



Agenda Date: 11/30/16  
Agenda Item: VIIIA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

AMENDED ORDER<sup>1</sup>

|                                                           |   |                        |
|-----------------------------------------------------------|---|------------------------|
| 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                | ) | DOCKET NO. EO12090862V |
| LANDFILL FACILITIES                                       | ) |                        |
|                                                           | ) |                        |
| NEW ROAD SOLAR, LLC                                       | ) |                        |
| SOUTH BRUNSWICK TOWNSHIP LANDFILL                         | ) | DOCKET NO. QO16070632  |

**Party of Record:**

**Justin Sallusto**, New Road Solar

**BY THE BOARD:**

This Order concerns an application by New Road Solar, LLC (“New Road” or “Applicant”) for certification pursuant to L. 2012, c. 24, (“Solar Act”), codified at N.J.S.A. 48:3-87(t) (“Subsection t”). New Road seeks certification for eligibility to generate Solar Renewable Energy Certificates (“SRECs”) for the proposed solar electric generation facility to be located in South Brunswick Township, Middlesex County, New Jersey. New Road submitted the required documentation to enable a New Jersey Department of Environmental Protection (“NJDEP”) determination as to whether the proposed site is a properly closed sanitary landfill facility as set forth in the Solar Act.

**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

<sup>1</sup> This Order supersedes the Order entered on October 31, 2015 to further reflect the Board's action.

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>2</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 [DEP.]" *Ibid.*

The October 10 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 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 L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

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<sup>2</sup> I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090860V; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards, Docket No. EO12090861V; 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, Docket No. EO12090880V; 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, Docket No. EO12090862V; 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, Docket No. EO12090863V (October 10, 2012) ("October 10 Order").

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>3</sup> 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. January 24 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 24 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 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 SREC Registration Program ("SRP") within ten (10) 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 24 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 24 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 24 Order and required developers to comply with the SREC Registration rules at N.J.A.C. 14:8-2-4.<sup>4</sup>

<sup>3</sup> I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; 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, Docket No. EO13010009V (January 24, 2013) ("January 24 Order").

<sup>4</sup> I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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

The SRP requires a solar electric generation project to submit a registration within ten (10) 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 (1) year because the SRP registration number expires, with only one (1) six (6) 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.<sup>5</sup> June 18 Order at 6-7. Accordingly, the Board directed that Subsection t applicants 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) applicants supported applying a similar process for the registration of a Subsection t applicant.<sup>6</sup> 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 (1) year to two (2) years. June 18 Order at 7. Construction of solar facilities on properly closed sanitary landfill facilities, 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 (1) year SRP process may mean the developers cannot complete the construction process prior to the expiration of their registrations. A two (2) 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 the request by New Road that the proposed South Brunswick Township Landfill solar facility, to be located in South Brunswick Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection t. New Road filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a brownfield, area of historic fill, or properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff 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 New Road in its application and the January 24

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SRECS to Certified Brownfield, Historic Fill and Landfill Facilities, Docket No. EO12090862V; I/M/O Standard Alternative - Brick Township Landfill, Docket No. EO13050389V; and I/M/O Syncarpha Capital – Bernards Township Landfill, Docket No. EO13050388V (July 19, 2013).

<sup>5</sup> I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012, Docket No. EO12090832V; 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, Docket No. EO12090862V; and I/M/O PVNavigator, LLC – Somerdale Road (Owens Corning) Landfill, Docket No. QO14010014V (June 18, 2014) ("June 18 Order").

<sup>6</sup> 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) and (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. EO12090880V (August 21, 2013).

