



Agenda Date: 11/21/24
Agenda Item: 8C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE COMPETITIVE SOLAR INCENTIVE (“CSI”) PROGRAM PURSUANT TO P.L. 2021, C. 169)	ORDER
)	
)	DOCKET NO. QO21101186
)	
IN THE MATTER OF NJR CLEAN ENERGY VENTURES III – AERO HAVEN LANDFILL – APPLICATION FOR COMPETITIVE SOLAR INCENTIVE PROGRAM TRANCHE 3 ELIGIBILITY)	
)	
)	DOCKET NO. QO24080620
)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Garrett Lerner, Managing Director, NJR Clean Energy Ventures III Corporation

BY THE BOARD:

This Order concerns an application submitted by NJR Clean Energy Ventures III Corporation (“NJR” or “Applicant”) for conditional certification of Tranche 3 (Contaminated Sites and Landfills) eligibility under the Competitive Solar Incentive (“CSI”) Program, established by the New Jersey Board of Public Utilities’ (“Board’s”) December 7, 2022 Order,¹ pursuant to the Solar Act of 2021 (“Solar Act” or “Act”).² NJR seeks certification for eligibility to generate Solar Renewable Energy Certificate-IIs (“SREC-IIs”) for a constructed 2.772 megawatt³ (“MW”) solar electric power generation facility located at the Aero Haven Landfill site, Block 63, Lot 1 at 450 Kettle Run Road, Evesham Township, Burlington County, New Jersey (“Project”).

BACKGROUND

On July 23, 2012, the Solar Act of 2012 was signed into law.⁴ The Solar Act amended certain aspects of the statute governing generation, interconnection, and financing of renewable energy.

¹ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c.169 - Order Launching the CSI Program, BPU Docket No. QO21101186, Order dated December 7, 2022 (“CSI Order”).

² L. 2021, c. 169.

³ All megawatt values in this Order are in direct current, or “dc”.

⁴ L. 2012, c. 24.

Among other actions, the Solar Act required the Board to conduct proceedings to establish new standards and develop new programs to implement the statute's directives.

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)(1).]

The Solar Act defines the terms “brownfield,” “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 emplaced 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.

By Order dated January 24, 2013, the Board approved Board Staff's (“Staff’s”) proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities.⁵ 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. The Order stated that certification would be limited to those areas delineated by New Jersey Department of Environmental Protection (“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.

By Order dated November 19, 2018, the Board granted conditional certification to a proposed 3.38 MW Aero Haven Landfill facility under the legacy Solar Renewable Energy Certificate

⁵ 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 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, BPU Docket Nos. EO12090862V & EO13010009V, Order dated January 24, 2013.

Registration Program (“SRP”).⁶ The Board directed the applicant to submit an initial registration package within fourteen (14) days of the effective date of the November 2018 Order. The Project acceptance letter issued on February 18, 2019 provided an expiration date of twenty-four (24) months to complete construction and submit a Final As-Built Packet in accordance with N.J.A.C. 14:8-2.4(c)(i).

On May 23, 2018, Governor Murphy signed the Clean Energy Act (“CEA”) into law.⁷ The CEA mandated that the Board close the 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. By Order dated December 18, 2018, the Board approved the adoption of rule amendments to close the Solar Renewable Energy Certification (“SREC”) market to new applications upon attainment of the 5.1% Milestone.⁸ 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.

Prior to closure of the SRP, by Order dated December 6, 2019, the Board established the Transition Incentive (“TI”) Program to provide a bridge between the legacy SRP and a to-be-developed Successor Program.⁹ The TI Program provided eligible projects with Transition Renewable Energy Certificates (“TREC”) for each megawatt-hour (“MWh”) of electricity produced. Incentives were tailored to specific project types through a factor multiplied by a base incentive rate of \$152/MWh. Subsection (t) projects were eligible to receive the full amount of the base incentive. The TI Program portal opened to new registrations on May 1, 2020, and remained open to new registrations until the establishment of a registration program for the new Successor Program.¹⁰

By Order dated July 15, 2020, the Board approved the transfer of the conditionally registered 3.38 MW Aero Haven Landfill facility from the SRP to the TI Program with a new registration expiration date of April 30, 2021.¹¹ On July 29, 2020, the Board granted a blanket six (6)-month extension to any project that had an SRP registration that was transferred to the TI program, resulting in a

⁶ In re the Implementation of L. 2012, C. 24, The Solar Act of 2012; 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 SRECs to Certified Brownfield, Historic Fill and Landfill Facilities; and Aero Haven Solar LLC Aero Haven Landfill, BPU Docket Nos. E012090832V, EO12090862V and QO18040432, Order dated November 19, 2018 (“November 2018 Order”).

⁷ L. 2018, c. 17.

⁸ In re Rulemaking to Implement Certain Sections of P.L. 2018, Chapter 17, Regarding Closing the SREC Program to New Registrations Following the Attainment of 5.1 Percent of Total Kilowatt-hours Sold in the State from Solar Electric Power Generators Connected to the State’s Electric Distribution System, BPU Docket No. QO18060647, Order dated December 18, 2018.

