



**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

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF ) <u>P.L.</u> 2012, <u>C.</u> 24, THE SOLAR ACT OF 2012 )	DOCKET NO. EO12090832V
IN THE MATTER OF THE IMPLEMENTATION OF ) <u>P.L.</u> 2012, <u>C.</u> 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
TOMS RIVER MERCHANT SOLAR, LLC ) CIBA SPECIALTY CHEMICALS CORPORATION )	DOCKET NO. QO19010034

**Party of Record:**

**Scott Hesser, Toms River Merchant Solar, LLC**

**BY THE BOARD:**

This Order concerns an application by Toms River Merchant Solar, LLC ("Toms River Merchant Solar" or "Applicant") for certification pursuant to P.L. 2012, c. 24 ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection (t)"). Applicant seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located at the Ciba Specialty Chemicals Corporation site at Block 411, Lots 6.02 and 6.03, in Toms River Township, Ocean County, New Jersey ("Ciba Specialty Chemicals Corporation"). Applicant submitted the required documentation to enable a determination by the New Jersey Department of Environmental Protection ("NJDEP") as to whether the proposed project is located on a brownfield as defined in the Solar Act.

## **BACKGROUND**

On July 23, 2012, the Solar Act was signed into law. The Solar Act amended certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act required the New Jersey Board of Public Utilities (“Board”) to conduct proceedings to establish new standards and to develop new programs to implement the statute’s directives. By Order dated October 10, 2012, the Board directed Board staff (“Staff”) to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act.<sup>1</sup>

The Solar Act – specifically, Subsection (t) – provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered “connected to the distribution system” [and] shall not require such designation by the board[.]

[N.J.S.A. 48:3-87(t).]

The Solar Act defines the terms “brownfield,” “area of historic fill,” and “properly closed sanitary landfill facility.” A “brownfield” is “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.” N.J.S.A. 48:3-51. “Historic fill” is “generally large volumes of non-indigenous material, no matter what date they were placed on the site, used to raise the topographic elevation of a site . . . .” *Ibid.* A “properly closed sanitary landfill facility” means “a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection . . . .” *Ibid.*

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the 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.

<sup>1</sup> [I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87\(d\)\(3\)\(b\) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87\(e\)\(4\) – Net Metering Aggregation Standards; 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; 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; 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, 2012 N.J. PUC LEXIS 286 \(Oct. 10, 2012\).](#)

In an Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities.<sup>2</sup> The certification process for projects seeking approval pursuant to Subsection (t) provides three (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 that 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. 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. 2013 N.J. PUC LEXIS 27 at 31–33.

The January 24, 2013 Order states that certification would be limited to those areas delineated by 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 33. On or about April 10, 2013, Staff distributed, via the public renewable energy stakeholder email distribution list, and posted to the New Jersey Clean Energy Program and BPU websites, a Subsection (t) application form.

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, projects must comply with the rules at N.J.A.C. 14:8-2.4 and applicable Board orders concerning registration with the SREC Registration Program ("SRP"). The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17 ("Clean Energy Act"), which requires the Board to close the SRP once the Board has determined that 5.1% of the total kilowatt-hours sold in New Jersey have been generated by SREC-eligible solar generation installations ("5.1% Milestone"). The Clean Energy Act also sets the SREC term as ten years. Pursuant to the Clean Energy Act and Board Orders dated October 29, 2018<sup>3</sup> and February 27, 2019,<sup>4</sup> a proposed solar electric generation facility that submits a Subsection (t) application after October 29, 2018 is eligible to receive a ten-year SREC term, provided that the project achieves commercial operation prior to the Board's closure of the SREC program upon attainment of the state's 5.1% solar milestone and is otherwise in compliance with applicable law.

<sup>2</sup> I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(t) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and 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, 2013 N.J. PUC LEXIS 27 (Jan. 24, 2013).

<sup>3</sup> I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2018 N.J. PUC LEXIS 251 (Oct. 29, 2018).

<sup>4</sup> I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2019 N.J. PUC LEXIS 20 (Feb. 27, 2019).

