



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
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.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO <u>P.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
)	
MONMOUTH SOLAR 1, LLC (HESP) MONMOUTH COUNTY HOWELL LANDFILL)	DOCKET NO. QO20080563

Parties of Record:

Brian O. Lipman, Esq., Acting Director, New Jersey Division of Rate Counsel
Daniel Grohman, Monmouth Solar 1, LLC

BY THE BOARD:

This Order concerns an application by Monmouth Solar 1, LLC (“Monmouth 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)”]. Monmouth Solar seeks certification for eligibility to generate Transition Renewable Energy Certificates (“TRECs”) for the proposed solar electric generation facility to be located at the Monmouth County Howell Landfill in Howell in Monmouth County, New Jersey (“Site”). Applicant claims that the proposed site is a “properly closed sanitary landfill facility” as that term is 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” or “BPU”)

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 . . ." Id. 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 . . ." Id.

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.

¹ 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.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 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.³

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 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, 2019.⁴ Pursuant to these rules, the Board determined that the 5.1% Milestone would be reached prior to May 2020 and closed the SRP on April 30, 2020.

On December 6, 2019, the Board established a Transition Incentive ("TI") Program to provide a bridge between the legacy SREC program and a Successor Incentive program in an orderly and

² 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").

³ January 24, 2013 Order at 31-33.

⁴ 51 N.J.R. 138(e) (Jan. 22, 2019).

efficient manner.⁵ The TI provides eligible projects with 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 TI rule proposal⁶ that codified this treatment at N.J.A.C. 14:8-10, which was published on May 18, 2020.⁷ 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.⁸ 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.⁹ The rule also incorporates the eligibility requirements enumerated at N.J.S.A. 48:3-87(t) and the Board’s Implementing Orders, and requires developers seeking eligibility for TRECs to use the same application process developed for SREC eligibility.¹⁰ Moreover, the TI rules require compliance with all rules and regulations of the SREC registration program at N.J.A.C. 14:8-2.4.¹¹

Projects certified under Subsection (t) are subject to all of the Board’s SRP and TI 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 TI rules at N.J.A.C. 14:8-10, and applicable Board orders concerning registration with the Transition Incentive Program.¹² 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 Monmouth Solar that its proposed solar facility, to be located in Howell, New Jersey, be certified as eligible for TRECs pursuant to Subsection (t). Monmouth Solar filed an application with supporting documentation to enable a NJDEP determination as to whether approximately 57 acres of the proposed site is a properly closed sanitary landfill facility. Staff reviewed the application for administrative completeness and on August 31, 2020 forwarded the application to the NJDEP for review and a recommendation as described above. The NJDEP reviewed the application and supplied an advisory memorandum to Staff on September 14, 2021, on the land use classification and on the closure status of the

⁵ 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”).

⁶ 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”).

⁷ 52 N.J.R. 1048(a) (May 18, 2020).

⁸ 52. N.J.R. 1850(a) (October 5, 2020).

⁹ N.J.A.C. 14:8-10.4(a).

¹⁰ N.J.A.C. 14:8-10.4(h).

¹¹ N.J.A.C. 14:8-10.4(i).

¹² December 2019 Order at 33.

proposed site. On the basis of NJDEP’s determination, the information certified by Monmouth 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.

Monmouth County Howell Landfill, also known as Waste Disposal, Inc. Landfill, began operations in 1946. Operating under Solid Waste Facility registration number 1319B, the landfill accepted waste until November 1983, when it ceased operations as a result of multiple violations. In August 1989, the owner submitted a Closure and Post-Closure Care and Financial Plan that was approved by the Department on September 10, 1990. The Closure Plan was later modified on January 14, 1991 and July 30, 1992. Closure work concluded in 1996 and was certified by Charles P. Ballod, P.E. (License Number GE28369) on May 31, 1996. On June 7, 1996, the Department deemed the landfill properly closed and accepted the as-built closure certification. While the required post-closure maintenance and monitoring on the Property is ongoing, there are no outstanding compliance issues as of July 1, 2021.¹³

Applicant’s 21.59 MWdc project is proposed to be located on a total of 57 acres owned by the County of Monmouth at Block 42, Lots 93, 94, and 94A as shown on the Howell Township Tax Map, and more commonly known as 2921 Allenwood Lakewood Road.