⁹ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c.17, BPU Docket No. QO19010068, Order dated December 6, 2019.

¹⁰ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated January 8, 2020.

¹¹ In re the Implementation of L. 2012, C. 24, The Solar Act of 2012; In re the Implementation of L. 2012, C. 24, N.J.S.A. 48:3-87(t) – A Proceeding to Certified Brownfield, Historic Fill and Landfill Facilities; and In re the Petition of Aero Haven Solar LLC for a Determination that the Company’s Application Pursuant to Subsection (t) of the Solar Act of 2012 is Eligible to Participate in the Transition Incentive Program, BPU Docket Nos. E012090832V, EO12090862V & QO20060398, Order dated July 15, 2020.

new expiration date of October 30, 2021.¹² The Board found that the solar industry was, at that time, adjusting to significant changes caused by both the COVID-19 pandemic and the changes in solar incentive programs.

By Order dated June 24, 2021, the Board granted projects registered in the TI Program on or before the effective date of the Order, a second six (6)-month extension to their existing deadline.¹³ The Board found that the solar industry was still adjusting to the changes resulting from the Clean Energy Act and the impact of the COVID-19 pandemic. The Board additionally acknowledged the regulatory uncertainty resulting from the pending launch of the Successor Program. With the creation of the Successor Program still pending, the Board found that waiving the existing TI development timelines would both support the solar industry and reduce costs to ratepayers. The second blanket extension resulted in an expiration date of April 30, 2022 for the Project.

On July 9, 2021, Governor Murphy signed into law the Solar Act of 2021 (“Act”).¹⁴ The Act directed the Board to establish a new program to provide incentives for the deployment of at least 3,750 MW of new solar power generation by 2026,¹⁵ through the mechanism of SREC-IIs. The Act directed the Board to create both a solar facilities program for smaller projects, with administratively set incentive values, and a competitive solicitation process for awarding contracts for grid supply solar facilities and net metered solar facilities greater than five (5) MW. Among other changes, the Act also expanded the definition of contaminated sites or landfills eligible for the siting of solar facilities to include “any currently contaminated portion of a property on which industrial or commercial operations were conducted and a discharge occurred, and its associated disturbed areas” and “a properly closed sanitary landfill facility and its associated disturbed areas.” N.J.S.A. 48:3-51.

By Order dated July 28, 2021, the Board announced the closure of the TI Program, effective thirty (30) days later, and the opening of the Successor Solar Incentive (“SuSI”) Program.¹⁶ The TI Program closed to new registrations on August 27, 2021, and the SuSI Program opened on August 28, 2021.

The SuSI Program is divided into two (2) components: the Administratively Determined Incentive (“ADI”) Program and the Competitive Solar Incentive (“CSI”) Program.¹⁷ Both the ADI and CSI Programs provide one (1) SREC-II for each MWh of solar electricity produced from a qualifying facility. The ADI Program offers a fixed SREC-II incentive for net metered residential facilities,

¹² In re a New Jersey Solar Transition Pursuant to P.L. 2018, c.17 – Order Providing Extensions to Solar Transition Projects, BPU Docket Nos. QO19010068 & QO20070484, Order dated July 29, 2020.

¹³ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c.17 – Order Addressing Requests for Extension for Projects in the Solar Transition Incentive Program, BPU Docket Nos. QO19010068 & QO21060883, Order dated June 24, 2021.

¹⁴ L. 2021, c. 169.

¹⁵ This target reflects both New Jersey’s 2019 Energy Master Plan and Governor Murphy’s goal of achieving 100% clean energy by 2035. See 2019 New Jersey Energy Master Plan: Pathway to 2050, nj.gov, https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf

¹⁶ In re a New Jersey Solar Transition Pursuant to P.L. 2018, c. 17, BPU Docket No. QO19010068, Order dated July 28, 2021.

¹⁷ In re a Solar Successor Incentive Program Pursuant to P.L. 2018, c.17, BPU Docket No. QO20020184, Order dated July 28, 2021.

net metered non-residential facilities of five (5) MW or less, and community solar facilities. Incentive values are set administratively, following comprehensive modeling of costs and multiple rounds of stakeholder involvement.

By the CSI Order, the Board established the CSI Program, thereby completing implementation of the SuSI Program. The CSI Program covers qualifying grid supply solar facilities - those selling into the wholesale markets - and net metered non-residential facilities greater than five (5) MW in size. The CSI Program awards SREC-IIs through a competitive solicitation with five separate market categories, or tranches:

- Tranche 1: Basic Grid Supply
- Tranche 2: Grid Supply on the Built Environment
- Tranche 3: Grid Supply on Contaminated Sites and Landfills¹⁸
- Tranche 4: Net Metered Non-residential Projects above 5 MW
- Tranche 5: Storage Paired with Grid Supply Solar

