STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 17-4695-PET

Petition of Chelsea Solar, LLC for relief from
Standard-offer contract milestone

RESPONSE TO REQUEST FOR RESPONSES
TO STANDARD OFFER CONTRACT EXTENSION

Now comes Libby Harris, *pro se*, and offers the following response to the request by Chelsea Solar for an extension from six months to one year of the Standard Offer contract's commissioning milestone. Harris provides evidence that Chelsea Solar has not acted in good faith or with due diligence. Harris contends that the PUC should declare the Standard Offer contract to be null and void because the PUC has chosen not to issue a CPG and because there is no petition for Chelsea Solar to apply to the Standard Offer contract. Harris supports the purpose and integrity of the Standard Offer program to produce bids that are low cost for Vermont ratepayers, of which she is one. Harris seeks finality. Harris recommends against the extension and requests that the PUC find that the contract is of no further force or effect.

Background

In 2005, the Vermont legislature established the SPEED program to encourage the development of renewable energy resources in Vermont as well as the purchase of renewable power by the state's electric distribution utilities.

In 2012, the legislature expanded the Standard Offer Program, and mandated the use of market-based mechanisms to determine pricing for Standard Offer Projects.

Chelsea Solar[1] responded to the first RFP issued under the new system, in which contracts were awarded to the lowest bidders. A contract for Chelsea Solar was issued in May, 2013. The Price was 0.1340/kWh. The project was to have been commissioned on or before June 20, 2015.

At the same time, applicants also responded to the RFP and submitted a bid for a project called Apple Hill Solar, a contiguous solar project of the same size on the same parcel of land. In a split 2-1 decision, the PUC denied Apple Hill Solar.[2]

The applicant petitioned the PUC to reconsider the denial of Apple Hill Solar's qualification for the Standard Offer contract. On June 28, 2013, the PUC again rejected the two contiguous 2 MW solar projects on one parcel of land as exceeding the Standard Offer cap of 2.2 MW.

The applicant appealed the PUC's decision denying Apple Hill Solar's Standard Offer contract to the Vermont Supreme Court. In its Opinion of March 28, 2014, the Vermont Supreme Court reversed the PUC, finding for the applicant based on the applicant's representations of the project,

> The projects will not share common roads, control facilities, or connections to the electric grid. Each of the projects will have a separate interconnection agreement with GMP and separate interconnection facilities designed and owned by GMP, which would limit the capacity of each to 2.0 MW.

Chelsea Solar was applied for in the summer of 2014.

Extension request #1. On Dec. 30, 2014, Chelsea Solar filed a request for a 10-month extension of the commissioning deadline. While the PUC granted the extension on Jan. 8, 2015, it said in its Order,

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[1] The project was named Bennington Solar at that time.
[2] The dissenting opinion held that both projects should have been denied.

> Our decision to grant the requested milestone extensions was not made lightly, as much of the responsibility for the impending delay in the dockets appears to rest with the petitioners.

The new deadline for commissioning the project was April 19, 2016.

Apple Hill Solar was applied for in the spring of 2015.

The two cases collided in July 2015 when the PUC scheduled the technical hearing for Apple Hill Solar to be held two days before the technical hearing for Chelsea Solar. Harris, who had been granted Intervention in Chelsea Solar but was awaiting a ruling on her Motion to Intervene in Apple Hill Solar, asked the PUC to reschedule the Apple Hill Solar case until after the technical hearing for the Chelsea Solar case, and after the PUC had ruled on her Motion to Intervene.

In July 2015, the PUC held the technical hearing on Chelsea Solar.

In August 2015 the PUC held the technical hearing for Apple Hill Solar.

Extension request #2. On Dec. 10, 2015, Chelsea Solar again filed a request for an extension of the Standard Offer contract's commissioning milestone, this time for six months.

On Feb. 16, 2016, the PUC denied a CPG for Chelsea Solar.

After Feb. 16, 2016, Chelsea Solar filed eight or nine motions seeking reconsideration of the CPG denial and raising other issues.