**STAFF RECOMMENDATIONS**

**Project Description**

As stated above, at issue is the request by Toms River Merchant Solar that its proposed solar facility, to be located in Toms River Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). Toms River Merchant Solar filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a brownfield. NJDEP reviewed the application and supplied an advisory memorandum to Staff on February 11, 2019 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 Toms River Merchant Solar in its application, and the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Developer	Docket Number	Project/Designation	Location/Town	County	Landfill, Brownfield, or Historic Fill	Array Size (MWdc)	EDC
Toms River Merchant Solar, LLC	QO19010034	Ciba Specialty Chemicals Corporation	Block 411, Lots 6.02 & 6.03 227 Oak Ridge Parkway Toms River, NJ 08755	Ocean	Brownfield	28 MWdc	JCP&L

**Toms River Merchant Solar, LLC – Ciba Specialty Chemicals Corporation Brownfield – Docket No. QO19010034**

On December 31, 2018, Toms River Merchant Solar, LLC submitted an extensive application to the Board to have its project certified as being located on a brownfield pursuant to Subsection (t) of the Solar Act. The Applicant's 28 MWdc ground-mounted, fixed tilt solar photovoltaic electric generating project is proposed to be located on an existing 28 MWdc substation on the approximately 166 acres, at Block 411, Lots 6.02 and 6.03, that were the formerly operational areas of the Ciba-Geigy Chemical Corporation at 227 Oak Ridge Parkway in Toms River, New Jersey. The Applicant indicated that the site and substation are proposed to be re-purposed to provide solar generated electricity to the surrounding community. The property encompasses 731.4 acres in total and is owned by BASF Corporation.

Staff forwarded the application to NJDEP on or around December 31, 2018 for review and a recommendation as described above. NJDEP stated that the site is one of the largest Superfund sites in New Jersey, encompassing more than 1,200 acres and that, as proposed, the project would be the largest solar project in the state.

NJDEP noted that BASF Corporation assumed ownership of the site in 2009 from Ciba-Geigy Specialty Chemicals Corporation, which had conducted manufacturing activities at the site.<sup>5</sup> As described in documents submitted by the Applicant, all commercial operations at the site ceased in December 1996, after which most of the manufacturing buildings were demolished. NJDEP noted

<sup>5</sup> The application provides a history of ownership and operatorship of the site on page 7 of its application package, as well as a chain of title as Appendix 2 of the application. The submitted information indicates that Ciba States Limited / Ciba-Geigy Corporation owned the property from 1949 to 1993 and conducted manufacturing operations from 1952 to 1990. Cincinnati Chemical Corporation owned the site from 1993 to 2001, and Ciba Corporation (formerly known as Ciba Specialty Chemicals Corporation) owned the site from 2001 to 2008.

that contaminated wastes had been disposed of on the site, and wastewater treatment operations at the site also resulted in various types of contamination, including to groundwater. The site was placed on the Superfund National Priorities List in 1983. In 1984, the U.S. Environmental Protection Agency ("EPA") began conducting a remedial investigation of the site. Remediation of the site began in 1989; and groundwater treatment through an existing treatment system continues to the present. NJDEP stated that EPA's latest Five Year Review Report, attached to the application as Appendix 7, sets forth ongoing and future remedial activity and that, except for ongoing site remediation efforts, the entire BASF site is currently inactive.

NJDEP determined that the area of the site for which the Applicant requests certification meets all three prongs of the Solar Act's definition of a "brownfield" at N.J.S.A. 48:3-51 – that is, 1) it is a former commercial or industrial site; 2) it is currently vacant or underutilized; and 3) on which there has been, or there is suspected to have been, a discharge of a contaminant. Specifically, DEP stated that:

- a. The site is currently vacant or underutilized. The documentation submitted to the NJDEP clearly establishes that, except for ongoing site remediation efforts, the entire BASF site is currently inactive, as the facility ceased operations in 1996.<sup>6</sup>
- b. There has been a discharge of a contaminant at the site. The documentation submitted to the NJDEP establishes that there has been a discharge of contamination at the site of the proposed solar installation. Both soil and groundwater at the site of the proposed solar array remain contaminated, no further remediation of the soil is planned, and the site of the solar array will be subject to engineering and institutional controls that will restrict the use of the property.<sup>7</sup>
- c. The location of the proposed solar facility is within the footprint of the former industrial use area of the site. The applicant submitted information to clearly show that there was an industrial establishment located on the property, including the portion of the site designated for the solar project.<sup>8</sup>

NJDEP noted that the solar project will be installed on property that requires remediation. Accordingly, NJDEP emphasized that the property owner and owner/operator of the solar installation must – in addition to any other actions required by law, including, but not limited to, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., and any regulations promulgated pursuant thereto – ensure that the solar installation: (a) does not exacerbate the contamination at the property; (b) does not interfere with any necessary remediation of the property; (c) does not disrupt or change, without prior written permission from NJDEP, any existing or future engineering or institutional control that is part of a remedial action for the property; and (d) is protective of public health and the environment.

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<sup>6</sup> NJDEP refers to the application and attachments, including, but not limited to: Section 2: Project Description; Section 3: Brownfield Designation; and Appendix 3: November 2018 Phase I Environmental Site Assessment prepared by Weston Solutions, which provides the current status of the proposed project area, along with an extensive environmental history of the site.