On April 29, 2022, NJR filed a petition for a third extension in the TI Program, seeking an extension until three (3) months after all agency approvals had been received but no later than November 30, 2022. During the pendency of the petition, NJR received permission to operate (“PTO”) on March 24, 2023, and submitted its post-construction certification package on April 19, 2023. Of the 3.38 MW capacity initially proposed under the SRP and TI Programs, only 2.772 MW was constructed. By Order dated June 29, 2023, the Board denied NJR’s petition for a third extension in the TI Program.¹⁹

Since NJR’s post-construction certification package was not submitted before the registration expiration date and their petition for a third extension under the TI Program was denied, the Project was not eligible to receive TRECs, even though it had become operational. In the TI Denial Order, the Board encouraged NJR to participate in the CSI Program. The Order also stated that if NJR were to be awarded a bid under the CSI Program, energy generated by the Project from the date of its PTO shall be eligible to be the basis for the creation of SREC-IIs.

The first solicitation of the CSI Program opened for pre-qualification applications on February 1, 2023, and closed to bid submission on March 31, 2023. During the pre-qualification period, projects provided evidence that they met maturity requirements and specific tranche eligibility criteria; applications were administratively reviewed by the solicitation manager. Pre-qualified CSI projects then submitted a bid for an SREC-II award in their tranche, specified in dollars per MWh of solar electricity production; projects subsequently competed on bid price only. The Act provides the Board the ability to establish confidential, pre-determined price caps for any or all tranches prior to the solicitation to protect ratepayers against excessive bids.²⁰ By Order dated

¹⁸ A “contaminated site and landfill” means (1) any currently contaminated portion of a property on which industrial or commercial operations were conducted and a discharge occurred, and its associated disturbed areas, where “discharge” means the same as the term is defined in section 23 of P.L.1993, c.139 (C.58:10B-1); or (2) a properly closed sanitary landfill facility and its associated disturbed areas. N.J.S.A. 48:3-51.

¹⁹ In re the Petition of NJR Clean Energy Ventures III Corporation for an Order for an Additional Extension of the Expiration Date of the Conditional Approval in the Transition Incentive Program for TREC Registration No. NJSTRE1545322666 – Aero Haven Landfill, BPU Docket No. QO22040322, Order dated June 29, 2023 (“TI Denial Order”).

²⁰ N.J.S.A. 48:3-117(d).

March 6, 2023, the Board established confidential price caps for each tranche for the first CSI Program solicitation.²¹

By Order dated July 12, 2023, the Board declined to make any awards in the first solicitation as all SREC-II bids exceeded the price caps.²² In the same Order, the Board directed Board Staff (“Staff”) to conduct an analysis of market conditions impacting solar development in New Jersey prior to the second solicitation. The Board directed the next solicitation in the CSI Program to open on an expedited timeline.

The second solicitation opened on November 27, 2023 and closed on February 29, 2024. The Board received fourteen (14) submissions totaling 374.34 MW of solar generation capacity. Nine (9) projects totaling 339.96 MW were submitted in Tranche 1 (Basic Grid Supply), and five (5) projects totaling 34.38 MW were submitted in Tranche 3 (Contaminated Sites and Landfills). One (1) Tranche 1 project and one (1) Tranche 3 project also submitted bids for storage paired with solar electric generation in Tranche 5, totaling 92 MWh. No bids were submitted in Tranche 2 (Grid Supply on the Built Environment) or Tranche 4 (Net Metered Projects >5 MW).

By Order dated April 17, 2024, the Board awarded the 2.772 MW NJR project, located at the Aero Haven Landfill site, Block 63, Lot 1 at 450 Kettle Run Road, Evesham Township, Burlington County, New Jersey, an SREC-II incentive of \$89/MWh in Tranche 3.²³ Pursuant to N.J.A.C. 14:8-11.5, projects that have received an SREC-II award under Tranche 3 (Contaminated Sites and Landfills) of the CSI Program must obtain conditional certification of eligibility from the Board and include documentation of that conditional certification as part of its registration package. The developer must apply for conditional certification using the Contaminated Sites and Landfills Eligibility Verification Form located on the Board’s New Jersey Clean Energy Program website at www.njcleanenergy.com. Per the April 17 Order, the project was granted thirty (30) days after the effective date of the award Order to submit a completed registration packet to the Program Administrator, including a Contaminated Site or Landfill Eligibility Verification form and NJDEP Permit Readiness Checklist.

Project Description

On May 22, 2024, NJR submitted their initial CSI Program registration package, including the Contaminated Site or Landfill Eligibility Verification Form; a letter acknowledging receipt and notifying the Applicant of the Pending Certification for the project was issued on the same date. Staff transmitted a copy of the Eligibility Verification Form and NJDEP Permit Readiness Checklist to NJDEP on June 4, 2024.

The Applicant filed the Eligibility Verification Form with supporting documentation to enable the Board, in consultation with NJDEP, to determine whether the Project meets the requirements to participate in Tranche 3 of the CSI Program. NJDEP’s Office of Permitting and Project Navigation (“OPPN”) coordinated the review of the Project to determine any compliance issues at the site,

²¹ In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c. 169, Order Addressing Price Cap Determination, BPU Docket No. QO21101186, Order dated March 6, 2023.