On March 31, 2016, the PUC again granted the extension request[3] with the following caveat:

…to allow for the commissioning of the proposed project six months after the

[3] The PUC's decision to grant the second extension of the commissioning date of the Standard Offer contract for Chelsea Solar is peculiar in its timing, as it comes after the CPG denial. The PUC presents a confusing decision since it had already chosen not to issue the CPG. The contract should have been declared null and void and of no further force and effect rather than grant the extension, since no CPG had been issued. On the same date, the PUC issued an extension of the contiguous Apple Hill Solar decommissioning milestone. The language in the two Orders is virtually identical.

> date of any CPG that may be issued for the proposed project. If Chelsea fails to complete commissioning of its proposed project before the extended deadline, or **if no CPG is issued for the proposed project, the Chelsea SPEED PPA shall be null and void and of no further force and effect,** absent an order of the Board to the contrary. [*emphasis added*]

In March, 2016, the Apple Hill residential community learned that their groundwater wells, upon which all properties depend, are contaminated with PFOA.

On April 14, 2017, the PUC denied Chelsea Solar's numerous Motions and affirmed its denial of a CPG for the project.

Chelsea Solar appealed the PUC's denial of its CPG to the Vermont Supreme Court. In the months since the PUC affirmed its denial of the CPG, in 2017 the applicant applied pressure to Harris with repeated phone calls and emails, requests for meetings and an offer of $50,000 in an effort to get her to drop her intervention and opposition to Chelsea and Apple Hill Solar. The applicant offered the Town of Bennington $200,000 to drop its opposition to both projects.

On May 24, 2017, the PUC responded to numerous motions filed by the applicant in the contiguous Apple Hill Solar project (Case No. 8454) and granted the applicant the opportunity to submit an amended application, serve discovery, and hold a technical hearing on the revised Apple Hill Solar project.

As part of its efforts, the applicant presented amended plans, which it said in correspondence with Harris would be smaller in footprint and produce lower power output, though the reduction in power output was not specified. *[Exhibit 1]*

Harris and the Town of Bennington both rejected the applicant's monetary offer and request to drop their intervention and opposition to Chelsea Solar and Apple Hill Solar.

Many hours have been consumed by Harris, interested Bennington residents, and the Town of Bennington responding to the numerous and unwelcome requests for engagement in recent months. The applicant has repeatedly been asked by the community to work with them to site their projects on the more than 500 acres of areas in Bennington that have been identified as preferred sites by the Planning Commission's energy subcommittee.

On September 18, 2017, Apple Hill Solar filed an amended application for a 2 MW solar project. The PUC found it to be incomplete on October 17, 2017, and gave the applicant until Oct. 30, 2017 to submit the complete application. The PUC has not ruled on the completeness of the Apple Hill Solar application.

On Oct. 12, 2017, the PUC responded to the applicant's request to submit amended plans for Chelsea Solar. Incredibly, the PUC granted the request and is allowing Chelsea Solar to submit its amended plan if the applicant withdraws its appeal to the Vermont Supreme Court, which it has done.

On October 13, 2017, the applicant submitted its 45-day notice to the required parties for the amended Chelsea Solar project, which is still proposed to be 2 MW and will not "result in less renewable energy being produced" as the applicant claimed in correspondence to Harris.

On Oct. 25, 2017, Chelsea Solar submitted a request to the PUC for a third extension of the commissioning milestone for Chelsea Solar.

On November 3, 2017 the PUC issued an Order seeking comments on the applicant's request for an extension date one year from when Chelsea Solar files a complete revised petition.

Due Diligence or the Choice to Delay

In its third request for extension, the applicant attempts to make the case that it has operated with due diligence and in good faith. Harris disagrees. Nothing could be further from the truth.

Chelsea Solar received a Standard Offer contract in May 2013 with a commissioning date of June 2015. Chelsea Solar could have moved forward at that time. Yet the applicant chose to wait more than a year while its appeal of the denial of the Apple Hill Solar project's Standard Offer contract to the Vermont Supreme Court was pending. The delay was entirely the applicant's choice and resulted in more than year's delay in filing a petition for Chelsea Solar, which finally occurred in June 2014. Chelsea Solar then sought a 10-month extension and a six-month extension of the Standard Offer decommissioning milestones.