Developer	Docket Number	Project/ Designation Address	Location Town	County	Landfill, Brownfield, or Historic Fill	Proposed Array Size (MWdc)	EDC
Monmouth Solar 1, LLC (HESP)	Q020080563	Monmouth County Howell Landfill	Block 42, Lot 93, 94, & 94A 2921 Allenwood Lakewood Road Howell, NJ 07731	Monmouth	Landfill	21.159	JCP&L

Monmouth Solar 1, LLC / Monmouth County Howell Landfill – Docket No. Q020080563

On August 21, 2020, Monmouth 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.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP advised in a September 14, 2021 memorandum that the proposed site for the solar array described in the application comprises approximately 57 acres.

NJDEP determined that the 21.59 MWdc facility would be located on approximately 57 acres of a properly closed sanitary landfill facility.

NJDEP advises 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 Division of Solid and Hazardous Waste, as well as any other permits identified by the Department, such as Land Use approvals, prior to construction of the solar electric power generation facility. The Approval for construction of improvements on the closed

¹³ The NJDEP notes that during its initial review, NJDEP map resources identified historic fill on-site. However, NJDEP determined that this “historic fill” is likely an additional designation for the landfill soil and advised Staff that it does not impact the NJDEP’s review of this application.

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 on-going maintenance and monitoring during the post-closure period. Consistent with the above requirements, the property owner and operator of the solar facility must ensure that all future operations continue to protect the integrity of the cap.

Based on the information contained in the application and other documentation, Staff recommends that the Board conditionally certify the Applicant's 21.59 MWdc project as being located on 57 acres of a "properly closed sanitary landfill," as that term is defined pursuant to Subsection (t). Staff also recommends that the Board authorize Staff to require that the conditions for certification provided by the NJDEP be fully documented as satisfied by the Applicant prior to Staff's issuance of full certification of the project's eligibility for TREC. In addition, Staff recommends that the Board direct the Applicant to file its TREC registration within 14 days of the date of the Order and explicitly grant conditional certification.

Staff also notes that some projects recommended for conditional certification pursuant to Subsection (t) may have been recommended for conditional approval or granted conditional approval in Pilot Year Two ("PY2") of the Community Solar Energy Pilot Program. Staff recommends that the Board disallow concurrent TI registrations for duplicative PY2 and Subsection (t) projects.

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. NJDEP determined that the solar array proposed for Block 42, Lots 93, 94, and 94A, as shown on the tax map of the Town of Howell, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility." To be eligible for the creation of TREC, the facility must not exceed 21.59 MWdc and must be placed within the 57 acres of properly closed sanitary landfill facility depicted on the Applicant's site map by Gladstone Design, Inc. entitled Concept Layout "B", dated July 27, 2020. Based on information provided by NJDEP, the Board **FINDS** that the Monmouth County Howell Landfill project is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP determined that the property owner will need to obtain an Approval from the NJDEP Division of Solid and Hazardous Waste, as well as any other permits identified by the NJDEP, prior to construction of the solar electric power generation facility. The Board **FINDS** that the NJDEP has stated that the Approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site including, but not limited to, 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.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of Applicant's proposed solar electric generation facility, to be located on 57 acres at the Monmouth County Howell Landfill at Block 42, Lots 93, 94, and 94A in Howell Township, Monmouth County, New Jersey, with an array size not to exceed 21.59 MWdc. To obtain full certification and fulfill the conditions for TREC eligibility, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

In addition, to obtain full certification, the Board **DIRECTS** Monmouth Solar to submit an initial TI program registration package within 14 days of the effective date of this order, and to complete construction within two (2) years in accordance with N.J.A.C. 14:8-10.4(e)(4)(ii)(3). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all TREC eligibility requirements at N.J.A.C. 14:8-10, et seq. – have been satisfied. After the Applicant receives full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of TREC creation for a 15-year Qualification Life.