²² In re Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c. 169, Order on the Outcome of the 2023 CSI Program Solicitation, BPU Docket No. QO21101186, Order dated July 12, 2023.

²³ In re the Competitive Solar Incentive (“CSI”) Program Pursuant to P.L. 2021, c. 169 - Order on the Outcome of the Second Solicitation in the CSI Program, BPU Docket No. QO21101186, Order dated April 17, 2024 (“April 17 Order”).

required permits and approvals, and impacts to regulated areas that should be addressed prior to construction of the project. On August 9, 2024, NJDEP provided an advisory memorandum.²⁴

NJDEP Memorandum

NJDEP offered comments on the following aspects of the project:

Division of Sustainable Waste Management – Bureau of Solid Waste Permitting (“the Bureau”)

NJR initially obtained a modified Closure and Post-Closure Plan Approval (“CPA”), dated February 25, 2020, to incorporate the construction of an approximately 6.15 MW solar facility atop portions of the landfill and areas adjacent to the landfill. However, NJR constructed a 2.7 MW solar facility within the landfill footprint out of the originally approved 6.15 MW solar project. Subsequently, the CPA was modified on February 14, 2024, to accept the as-built documents and acknowledge the completion of the solar project. The Bureau comments that if NJR chooses to construct additional solar panels outside of the 2.7 MW solar facility, a modified Closure and Post-Closure Plan Application will be required for Department approval.

The Bureau also commented that in accordance with the February 14, 2024 CPA, NJR must continue post-closure maintenance of the landfill, and landfill monitoring and inspection reports must be submitted quarterly to the Division of Sustainable Waste Management. The Bureau noted that it has not received any of the quarterly inspection reports required by the CPA since the solar construction was complete (March 2022).

The Bureau further advised that the potential risk of encountering Kaylo waste material (asbestos-containing material) was not addressed in the Health and Safety Plan (“HASP”) submitted as part of the February 25, 2020 CPA. The Bureau commented that an updated HASP, in which proper precautions for dealing with Kaylo waste material are thoroughly addressed, must be submitted as part of any future application for construction activity conducted atop or within the landfill.

The Bureau noted some discrepancies in submitted site drawings. The site drawings submitted to NJDEP titled “Plans for Proposed Ground-Mounted Solar Array Aero Haven Solar,” prepared by T&M Associates, dated February 15, 2022, and “Aero Haven Electrical Construction Plans,” prepared by CS Energy, LLC, dated April 14, 2022, were not approved by the Bureau. The Bureau also noted that they approved a different set of as-built drawings.

Watershed and Land Management (“WLM”) Program

The Project requires a Freshwater Wetlands General Permit 5, which requires a landfill closure plan approval. A Freshwater Wetlands Transition Area Waiver is required if the solar panels are proposed within a transition area. In addition, a Freshwater Wetlands Letter of Interpretation (“LOI”) is required.

The Project also requires a Flood Hazard Area permit.

Based on aerial mapping, the facility is constructed with no records of permits or LOIs for the site. Therefore, it is possible that there are compliance issues with the facility that must be resolved. The applicant should provide evidence to WLM that permits were obtained or were determined to not be required. Otherwise, the applicant must apply for after-the-fact permits.

²⁴ Appendix A.

Division of Fish and Wildlife (“NJFW”)

NJDEP, through its Division of Fish and Wildlife, Endangered & Nongame Species Program (“ENSP”), administers the Endangered and Nongame Species Conservation Act (“ENSCA”), which prohibits the taking of certain protected species. If the Aero Haven Landfill project is in the vicinity of such protected species, NJR must avoid disturbing them. NJDEP does not offer permits or other authorizations to disturb protected species. NJR should refer to NJDEP’s Landscape Project Map (v. 3.3) for areas where state endangered and threatened species may be present due to revegetation of the landfill.

NJDEP has offered avoidance and minimization practices to reduce the risk of adverse impacts to protected wildlife with regards to the Project, which can be found under the Landfill Closure and Solar Array Project Area and Installation section of Appendix A.

Bureau of NJ Pollutant Discharge Elimination System (“NJPDES”) Stormwater

If more than one(1) acre will be disturbed, a general permit for Construction Activities (5G3) from NJDEP Bureau Stormwater Permitting and Water Quality Management may be required.²⁵

Air Permitting

The applicant must review N.J.A.C. 7:27-8.2(c) for stationary permitting requirements, including air pollution permits for construction equipment or emergency generators that may remain on-site for over a year. Pursuant to N.J.A.C. 7:27-14 and 15, vehicles involved in the project must adhere to idling standards of less than three (3) minutes. Pursuant to N.J.A.C. 7:27-5.2, air pollution, including offsite odors harmful to human health or resulting in complaints, is prohibited. Pursuant to N.J.A.C. 7:27-5.2, dust emissions from construction activities must be controlled to prevent offsite impacts or material tracked onto the roadways. Pursuant to N.J.A.C. 7:27-8.2(c)21, an air permit may be required if a generator producing thirty-seven (37) kW or more is used. N.J.A.C. 7:27-8.2(c)17 requires an air permit for venting of closed and opened landfills.

