

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 17-5024-PET

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. §248, for a certificate of public good authorizing the installation and operation of the “Chelsea Solar Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont	
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**THE DEPARTMENT OF PUBLIC SERVICE BRIEF
REGARDING SINGLE PLANT ISSUE**

The Department of Public Service (“Department”) submits the following Brief in response to the Public Utility Commission’s (“Commission”) February 14, 2019 Procedural Order Re Additional Briefing. For the reasons set forth below, the Department recommends the Commission continue to treat the Willow Road and Apple Hill projects as separate plants and to keep in place the standard-offer contract.

I. The differences between PC 156 and the Willow Road Project are consistent with the Vermont Supreme Court’s decision in 2014 VT 29.

The Vermont Supreme Court addressed the single plant issue in 2014 *In Re Programmatic Changes to the Standard-Offer Program*, when 30 V.S.A. § 8002 defined a group of facilities as one plant “if the group is part of the same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid.” The Court looked to the plain language of the statute to address whether the Bennington and Apple Hill projects (as detailed in exhibits PC 155 and 156) constituted a single plant, stating that:

The second sentence makes clear that electrical generation facilities are not independent if they share technical features such as equipment and infrastructure. The logical corollary of the second sentence is that facilities that are *not* part of the same project and do not share equipment and infrastructure should be considered separate plants.

In re Programmatic Changes to Standard-Offer Program, 2014 VT 29, ¶ 10, 196 Vt. 175, 180, 95 A.3d 999, 1002-03 (2014).

The Court reasoned that under the plain language of the statute, the Bennington and Apple Hill projects as proposed qualified as “independent technical facilities” because they would “not share common roads, control facilities, or connections to the electric grid,” would have separate interconnection agreements, separate interconnection facilities and would be required to separately obtain a certificate of public good (“CPG”). *Id.* ¶ 12. The Court’s decision stopped short of considering factors such as physical proximity and common ownership to determine whether facilities are separate plants because the statute made no mention of such factors and it was not the intent of the Legislature to include them.¹ *Id.* ¶ 11.

a. The Willow Road and Apple Hill projects continue to qualify as separate, independent plants.

The differences between PC 156 and the Willow Road Project are as follows: first, the interconnection line, originally proposed to be located to the north of the project, is now proposed to be located to the south of the project. Second, access to the project, originally proposed to come from the north utilizing Russet Road in PC 156 and Apple Hill Road in Docket 8302, is now proposed to come from the south utilizing Willow Road.

The differences between PC 156 and the Willow Road Project are consistent with the Vermont Supreme Court’s 2014 decision because the Willow Road and Apple Hill projects as proposed continue to qualify as “independent technical facilities.” Concluding otherwise would

¹ A third sentence was added to the statute by the Vermont Legislature via Act 99 of 2014, which identified those factors the Commission may consider in determining whether a group of facilities is part of the same project: “Common ownership, contiguity in time of construction, and proximity of facilities to each other shall be relevant to determining whether a group of facilities is part of the same project.” 30 V.S.A. § 8002(18). Because the Commission’s questioning is limited to whether the differences between PC 156 and the Willow Road Project are consistent with the Vermont Supreme Court’s decision that was issued before the third sentence was added, the Department does not address those factors for purposes of this brief.

be contrary to the plain language of the statute. The projects will not share common roads, control facilities, or connections to the electric grid. They will also have separate interconnection agreements, separate interconnection facilities, and are required to separately obtain a CPG. Brad Wilson, Chelsea Solar, LLC pf (8/10/18) at 30. Finally, both projects are required to have separate standard-offer contracts.

The projects do not share infrastructure even though both are accessed from Willow Road. While they will use the same public road, the projects are located at different points along the road and will use different access points from that road. Accordingly, the projects do not in fact share common infrastructure.² *See Investigation into programmatic adjustments to the standard-offer program*, Order of 10/20/17 at 12 (“Otter Creek represents that the facilities do not use common equipment and infrastructure because each facility will have separate equipment, *access roads*, and interconnection points... Therefore, the Commission finds that the Otter Creek 2 project is a separate plant under Section 8002(18).”) (emphasis added)).

² The Department notes that the access point for the project has changed numerous times to accommodate concerns expressed by adjacent landowners. A brief explanation is below.

As part of its standard-offer contract Exhibit PC 156, Ecos Energy LLC depicted access to the project via Russet Drive on the northern boundary of the property.

