



Agenda Date: 2/24/16
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, Suite 314, 3rd 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, 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

RADIANT ENERGY, LLC)
PRICE'S LANDFILL)

DOCKET NO. QO15111299

Party of Record:

Rose Cheung, Radiant Energy, LLC

BY THE BOARD:

This Order concerns the Radiant Energy, LLC (“Radiant” or “Applicant”) 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 Price’s Landfill solar electric generation facility to be located at Block 190, Lot 3, Pleasantville, Atlantic County and Block 801, Lots 8 and 13, Egg Harbor Township, Atlantic 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 properly closed sanitary landfill facility 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. 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. BPU Docket No. EO12090832V (“October 10 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[.]

[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 [NJDEP.]” 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 (“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 L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

In an Order dated January 24, 2013, Docket. No. EO12090862V (“January 24 Order”), 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. 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 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 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 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 Solar Renewable Energy Certificates ("SREC") Registration Program ("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 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. 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 (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 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-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 the request by Radiant that the Price’s Landfill solar facility, proposed to be located in Egg Harbor Township and Pleasantville, 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 site was a properly closed sanitary landfill facility. The NJDEP reviewed the application and supplied an advisory memo to Board Staff on the land use classification and 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 24 Order, Staff recommends that the Board approve conditional certification for the Price’s Landfill, as explained further below.

| Developer | Docket Number | Project/ Designation Address | Location Town | County | Landfill, Brownfield, or Historic Fill | Array Size (MWdc) | EDC |
|---------------------|---------------|------------------------------|--|----------|--|-------------------|-----|
| Radiant Energy, LLC | Q015111299 | Price's Landfill | Egg Harbor/ Pleasantville, NJ 08234/ 08232 | Atlantic | Landfill | 4.2 | ACE |

Price’s Landfill – (Egg Harbor Township / City of Pleasantville) Docket No. Q015111299

On November 12, 2015, Radiant 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.¹ Applicant’s 4.2 MW dc project is proposed to be constructed on 21 acres of the 26 acre Price’s Landfill site, which is owned by AGA Partnership (“AGA”) in the City of Pleasantville and Egg Harbor Township, Atlantic County, New Jersey. In its application, Radiant represented that Price’s Landfill ceased operations in 1976.

Staff forwarded the application to NJDEP for review and a recommendation was received. NJDEP advised Board Staff that the Price’s Landfill is a 26-acre Superfund site, which operated as a solid waste landfill, accepting industrial chemicals, sewage, greases and oil, from 1969 to 1976.

In 1982, the United States Environmental Protection Agency (“EPA”) placed Price’s Landfill on the National Priorities List as a Superfund site and NJDEP began a Remedial Investigation and Feasibility Study (“RI/FS”) to determine the extent of the contamination and evaluate cleanup alternatives. In 1983, EPA issued a Record of Decision (“ROD”) with NJDEP that required relocation of the Atlantic City Well Field and replacement of private potable wells with public water supplies. After the RI/FS was completed in 1985, the EPA issued a second ROD in 1986 that required remedial actions including construction of a landfill cap and groundwater extraction

¹ The Applicant completed Section F, subsections b) and c), the subsections regarding brownfields and areas of historic fill, respectively, on the Subsection t application. Because this project is being conditionally certified as a properly closed sanitary landfill facility, there is no need to address the fact that the Applicant filled out other portions of the application.

and treatment systems. As stated in the 2015 Remedial Action Report for Price's Landfill, the entire landfill was capped and groundwater treatment systems were put in place in 2014 in accordance with the ROD.

NJDEP states that NJDEP and EPA conducted a joint inspection of the landfill cap in 2015 and determined that the landfill cap is complete, operational, and functional. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. §§ 9601-9675 ("CERCLA"), NJDEP is required to assure future operation and maintenance ("O&M") of the remedy so that the cap remains protective of human health and the environment. According to NJDEP, O&M at Price's Landfill is expected to commence on June 1, 2016.

Following its review, NJDEP determined that the 21 acres for which Radiant sought Subsection t certification constitutes a "properly closed sanitary landfill facility" as defined by the Solar Act.

NJDEP also noted that the solar installation will constitute the construction of improvements on a closed landfill. Accordingly, NJDEP advises that prior to construction of the solar electric generation facility, AGA 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. 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. In addition, NJDEP stated that AGA will need to obtain any permits identified by NJDEP.