Pinelands Commission

All development, including clearing and land disturbance shall be in accordance with the plan referenced in the December 18, 2023 letter to Michael Bruno, Senior Project Manager - Project Management of NJR Clean Energy Ventures. In addition, the conditions referenced in the December 18, 2023 letter are still valid.

Conclusion

NJDEP noted that the comments provided are not indicative that NJDEP has made any decisions on whether the constructed project will be permitted. The Applicant must comply with all other NJDEP rules and regulations and obtain any necessary permits as appropriate. Should the circumstances or conditions set forth in the information that was provided to the NJDEP change, the regulatory requirements and recommendations are subject to modification and may no longer hold true.

²⁵ A 2.772 MW solar generation facility will result in disturbance of more than one (1) acre of land.

Permit Status

As of April 18, 2023 following construction of the facility, NJR submitted a Post-Construction NJDEP Compliance Form, which documents permits issued and ongoing permit requirements of the Applicant. Further, in NJR's Permit Readiness Checklist dated May 16, 2024, NJR indicated that they have obtained Wetland Delineation/Letter of Interpretation ("LOI"), Landfill Disruption Approval, and Landfill Closure Plan. In addition, NJR has initiated contact with the Bureau of Solid Waste Permitting. However, as noted in NJDEP's memo, there are discrepancies in documentation of the Project and outstanding compliance issues that need to be addressed, including but not limited to quarterly inspection reports under the CPA and Flood Hazard Area permitting.

DISCUSSION AND FINDINGS

At issue is the request by NJR to have its constructed Project certified as eligible for SREC-IIs pursuant to N.J.A.C. 14:8-11.5(d)(2)(viii).

The Board **FINDS** that, as directed in the Board's April 17 Order and required at N.J.A.C. 14:8-11.5, the Applicant satisfied the initial registration requirements for a Tranche 3 project in the CSI Program. The Board **FINDS** that Staff transmitted the application discussed above to NJDEP for a review of eligible land use type and status of compliance issues at the site, required permits and approvals, and impacts to regulated areas associated with the constructed facility.

Following a thorough review of the information submitted by the Applicant with their initial registration package, including the Contaminated Site or Landfill Eligibility Verification Form, site maps and NJDEP Permit Readiness Checklist, and NJDEP's findings, the Board **FINDS** that the Project is located on a landfill as defined in the Board's rules. The Board **FINDS** that the NJDEP memo has identified several potential compliance issues, outstanding documentation, and impact considerations that the Applicant will need to address in order to obtain full certification for the project.

The Board **FINDS** that should the circumstances or conditions set forth in the information that was provided to the NJDEP change, the regulatory requirements and recommendations are subject to modification and may no longer hold true. The Board **FINDS** that the information provided by NJDEP is not indicative that NJDEP has made any decisions on whether the project will be permitted.

The Board **FINDS** that the memorandum issued by NJDEP is not indicative of all permitting and approval requirements that the project must meet and that NJDEP determined that the Applicant will need to comply with State laws relevant to the Property for the solar installation, as well as any other permits identified by NJDEP following construction of the solar electric power generation facility.

The Board **FINDS** that provided these conditions are satisfied, the Applicant's 2.772 MW project will be eligible to generate SREC-IIs in the CSI Program as a landfill facility with associated disturbed area. The Board **ORDERS** that the Applicant shall document that the conditions for certification provided by the NJDEP – including but not limited to those considerations presented in the advisory memorandum – have been satisfied before full certification of the project's eligibility for SREC-IIs can issue.

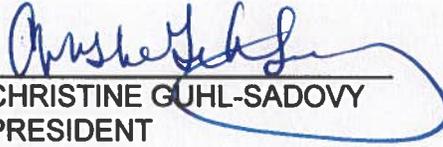
The Board **GRANTS** conditional certification of the Applicant's constructed Project. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements have been satisfied.

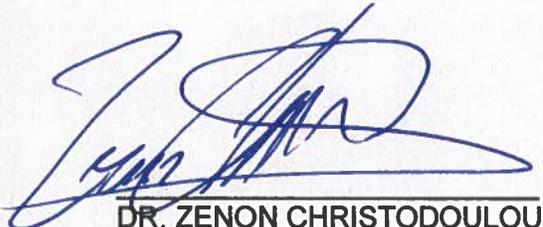
In addition, to obtain full certification, the Board **DIRECTS** NJR to submit this Order with the registration package within thirty (30) days of the effective date of this Order and to achieve commercial operation within thirty-six (36) months in accordance with N.J.A.C. 14:8-11.5(g)(3)(iii). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including but not limited to all NJDEP requirements – 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 SREC-II creation for a fifteen (15)-year Qualification Life. The Board **CONFIRMS** its previous June 29, 2023 Order – all energy generated by the Project from the date of its PTO shall be eligible to be the basis for the creation of SREC-IIs.