Chelsea Solar did not act with due diligence, but instead chose to use up one of the two years allowed to commission the project until it learned the result of litigation that had nothing to do with Chelsea Solar, assuming that Chelsea and Apple Hill are two separate projects, as the applicant contends. Chelsea Solar could have and should have moved forward and kept to the schedule that the award of a Standard Offer contract expects and requires.

Chelsea Solar did not use due diligence but instead delayed its petition to the PUC for more than a year of the two years required by Standard Offer Contracts. In addition, Chelsea Solar has already received a 10-month extension and a 6-month extension of the Standard Offer contract's commissioning deadline.

The actions of the applicant in its relentless pursuit of Chelsea and Apple Hill Solar has created tremendous stress for Harris, the Apple Hill residential community, and has cost the Town of Bennington thousands of dollars in legal and expert fees. The decision to delay the filing of Chelsea Solar while Apple Hill Solar was being litigated was solely the applicant's choice.

The applicant's decision to wait on moving forward with Chelsea Solar until the Vermont Supreme Court ruled on the denial of the Standard Offer contract for Apple Hill Solar resulted in the two projects creating a chaotic and confusing situation for parties to the two cases. The volume of material and confusion because of the two cases taking place contiguously was especially stressful for Harris as she was recovering from a concussion and under doctor's orders to reduce stress. Harris and her surrounding community have been unnecessarily pressured and stressed by the applicant's failure to use due diligence in engaging in Vermont's regulatory process.

Good Faith, Bad Faith

In its third Standard Offer contract extension request, the applicant claims that it has operated in good faith. Harris disagrees. Harris and her community, which includes the Apple Hill Homeowners' Association (AHHA) have experienced numerous instances where the applicant has shown bad faith.

AHHA's President *[see affidavit of Bill Knight, Exhibit 2]* describes how in 2013, prior to the application for a CPG and without any advance notice, the applicant showed up in the Apple Hill neighborhood which has deed restrictions against commercial development, with heavy equipment and workers who expressed their intention to build a

road to the solar site. AHHA's President was contacted a second time in the summer of 2013, again prior to the submission of a petition to the PUC for a CPG, threatening legal action if he did not sign a "Certificate of Public Good" for the closing of the sale of the property.

AHHA's experience with the applicant's bad faith continued as the Association attempted to negotiate an MOU to address the numerous issues raised by the project, including the use of a private road through Apple Hill lands, the potential for increases in wind and noise if the forest is cut, among others. Eventually AHHA settled on an MOU that addressed only the private road, which the applicant promised would only be used for operation and maintenance and not for construction. The applicant did not address the AHHA's concerns about increased wind or noise if the 27 acre forest is cut.

In a written statement submitted at the request of her state Senators and Representative in August 2015, *Harris ["My Experience Participating at the Public Service Board Hearings", Exhibit 3]* describes the bad faith with which the applicant approached her intervention where twice, in attempting to negotiate the maintenance agreement for the private road that serves her property and through which Chelsea Solar proposed to maintain and operate the project and in discussions about screening, she felt bullied and threatened by the applicant's effort to condition those agreements on her dropping her invention. The applicant/landowner has not shared the cost of maintenance of the shared right of way nor the plowing of it. There is a deed which states that they have to share the cost and they have ignored it thereby having the full cost paid by Harris.

Chelsea Solar has acted in bad faith and should not be rewarded for its behavior by extending the Standard Offer commissioning deadline a third time.

The applicant's request defeats the purpose of the Standard Offer program

In 2012, the legislature mandated the use of market-based mechanisms to determine pricing for Standard Offer Projects. The PUC established a bidding process using a Request for Proposal (RFP) process that was first utilized in 2013. It was through this process that the applicant received its Standard Offer contracts for Chelsea (a/k/a Bennington) Solar and Apple Hill Solar.

Four years later, the applicant seeks a third extension of the commissioning milestone for the 2013-issued Standard Offer contract for Chelsea Solar.

The Standard Offer program has been successful in driving down the cost of solar projects in Vermont. In the most recent solicitation, several bidders submitted bids as low as .0899/kWh. The highest priced bid in the Price Competitive Block was 0.1117/kWh. Chelsea Solar's four-year old bid for which the Standard Offer contracted was granted was 0.1340/kWh.