Finally, NJDEP stated that as a result of CERCLA's requirements, as well as a consent decree entered into in 1988 between NJDEP, EPA, AGA, and other parties, NJDEP will provide O&M at Price's Landfill beginning on June 1, 2016. However, NJDEP advised that if the Applicant receives a conditional certification pursuant to Subsection t and moves forward with its project, AGA will need to account for operation and maintenance of the remedy due to the change in use and occupation, to ensure that the remedy continues to be protective of the public health and safety.²

Based on the information provided in the application and NJDEP's indication that additional protective measures are necessary, Staff recommends conditional certification. Full certification is conditioned upon the project developers satisfying NJDEP permit requirements for the construction of the solar facility.

Should the Board accept Staff's recommendation to grant conditional certification, Staff also recommends that 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. Based on the information provided by NJDEP, the Board **FINDS** that the 21

² NJDEP has advised the Board that it has been unable to verify whether AGA fulfilled its payment obligations under the 1988 consent decree. As a result, AGA may be subject to cost recovery, contribution, and/or enforcement actions in the event AGA Partnership has failed to satisfy its obligations under the judicial consent decree.

acres described in Radiant's application are located on land meeting the definition of a "properly closed sanitary landfill facility".

The Board **FINDS** that the Applicant must address NJDEP requirements and **DIRECTS** the Applicant to demonstrate to Staff that it has satisfied all NJDEP requirements for full certification. 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.

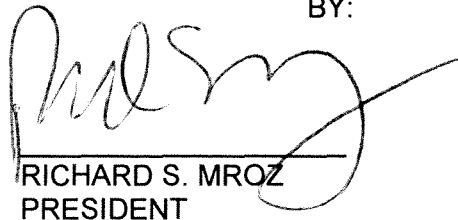
The Board **WAIVES** the provisions of the SREC Registration Program in the Renewable Portfolio Standard rules requiring submittal of an initial registration package within ten days of installation contract execution at N.J.A.C. 14:8-2.4(c) and the registration length of one year at N.J.A.C. 14:8-2.4(f) for the Price's Landfill project. 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.

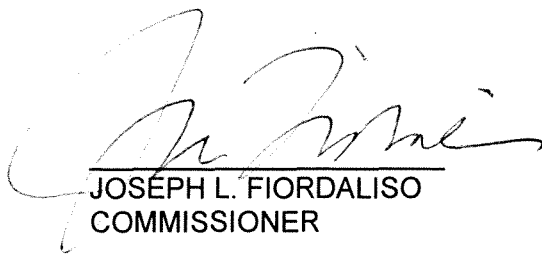
This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection t, provided that the facilities are constructed in accordance with NJDEP requirements, the plans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


This Order shall be effective on March 5, 2016.

DATED: 2-24-16

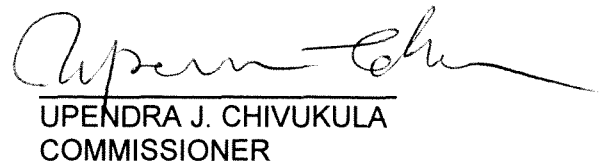
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

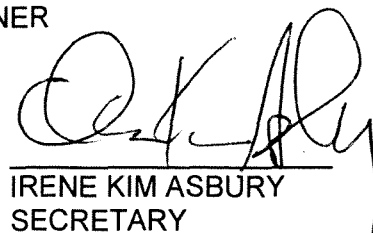

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

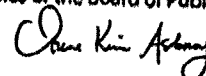

DIANNE SOLOMON
COMMISSIONER


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



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SERVICE LIST

Rose Cheung
Radiant Energy LLC
321 N. Kenmore Ave #128
Los Angeles, CA 90004

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
fthomas@rpa.state.nj.us

Benjamin S. Hunter
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
benjamin.hunter@bpu.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, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
irene.asbury@bpu.state.nj.us

Secil Uztetik Onat, Executive Director
Economic Development and Emerging Issues
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
secil.onat@bpu.state.nj.us

Allison E. Mitchell
Office of Clean Energy
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
allison.mitchell@bpu.state.nj.us

Rachel Boylan, Esq., Legal Specialist
Counsel's Office
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
rachel.boylan@bpu.state.nj.us