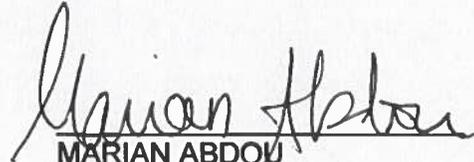
The effective date of this Order is November 28, 2024.

DATED: November 21, 2024

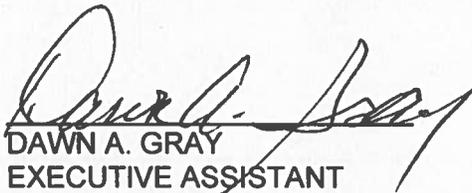
BOARD OF PUBLIC UTILITIES
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COMMISSIONER

ATTEST: 
DAWN A. GRAY
EXECUTIVE ASSISTANT

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 COMPETITIVE SOLAR INCENTIVE ("CSI") PROGRAM PURSUANT TO P.L. 2021, C. 169

IN THE MATTER OF NJR CLEAN ENERGY VENTURES III – AERO HAVEN LANDFILL – APPLICATION FOR
COMPETITIVE SOLAR INCENTIVE PROGRAM TRANCHE 3 ELIGIBILITY

DOCKET NOS. QO21101186 AND QO24080620

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MEMORANDUM

TO: Diane Watson
NJBPU Clean Energy Program

FROM: David Pepe, Director
NJDEP Office of Permitting and Project Navigation

Ryan Carter, Environmental Specialist
NJDEP Office of Permitting and Project Navigation

DATE: August 9, 2024

SUBJECT: Competitive Solar Incentive (CSI) Tranche 3 Review
Aero Haven Solar Project
Evesham, Burlington County
Block 63, Lot 1

Per Board Order, the New Jersey Board of Public Utilities (NJBPU) announced the opening of the second solicitation of the CSI Program. The CSI program structure has separate categories, or tranches, to ensure that a range of solar project types are able to participate. The New Jersey Department of Environmental Protection's (NJDEP) Office of Permitting and Project Navigation (OPPN) has been tasked with reviewing Tranche 3, grid supply projects on Contaminated Sites & Landfills that have been conditionally awarded SREC-II incentives by the NJBPU to determine any compliance issues at the site, required permits and approvals, and impacts to regulated areas that should be addressed prior to construction of the project.

In response to the request for a determination as to whether the subject proposal will have any adverse impacts to land resources, historical or cultural resources, threatened and endangered species and migratory birds, contaminated sites or landfills, or whether there are any impacts to Green Acres encumbered parkland held by the State, local government units and/or nonprofit organizations, the Department offers the following comments for NJBPU's consideration:

Division of Sustainable Waste Management – Bureau of Solid Waste Permitting

From the Contaminated Sites and Landfills Eligibility Verification Form, it seems that the Permittee is applying for a 2.772-megawatt ("MW"), direct current (DC) solar facility that encompasses 8.3 acres. This solar facility has been constructed, and as-built documents were approved by the Bureau on February 14, 2024. The Permittee initially obtained a modified Closure and Post-Closure Plan Approval (CPA), dated February 25, 2020, to incorporate the construction of an approximately 6.15-MW (DC) solar facility atop portions of the landfill and areas adjacent to the landfill. Subsequently, the CPA was again modified on February 14, 2024, to accept the as-built documents and acknowledge the completion of the solar project. However, the Permittee constructed a 2.7-MW (DC) solar facility out of the originally approved 6.15-MW (DC) solar project. If the Permittee chooses to construct additional solar panels outside of the 2.7 MW (DC)

solar facility, a modified Closure and Post-Closure Plan Application will be required for Department approval.

The Permittee shall continue post-closure maintenance of the landfill in accordance with the February 14, 2024 CPA. Landfill monitoring and inspection reports shall be submitted quarterly to the Division of Sustainable Waste Management, in accordance with the February 14, 2024 CPA. Proper maintenance and housekeeping shall be observed. The Bureau has not received any of the quarterly inspection reports required by the CPA since the solar construction was complete (March 2022).

Please also be advised that the potential risk of encountering Kaylo waste material (asbestos-containing material) was not addressed in the Health and Safety Plan (HASP) submitted as part of the February 25, 2020 CPA. An updated HASP, in which proper precautions for dealing with Kaylo waste material are thoroughly addressed, shall be submitted to the Bureau as part of any future application for construction activity conducted atop or within the landfill.

The attached site drawings titled “Plans for Proposed Ground-Mounted Solar Array Aero Haven Solar,” prepared by T&M Associates, dated February 15, 2022, and “Aero Haven Electrical Construction Plans,” prepared by CS Energy, LLC, dated April 14, 2022, were not approved by the Bureau. The as-built drawings by CS Energy, LLC are like the submitted as-built drawings we have on record, it should be noted that the Bureau approved a different set of as-built drawings.

Watershed and Land Management (WLM)

Freshwater Wetlands

The project requires a Freshwater Wetlands General Permit 5, which requires a landfill closure plan approval. A Freshwater Wetlands Transition Area Waiver is required if the solar panels are proposed within a transition area. In addition, a Freshwater Wetlands Letter of Interpretation (LOI) is required.