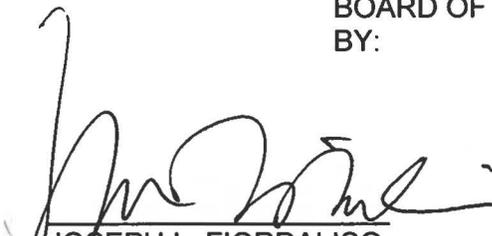
The Board **ORDERS** that a Conditionally Certified Project may not have concurrent PY2 and Subsection (t) TI registrations, and **DIRECTS** applicants conditionally approved in PY2 of the Community Solar Energy Pilot Program to withdraw such registrations prior to submission of the TI Program registration package for a Subsection (t) project.

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 site plans filed with the application, and the TREC registration.

This Order shall be effective on November 4, 2021.

DATED: 10/28/2021

BOARD OF PUBLIC UTILITIES
BY:


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SECRETARY

IN THE MATTER OF THE IMPLEMENTATION OF L. 2012, C.24, THE SOLAR ACT OF 2012;

IN THE MATTER OF THE SOLAR TRANSITION PURSUANT TO L. 2018, C. 17 – APPLICATION FOR CERTIFICATION OF SOLAR FACILITY AS ELIGIBLE FOR TRECS PURSUANT TO SUBSECTION (T) OF THE SOLAR ACT OF 2012; AND

MONMOUTH SOLAR 1 LLC (HESP) – MONMOUTH COUNTY HOWELL LANDFILL

DOCKET NOS. EO12090832V, QO19010068, AND QO20080563

SERVICE LIST

<p><u>HESP Construction, LLC</u></p> <p>Susan Brodie 1 Paragon Drive, Suite 255 Montvale, NJ 07645 sbrodie@hespsolar.com</p> <p><u>Monmouth Solar 1, LLC</u></p> <p>Daniel Grohman 1 Paragon Drive, Suite 255 Montvale, NJ 07645 Dgrohman@hespsolar.com</p> <p><u>New Jersey Division of Rate Counsel</u></p> <p>140 Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0003</p> <p>Brian O. Lipman, Esq., Acting Director blipman@rpa.nj.gov</p> <p>Sarah H. Steindel, Esq. Assistant Deputy Rate Counsel ssteinde@rpa.nj.gov</p> <p><u>New Jersey Division of Law</u></p> <p>Department of Law & Public Safety Division of Law R.J. Hughes Justice Complex 25 Market Street Post Office Box 112 Trenton, NJ 08625-0112</p> <p>David Apy, Assistant Attorney General david.apy@law.njoag.gov</p> <p>Daren Eppley, Section Chief, DAG daren.eppley@law.njoag.gov</p>	<p>Pamela Owen, Assistant Section Chief, DAG pamela.owen@law.njoag.gov</p> <p>Steven Chaplar, DAG Steven.chaplar@law.njoag.gov</p> <p>Michael Beck, DAG michael.beck@law.njoag.gov</p> <p><u>New Jersey Board of Public Utilities</u></p> <p>44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch Secretary of the Board board.secretary@bpu.nj.gov</p> <p><u>Division of Clean Energy</u></p> <p>Kelly Mooij, Director kelly.mooij@bpu.nj.gov</p> <p>Stacy Richardson, Deputy Director stacy.richardson@bpu.nj.gov</p> <p>Benjamin S. Hunter, Manager benjamin.hunter@bpu.nj.gov</p> <p>Jamal Garner, Environmental Engineer jamal.garner@bpu.nj.gov</p> <p><u>Counsel's Office</u></p> <p>Abe Silverman, Esq., General Counsel Abraham.silverman@bpu.nj.gov</p> <p>Rachel Boylan Rachel.boylan@bpu.nj.gov</p>
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