Order, Staff recommends that the Board grant conditional certification, as explained further below.

| Developer           | Docket Number | Project/ Designation Address      | Location/Town                                                                                     | County    | Landfill, Brownfield, or Historic Fill | Array Size (MWdc) | EDC   |
|---------------------|---------------|-----------------------------------|---------------------------------------------------------------------------------------------------|-----------|----------------------------------------|-------------------|-------|
| New Road Solar, LLC | Q016070632    | South Brunswick Township Landfill | Block 95, Lot 35, 39.01, 39.03, 40, 41, 42, 43.01 & 44<br>East New Road<br>S. Brunswick, NJ 08852 | Middlesex | Landfill                               | 13                | PSE&G |

**South Brunswick Township Landfill – (South Brunswick) – Docket. No. Q016070632**

On or about June 22, 2016, New Road 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 13 MWdc project as rendered on the Site Plan as PV-1 is proposed to be constructed on the South Brunswick Township Landfill, which is owned by BFI Waste Systems of New Jersey, Inc. (“BFI”). The landfill is located in South Brunswick Township, Middlesex County, New Jersey. In its application, New Road Solar represented that the South Brunswick Township Landfill ceased operations in 1978.

Staff forwarded the application to NJDEP for review and a recommendation as described above. The Applicant submitted additional information to NJDEP pertaining to the design of the project by letter dated July 14, 2016. NJDEP indicated the South Brunswick Township Landfill accepted municipal waste, pesticides, chemical waste and hazardous wastes from approximately 1970 to 1978. In September 1983, the United States Environmental Protection Agency (“EPA”) placed the South Brunswick Township Landfill on the National Priorities List. The landfill was clay capped, gas ventilation and leachate collection systems were installed, and a slurry wall was constructed along the perimeter to restrict the potential of horizontal movement of any leachate from the landfill. NJDEP advised that the EPA required long-term monitoring of the South Brunswick Township Landfill per the 1987 Record of Decision.

NJDEP informed Staff that BFI was not required to submit the Final Post-Closure as-built certification plans pursuant to N.J.A.C. 7:26-2A.9(d)10, which plans are required for all landfills that ceased operation in 1982 or later, because it is apparent from the application that the South Brunswick Township Landfill ceased operations in 1978. However, New Road submitted an EPA letter indicating that the EPA approved the post-closure operation and maintenance (“O&M”) plan in August 1997. NJDEP noted, however, that other public EPA documents show that EPA gave final approval in 2000. Regardless, NJDEP notes that a final post closure O&M plan was approved by the EPA.

According to NJDEP, the solar installation will constitute the construction of improvements on the closed landfill. Accordingly, NJDEP advises that prior to construction of the solar electric generation facility, BFI will need to obtain an Approval from the NJDEP’s Division of Solid and Hazardous Waste, which will need to address impacts on the environmental controls in place at the site. NJDEP noted that these impacts may include; but are not limited to, the protection and/or re-establishment of the final cap/cover; leachate collection; gas collection and storm water collection systems; settlement slope stability; control of erosion; and on-going maintenance; and monitoring during the post-closure period. NJDEP further advised that the

solar design and construction cannot breach the cap and must continue to protect the integrity of the cap. Finally, NJDEP indicated that BFI and New Road should ensure the solar panels are limited to within the slurry wall. In addition, NJDEP stated that BFI will need to obtain any other permits identified by the NJDEP.

Based on the information provided in the application and NJDEP's determination that the solar project as proposed 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 NJDEP for a determination of eligible land use type and status of remediation on the proposed site.

NJDEP has determined that the solar generation facility project at the South Brunswick Township Landfill, as rendered in the Site Plan as PV-1, is located on land meeting the Solar Act's definition of a "properly closed sanitary landfill facility," with the slurry wall constituting the outer limits. Based on information provided by NJDEP, the Board **FINDS** that the South Brunswick Township Landfill project as proposed within the slurry wall is located on land meeting the definition of a "properly closed sanitary landfill facility."

The Board also **FINDS** that NJDEP has determined that BFI will need to obtain an approval from the NJDEP Division of Solid and Hazardous Waste, as well as any permits identified by the NJDEP, prior to construction of the solar electric power generation facility. The Board also **FINDS** that "environmental controls in place at the site, such as the protection or re-establishment of the final cap or 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 in order to construct the solar project.

The Board **FINDS** that the Applicant must address NJDEP requirements and thus **GRANTS** conditional certification. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that it has satisfied all NJDEP requirements 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.