Four years is far too long for a contract to hang out without completion of the project. If Chelsea Solar is successful in being awarded a CPG for the amended project, the project will likely not be commissioned until five or six years since the award of the 2013 Standard Offer contract. Vermont ratepayers and other solar developers are now being disadvantaged by Chelsea Solar's dated contract for which the applicant chose not to proceed to application and construction in a timely manner. Chelsea Solar's contract should be declared null and void, freeing up the space for lower cost projects that the market is now producing for the benefit of Vermont ratepayers.

The need for finality of judgment

Chelsea Solar has successfully asserted its rights before the PUC by its excessive litigation and repeated grants of extensions that has unfairly burdened the community and interested parties in which it seeks to operate. The rights of the community which includes Harris, the Apple Hill Homeowners' Association and the Town of Bennington must also be considered as these two contiguous cases drag on with new amended project applications and yet a third request for extension of the Standard Offer contract's commissioning milestone for Chelsea Solar.

Harris contends that the four year dragging on of this project has been a terrible drain on the time and energy of AHHA members, where all homeowners have also been affected by PFOA contamination, which was discovered last year after the PUC denied the CPG for Chelsea Solar and is a new circumstance in this case. Having to deal with this solar project invasion of the neighborhood has created undue extra stresses and concerns about the decline in property values on top of the contamination of their wells upon which they rely for drinking water.

At some point, the PUC must recognize the rights of other parties and their need for finality. If an applicant can come back repeatedly for extensions and amended applications, is there ever any end? Harris contends that "enough is enough" and this is the time to issue a final order that protects the rights and interests of the community by denying the Standard Offer contract commissioning milestone extension and declaring the contract null and void.

Integrity of the Standard Offer Program

In its decision overturning the PUC's initial denial of the Apple Hill Solar project's Standard Offer contract, the Vermont Supreme Court based its ruling on the representations of the applicant, that "the projects will not share common roads, control facilities, or connections to the electric grid."

The applicant has submitted its amended plans for Apple Hill Solar and has issued its 45 day notice for Chelsea Solar. The amended plans show that the projects *will* share a common road, Willow Road. The application materials show that both projects are to be constructed, operated and maintained by the same road. Therefore, Harris contends that one of them should again be rejected as not complying with the requirements of the Standard Offer program as determined by the Vermont Supreme Court in its 2014 decision.

Furthermore, the petition for Chelsea Solar has not been filed with the PUC, and so there is no project to attach to the four-year old Standard Offer contract.

Conclusion

Chelsea Solar unnecessarily waited more than one year before submitting its petition for a CPG. This decision by the applicant used up one year of the two years required for commissioning the project. Chelsea Solar sought and was granted a 10-month extension of the Standard Offer commissioning deadline. Chelsea Solar sought and was granted a 6-month extension of the Standard Offer commissioning deadline.

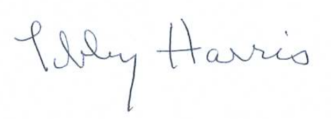
The PUC's Order granting the second extension contained clear language stating, "if no CPG is issued for the proposed project, the Chelsea SPEED PPA shall be null and void and of no further force and effect."

After the full hearing process, the PUC denied a CPG for Chelsea Solar. To ensure the integrity of the PUC process, the PUC must now stand by its March 31, 2016 Order declaring the Chelsea SPEED PPA "null and void and of no further force and effect" because no CPG has been issued.

The applicant has not acted with due diligence or in good faith and has created a situation that threatens the integrity of the Standard Offer program and will result in higher costs to Vermont electricity ratepayers due to the four-year age of the Chelsea Solar Standard Offer bid. Chelsea Solar has not submitted an application and so there is no project to attach to the four-year old Standard Offer contract.

Harris and the surrounding community of Apple Hill seek finality. For that reason and all those expressed above, Harris prays that the PUC deny Chelsea Solar's request for a one-year extension of the commissioning date and instead declare the contract null and void.

By Libby Harris, this 17th day of November, 2017



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