 Order at 31-33.

<sup>4</sup> 51 N.J.R. 138(e) (Jan. 22, 2019).

manner.<sup>5</sup> The Transition Incentive Program provides eligible projects with Transition Renewable Energy Certificates (“TRECs”) for each megawatt hour of electricity produced. Incentives are 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 proposal<sup>6</sup> that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

Projects certified under Subsection (t) 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 seeking TREC eligibility must comply with the rules at N.J.A.C. 14:8-10, and applicable Board orders concerning registration with the Transition Incentive Program.<sup>10</sup> 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 Mount Olive Solar that its proposed solar facility, to be located in Mount Olive Township, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). Mount Olive 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. NJDEP reviewed the application and supplied an advisory memorandum to Staff on August 26, 2020, 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 Mount Olive Solar 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.

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<sup>5</sup> 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”).

<sup>6</sup> 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”).

<sup>7</sup> 52 N.J.R. 1048(a) (May 18, 2020).

<sup>8</sup> 52. N.J.R. 1850(a) (October 5, 2020).

<sup>9</sup> N.J.A.C. 14:10.4(a).

<sup>10</sup> December 2019 Order at 33.

Developer	Docket Number	Project/ Designation Address	Location/Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
Mount Olive Solar Farm, LLC	QO20060460	Combe Fill North Landfill	Block 4100, Lot 10 149 Gold Mine Road Mount Olive Twp, NJ 07836	Morris	Landfill	28.2056	JCP&L

**Mount Olive Solar Farm, LLC – Combe Fill North Landfill – Docket No. QO20060460**

On April 9, 2020, Mount Olive Solar submitted its application to the Board to have its project certified as being located on a properly closed sanitary landfill pursuant to Subsection (t) of the Solar Act. Applicant’s 28.20564 MWdc project is proposed to be located on 65 acres of land controlled by Gold Mine Road Solar LLC (“Gold Mine Road Solar”) at Block 4100, Lot 10 (formally Block 12, Lot 54.1) at 149 Gold Mine Road in Mount Olive Township, Morris County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated that the Combe Fill Corporation (“CFC”) acquired the property on September 18, 1978. Prior to this acquisition, the municipal landfill accepted vegetative and industrial wastes and small amounts of dry sewage sludge from 1966 until 1978. NJDEP indicated that on January 31, 1981, the Combe Fill North Landfill ceased operation, and in July 1982, it was evaluated by the Environmental Protection Agency (“EPA”) under the EPA’s Hazard Ranking System. NJDEP noted that the U.S. EPA placed the landfill on the National Priorities List on September 1, 1983. On September 8, 1983, the landfill was declared a Superfund site. NJDEP further noted that, in October 1989, NJDEP, in partnership with the EPA, started remedial action activities, which were completed in 1991. Groundwater monitoring remains ongoing. NJDEP explained that, since metal data has been consistently below standards, the wells are sampled for metals approximately every three years. In November 2017, NJDEP commenced activities to extend a municipal waterline to affected properties and to install nine new water services over two phases, concluding on March 7, 2019. The methane vents are checked twice a year, and a select group of vents are sampled as required. NJDEP inspects the landfill caps every two years. It was last inspected on April 28, 2018. Beginning in October 2018, the EPA will inspect the landfill every five years to review site cleanups and remedies under the Superfund Five Year Review process.

NJDEP described how, on June 9, 2020, NJDEP executed an Administrative Consent Order (“ACO”) with Mount Olive Solar and Gold Mine Road Solar to allow for a solar facility on the landfill and to identify the roles and responsibilities for continued operation and maintenance of the site and the groundwater contamination.

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 NJDEP’s Division of Solid and Hazardous Waste for construction of improvements on the closed landfill, as well as any permits identified by NJDEP, and approval from any other applicable state or federal agency. NJDEP stated that Mount Olive Solar must comply with all requirements and conditions set forth in the ACO and 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, 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.

NJDEP also stated that, in order to obtain full certification, by the time that full certification is sought, Mount Olive Solar must show that it has done the following:

1. Completed the proper maintenance and mowing of the landfill cap / site;
2. Assessed the condition of the venting system and completed the proper maintenance; and
3. Renewed the necessary air permits, as required under N.J.A.C. 7:27, subchapter 8 and/or 22, that have since expired due to an unpaid renewal fee of \$1,267.00 as of December 9, 2020 (Activity #: PCP 080001 and Air Program Interest #: 25548).

Based on the information provided in the application and NJDEP's determination that the proposed solar array, as rendered in the map attached as Exhibit C of the ACO, is located on a "properly closed sanitary landfill facility" under the Solar Act, Staff recommended that the Board grant conditional certification of the proposed project. On October 14, 2020, in reliance upon the information provided by NJDEP and on Staff's recommendation, the Board issued an Order conditionally certifying the Subsection t application submitted by the Mount Olive Solar Farm LLC for the Combe Fill North Landfill in the Township of Mount Olive.

Subsequent to the issuance of the Board's October 14, 2020 Order, the developer and NJDEP identified inaccuracies in the conditions adopted by the Board for the project to attain TREC eligibility. Specifically, NJDEP informed the Board that its advisory memorandum of August 26, 2020 incorrectly assigned responsibility for the assessment and maintenance of methane venting systems, renewal of air permits, and payment of outstanding renewal fees to the developer.

On December 8, 2020, NJDEP issued a revised memorandum to Board staff that corrected the erroneously assigned responsibilities from the earlier memorandum. Based on the revised memo, Staff recommends that the Board issue an Order that incorporates the revised NJDEP condition that the developer comply with the terms and conditions of the June 9, 2020 ACO. Staff recommends that the Board remove from the developer the responsibility for assessment and maintenance of methane venting systems, renewal of air permits, and payment of outstanding renewal fees as NJDEP confirms that it has assumed those responsibilities.

### **FINDINGS AND CONCLUSIONS**

The Board notes that NJDEP continues to believe that the solar array proposed for Block 4100, Lot 10, as depicted in Exhibit C of the Administrative Consent Order executed among NJDEP, Mount Olive Solar, and Gold Mine Road Solar is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." Thus, the Board **REAFFIRMS** that the Combe Fill North Landfill project is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board further **FINDS** that, in order to obtain full certification, by the time that full certification is sought, Mount Olive Solar must show that it has done the following:

1. Complies with the terms and conditions of the June 9, 2020 ACO.

The Board further **FINDS** that, based upon the revised NJDEP memorandum, Mount Olive Solar is not responsible for the assessment and maintenance of methane venting systems, renewal of air permits, and payment of outstanding renewal fees to the developer.

The Board **REAFFIRMS** the conditional certification of Applicant's proposed solar electric generation facility, to be located on 65 acres at Combe Fill North Landfill at Block 4100, Lot 10 in Mount Olive Township, Morris County, New Jersey, with an array size not to exceed 28.20564 MWdc.

The Board **ORDERS** that, except as expressly identified in this Amended Order, all provisions of the October 14, 2020 Order in this docket remain in full force and effect.

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 TREC registration.

This Order shall be effective on January 17, 2021.

DATED: January 7, 2021

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

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 P.L. 2012, c. 17 – Application for  
Certification of Solar Facility As Eligible for TRECs Pursuant to Subsection (t) of the Solar Act of  
2012; Mount Olive Solar Farm, LLC – Combe Fill North Landfill

Docket Nos. EO12090832V, QO19010068, and QO20060460

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