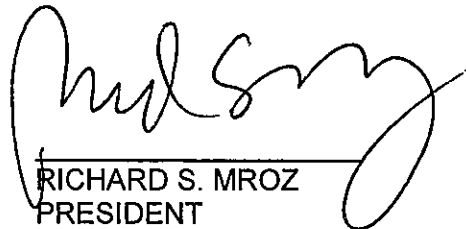
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten (10) days of installation contract execution at N.J.A.C. 14:8-2.4(c) and the registration length of one (1) year at N.J.A.C. 14:8-2.4(f) for the South Brunswick Township Landfill project. The Board **DIRECTS** New Road to submit an SREC Registration within fourteen (14) days of the effective date of this Order. The Board **FURTHER GRANTS** a modification of one (1) year provided in the current SRP to two (2) 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.

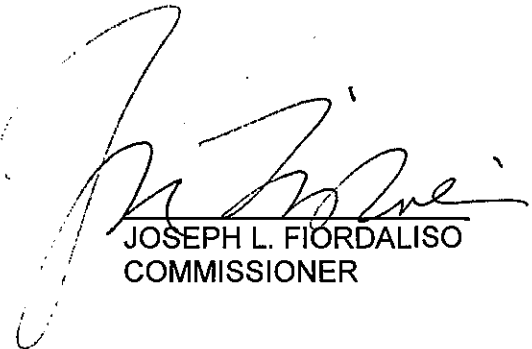
This Order shall be effective on December 10, 2016.

DATED: 11/30/16

BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

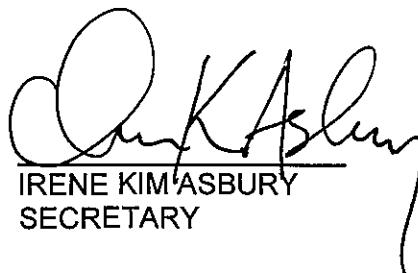
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

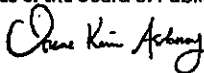
  
DIANNE SOLOMON  
COMMISSIONER

  
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; New Road Solar – South Brunswick Township Landfill

Docket Nos. EO12090832V, EO12090862V and QO16070632

SERVICE LIST

Justin Sallusto  
**New Road Solar LLC**  
20A South Beers Street  
Holmdel, NJ 07733  
[JustinAlps@aol.com](mailto:JustinAlps@aol.com)

**Division of Rate Counsel**  
140 Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Felicia Thomas-Friel, Esq.  
[fthomas@rpa.state.nj.us](mailto:fthomas@rpa.state.nj.us)

Sarah Steindel, Esq.  
[ssteindel@rpa.state.nj.us](mailto:ssteindel@rpa.state.nj.us)

Caroline Vachier, DAG  
Division of Law  
**Department of Law & Public Safety**  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07102-45029  
[Caroline.Vachier@dol.lps.state.nj.us](mailto:Caroline.Vachier@dol.lps.state.nj.us)

**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350

Irene Kim Asbury, Esq.  
Office of the Secretary  
[irene.asbury@bpu.nj.gov](mailto:irene.asbury@bpu.nj.gov)

Secil Onat, Executive Director  
Office of Clean Energy  
[secil.onat@bpu.nj.gov](mailto:secil.onat@bpu.nj.gov)

Marisa Slaten, Esq.  
Assistant Director  
[Marisa.slaten@bpu.nj.gov](mailto:Marisa.slaten@bpu.nj.gov)

Benjamin S. Hunter  
Office of Clean Energy  
[benjamin.hunter@bpu.nj.gov](mailto:benjamin.hunter@bpu.nj.gov)

Allison E. Mitchell  
Office of Clean Energy  
[allison.mitchell@bpu.nj.gov](mailto:allison.mitchell@bpu.nj.gov)

Megan Lupo, Esq., Legal Specialist  
Counsel's Office  
[megan.lupo@bpu.nj.gov](mailto:megan.lupo@bpu.nj.gov)