Flood Hazard Area

The project requires a Flood Hazard Area permit.

Compliance

Based on aerial mapping, the facility is constructed with no records of permits or LOIs for the site. Therefore, it is possible that there are compliance issues with the facility that must be resolved. The applicant should provide evidence to WLM that permits were obtained or were determined to not be required. Otherwise, the applicant must apply for after-the-fact permits.

If you have any questions, please contact Mark Davis at Mark.Davis@dep.nj.gov.

New Jersey Fish and Wildlife (NJFW)

Endangered Non-game species Program (ENSP)

The ENSP administers the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq. (ENSCA), which prohibits the take of certain protected species. Take includes actions that actually or attempt to harass, hunt, capture, or kill wildlife. The Department does not authorize the take of State or federally protected species. This means that persons planning or conducting activities in the vicinity of endangered, threatened, or nongame wildlife must avoid disturbing these protected species because, depending on its severity, a disturbance could constitute take in violation of ENSCA, even if the disturbance is unintended or incidental. A person found to have violated ENSCA may be liable to a penalty of up to \$25,000, or if found guilty of knowingly having violated ENSCA, the penalty can be up to \$50,000 per day that a violation is ongoing.

The Department cannot shield a person conducting activities in the vicinity of endangered, threatened, or nongame wildlife from potential ENSCA violation(s) because the Department does not offer permits or other authorizations to disturb protected species. The Department offers avoidance and minimization practices that, if observed, may reduce the risk of adverse impacts to protected wildlife when conducting activities in the vicinity of protected species. These practices, discussed in more detail below, include, but are not limited to:

1. Identify the presence, nature, and extent of protected species;
2. Avoid any activities that may cause the take of a protected species;
3. Observe timing restrictions to avoid disturbance;
4. Observe area restrictions to avoid disturbance;
5. Actively monitor for potential disturbance; and
6. Adaptively manage activities to minimize disturbance.

Users of this guidance should be aware that certain activities on land or in water are regulated by the Department and may require advanced Department review and authorization. Users may consult the Division of Watershed Protection and Restoration concerning potentially regulated activities.

The Department's Landscape Project Map (v. 3.3) values the area surrounding the project parcel for state endangered and threatened species including timber rattlesnake, northern pine snake, barred owl, pine barrens treefrog, and Bald Eagle. Since the landfill has revegetated, it is likely some of these species now inhabit the landfill for various life stages and life history requirements.

Guidance

Landfill Closure and Solar Array Project Area and Installation

1) Landfill Closure/Modified Closure

a) In recent years, it was discovered that endangered and threatened snake species, including timber rattlesnakes, are capable of and have been documented colonizing landfills that had been (per more current/modern landfill action terminology) "closed" via soil intermediate or temporary cover for the purpose of overwintering (i.e., hibernacula). Such sites are difficult to identify visually given the dense vegetation that has often grown on site. As such, to reduce the risk of harm to overwintering snakes and/or entombing them and thereby, violating ENSCA:

I) Optimally, conduct landfill closure activities from May 16 – September 30 when snakes are less likely to be concealed in on-site, subsurface pockets and deploy an ENSP-approved venomous snake monitor to search for and relocate snakes (and turtles) from the project area.

II) Minimally, deploy ENSP-approved venomous snake monitor(s) during all activities year-round to collect overwintering and injured snakes discovered during excavations and transport them to the approved wildlife rehabilitator (see 2.b below), and relocate seasonally-active snakes (and turtles) from the project area.

2) Construction and Installation

Reptiles:

a) From May 16 – September 30, maintain an exclusion fence around the footprint of all equipment storage and staging areas. Fence shall be five-feet high above grade with a minimum 6" sunk below grade, heavy duty silt fence or equivalent, pulled taught with posts set on the interior/storage side of the fence.

b) Avoid vehicle and machinery access and/or equipment or staging areas in vegetated areas.

c) Deploy ENSP-approved venomous snake monitor(s):

I) From March 15 – November 30, deploy one ENSP-approved venomous snake monitor each day of any on-site activities to search for and remove reptiles and amphibians from harm's way. Any injured reptiles should be safely secured and transferred to Woodlands Wildlife Refuge, Pittstown, NJ (Hunterdon County), for treatment and released near their capture location when deemed ready for release.

II) All fenced areas should be monitored daily for reptiles and amphibians and the fence must be inspected and repaired the same day damage is observed and maintained until project completion and removal.

III) All material stockpiles and vehicle/machinery engines and wheel wells should be inspected by an ENSP-approved venomous snake monitor each morning prior to the commencement of work.

Raptors:

a) Bald Eagles and Barred Owls may use on-site trees to perch/roost. Personnel must avoid disturbance to the birds when present (year-round).

Bats:

a) Long-eared bats may use on-site trees for roosting. Please consult with Sarah Crestol, USFWS, NJ Office (Sarah_Crestol@fws.gov; 609-382-5271) regarding timing and tree-size restrictions on tree felling and trimming.