<sup>7</sup> NJDEP refers to the application and attachments, including, but not limited to Appendix 7: May 7, 2018 Five Year Review Report issued by the EPA.

<sup>8</sup> NJDEP refers to the application and attachments, including, but not limited to Project Description and Brownfield Designation, including Figure 5: Proposed Solar Footprint.

Based on the information provided in the application and NJDEP's determination that the solar project as proposed is located on a "brownfield" 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 166 acres requested for Subsection (t) certification on Block 411, Lots 6.02 and 6.03, is located on land meeting the Solar Act's definition of a "brownfield." Based on information provided by NJDEP, the Board **FINDS** that the Ciba Specialty Chemicals Corporation project is located on land meeting the definition of a "brownfield."

The Board also **FINDS** that NJDEP has determined that the solar project will be installed on property that requires remediation. The Board **FINDS** that, in addition to any other actions required by law, including, but not limited to, the Spill Compensation and Control Act, the Brownfield and Contaminated Site Remediation Act, and any regulations promulgated pursuant thereto, the property owner and owner/operator of the site must ensure that the solar installation: (a) does not exacerbate the contamination at the property; (b) does not interfere with any necessary remediation of the property; (c) does not disrupt or change, without prior written permission from the NJDEP, any existing or future engineering or institutional control that is part of a remedial action for the property; and (d) is protective of public health and the environment.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of the Applicant's proposed solar electric generation facility, to be located at the Ciba Specialty Chemicals Corporation site at Block 411, Lots 6.02 and 6.03, in Toms River Township, Ocean County, New Jersey, with an array size not to exceed 28 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that all NJDEP requirements for brownfield remediation have been satisfied.

In addition, to obtain full certification, the Board **DIRECTS** Toms River Merchant Solar to submit an initial SRP registration package within fourteen (14) days of the effective date of this order, in accordance with N.J.A.C. 14:8-2.4(c). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all SRP requirements at N.J.A.C. 14:8-2.4 – have been satisfied and provided that the project achieves commercial operation prior to the Board's closure of the SREC program upon attainment of the state's 5.1% solar milestone and is otherwise in compliance with applicable law. After the Applicant has received full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation for a ten-year Qualification Life.


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.

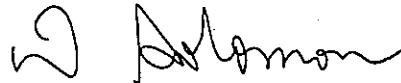
This Order shall be effective on April 28, 2019.

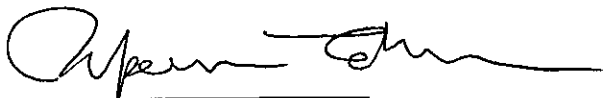
DATED: 4/18/19

BOARD OF PUBLIC UTILITIES  
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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 – Toms River Merchant Solar, LLC – Ciba Specialty Chemicals Corporation

Docket Nos. EO12090832V, EO12090862V, and QO19010034

SERVICE LIST

**Toms River Merchant Solar, LLC**

Scott Hesser  
5 Commerce Avenue  
West Lebanon, NH 03785  
[scott.hesser@edf-re.com](mailto:scott.hesser@edf-re.com)

**BASF Corporation**

Charles Waltz  
100 Park Avenue  
Florham Park, NJ 07932  
[charles.waltz@basf.com](mailto:charles.waltz@basf.com)

**New Jersey Division of Rate Counsel**

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.  
[ftomas@rpa.state.nj.us](mailto:ftomas@rpa.state.nj.us)

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

**New Jersey Division of Law**

Caroline Vachier, DAG  
Department of Law & Public Safety  
Post Office Box 45029  
Newark, NJ 07101-45029  
[caroline.vachier@law.njoag.gov](mailto:caroline.vachier@law.njoag.gov)

**Board of Public Utilities**

Post Office Box 350  
Trenton, NJ 08625-0350

Aida Camacho-Welch  
Secretary of the Board  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Sara Bluhm, Director  
Division of Clean Energy  
[sara.bluhm@bpu.nj.gov](mailto:sara.bluhm@bpu.nj.gov)

Sherri Jones, Assistant Director  
Division of Clean Energy  
[sheri.jones@bpu.nj.gov](mailto:sheri.jones@bpu.nj.gov)

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

Jamal Garner, Environmental Engineer  
Division of Clean Energy  
[jamal.garner@bpu.nj.gov](mailto:jamal.garner@bpu.nj.gov)

Stacy Ho Richardson, Esq.  
Counsel's Office  
[stacy.richardson@bpu.nj.gov](mailto:stacy.richardson@bpu.nj.gov)