3) Restoration and maintenance

As prescribed within the NJ Statute, N.J.S.A. 13:1B-15.178, "Standards for use of pollinator-friendly native plant species in grid supply solar facilities, Best Practices, May 2022" (Pollinator Standards), restoration and maintenance of solar array properties shall include:

a) Restoration: Use native pollinator seed mixes. For this location, the applicant should plant a combination of native warm season grasses and pollinator-friendly mix of plant species suitable for pollinating insects (and native birds).

b) Maintenance of vegetation: Please refer to the Pollinator Standards for complete guidance. In general:

I) When first establishing the grasses and pollinator plants, mow the site to a height of 4-6-inches prior to April 1 ahead of the first growing season.

II) Once native grasses and pollinator plants are established (and after completion of the solar array construction), mow on a 2-3-year rotation prior to April 1 annually.

Note: If mowing is necessary April 1 – November 15, please deploy an ENSP-approved venomous snake monitor to precede machinery each day of mowing (or other vegetative maintenance activities) to reduce the risk of take under ENSCA.

4) Soil erosion and sediment control products (if employed)

a) Use 100% bio-degradable SESC products (i.e., products made of 100% natural material with netting made of natural plant fibers unaltered by synthetic materials) where they will satisfy the performance standards outlined by the Department of Agriculture, State Soil Conservation Committee in the most current version of The Standards for Soil Erosion and Sediment Control in New Jersey ("NJ Performance Standards" which can be found at <https://www.nj.gov/agriculture/divisions/anr/nrc/njerosion.html>). When possible, avoid the use of SESC products that incorporate plastic or other synthetically-made netting, including those

claiming to be photo-, oxo-, UV-degradable, and others as these products have demonstrated to ensnare wildlife, particularly snakes, resulting in unauthorized incidental take of nongame species protected by ENSCA (N.J.S.A. 23:2A-1-13). In addition, such products do not degrade but rather break apart leaving plastic fragments, balls of matted plastic, and microplastics in the environment causing long-term risks to wildlife.

I) If “temporary” SESC products with plastic/synthetic netting are used to meet the NJ Performance Standards, they must be removed within 6-months of installation.

II) If permanent SESC products with plastic/synthetic netting are used to fulfill the NJ Performance Standards, the plastic/synthetic netting must have a rectangular aperture and if available, movable joints (not fixed/welded).

If you have any questions, please contact Joe Corleto at Joseph.Corleto@dep.nj.gov.

NJPDES Stormwater

If more than one acre will be disturbed, a general permit for Construction Activities, (5G3) may be required. The permit application process is available online at <http://www.state.nj.us/dep/DWQ/5G3.htm>.

If you have any questions, please contact Daniel Kuti at Daniel.Kuti@dep.nj.gov.

Air

The applicant should review the requirements of N.J.A.C. 7:27-8.2(c) 1-22 for stationary permitting requirements. This includes but is not limited to, construction equipment-stationary construction equipment or emergency generators, may require air pollution permits if it is located on the site for longer than one year (N.J.A.C. 7:27-8.2(d)15). There are general permits for boilers and emergency generators (<https://www.state.nj.us/dep/aqpp/gp.html>) if the units can meet the prescribed requirement in the general permits.

Idling Vehicles – any vehicles involved on the project must adhere to the idling standards (less than 3 minutes) in N.J.A.C. 7:27-14 and 15.

Air pollution including odors that are detectable offsite that are injurious to human health or would result in citizen complaints are prohibited. N.J.A.C. 7:27-5.2.

Fugitive Dust – dust emissions either windblown or generated from construction activities should be controlled to prevent offsite impacts or material tracked onto the roadways. N.J.A.C. 7:27-5.2.

An Air permit may be needed if a generator producing 37 KW or greater will be used for the project (N.J.A.C. 7:27-8.2(c)21).

N.J.A.C. 7:27-8.2(c)17 requires an air permit for venting of closed and opened landfills.

If you have any questions, please contact Danny Wong at Danny.Wong@dep.nj.gov.

Pinelands Commission

All development, including clearing and land disturbance shall be in accordance with the plan referenced in the 12/18/2023 letter to Michael Bruno, Senior Project Manager - Project Management of NJR Clean Energy Ventures. In addition, the conditions referenced in the 12/18/23 letter are still valid.

If you have any questions, please contact Timothy Capella at Timothy.Capella@pinelands.nj.gov.

The comments provided on behalf of the Department are not indicative that the Department has made any decisions on whether the proposed project will be permitted. The applicant must comply with all other Department rules and regulations and obtain any necessary permits as appropriate.

Should circumstances or conditions become other than as set forth in the information that was provided to the Department, the regulatory requirements and recommendations are subject to change and may no longer hold true. Thank you for providing the Department the opportunity to review the proposed solar project. Should you have any questions or need additional information, please contact Ryan Carter with the Office of Permitting and Project Navigation at Ryan.Carter@dep.nj.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Pepe', with a long horizontal flourish extending to the right.

David Pepe, Director
Office of Permitting and Project Navigation