In Docket 8302, Petitioner proposed to access the project via Apple Hill Road at the northeastern boundary of the property. As part of a collaborative effort with adjacent landowners, the project plans were subsequently amended and provided for access to the project via Willow Road along the southern border of the property for construction and access via Apple Hill Road for post construction operation. (“These modifications were the result of Petitioner and the [Apple Hill Homeowners] Association working together to identify changes that could be made to the Project site design in order to increase the Project’s compatibility with the Association’s preferences and wishes.”) Wilson pf. (9/26/14) at 9.

In Case No. 17-5024-PET, Petitioner proposed to access the project via Willow Road for both construction and post-construction operations. Wilson pf. (11/27/17) at 6. At the request of adjacent landowners, Petitioner amended the access plans, proposing to maintain Willow Road as the access point for construction, but using Apple Hill Road for post-construction operations. (“This alternative access scenario addresses the concern raised by neighbor Libby Harris...Project site preparation and construction traffic would continue to utilize Willow Road as requested by Libby Harris and the Apple Hill Homeowners Association...”). Wilson pf. (2/14/18) at 2.

Although it is correct to state that both projects interconnect via the same line extension, three additional factors must be considered. First, the projects will have separate connections to the electric grid. Second, the projects will have separate interconnection agreements in place. Finally, each project will have its own interconnection facilities. Such separation effectively limits the capacity of each project to 2.0 MW and therefore qualifies the projects as “independent technical facilities” consistent with the Supreme Court’s 2014 decision. (“Under the plain language of the statute...the projects would qualify as “independent technical facilities”...Each of the projects will have a separate interconnection agreement with [the utility] and separate interconnection facilities designed and owned by [the utility], which would limit the capacity of each to 2.0 MW.” 2014 VT 29, ¶ 12).

II. The differences between PC 156 and the Willow Road Project do not merit amendment to the standard-offer contract.

The Commission has previously determined that “[w]hen entering the queue, the plant owner must have a legitimate project to be developed. Accordingly, the location, technology type, and interconnecting utility cannot be changed from the time that the project enters the queue.” *Investigation Re: Establishment of a Standard Offer Program*, Docket 7533, Order of 10/16/09 at 7. The standard-offer program no longer has a queue, but the principle remains the same: a project proponent must have a legitimate project to be developed if awarded a standard-offer contract. *Request of Triland Partners LP to amend standard offer contract*, Docket 8801, Order of 8/29/16 at 2.

In order to effectuate this principle, the Commission has included the following language in standard-offer contracts: “Producer shall construct the Project at the location and in a manner substantially consistent with the description set forth in Attachment A.” Standard-offer contract at 6, ¶11. This requirement is intended to prevent contracts from being awarded to “undefined or

nascent projects” at the expense of more mature projects. *Request of Star Wind Turbines, LLC to amend standard-offer contracts*, Docket 8720, Order of 4/14/16 at 6.

One instance in which the Commission will alter a standard-offer contract is where the capacity of a project changes during development. The Commission has held that in order to be eligible to alter the capacity of a project by more than 5%, “the producer must demonstrate that there are legitimate engineering reasons why the project cannot be built to the capacity indicated in Attachment A and that the capacity included as Attachment A was not simply a placeholder.” Docket 7533, Order of 7/7/11 at 11. Further, it is generally the practice of the Commission to prohibit a change in location for a standard-offer project when the request is based primarily on community opposition to the location. Docket 8720, Order of 4/14/16.

The Commission has reserved the right to make amendments to standard-offer contracts where such amendments are found to be in the public interest, provided that: (1) such amendment does not result in any reduction in the project’s economic value to producer; (2) such amendment will not adversely affect producer’s ability to meet the project’s financial obligations; (3) such amendment will not impose additional operational or other economic costs on producer without full compensation; (4) the amendment results in a benefit to ratepayers; and (5) the parties are given notice and an opportunity to be heard by the Commission. Docket 8801, Order of 8/29/16 at 2-3.

Here, the Willow Road project is proposed to be constructed in a manner substantially consistent with the description put forth in Attachment A of the standard-offer contract because: (1) the capacity of the project is proposed to remain the same; (2) the proposed location of the project has not changed; and (3) the interconnecting utility has not changed. Petitioner continues to represent that the capacity of the project will remain 2.0 MW, that the location of the facility

will remain along Willow Road in Bennington, and that the interconnecting utility continues to be Green Mountain Power. This has remained the case since 2013, when Ecos Energy LLC filed PC 155 and 156 with the Vermont Supreme Court. Therefore, the changes between what was proposed in the 2014 standard-offer Vermont Supreme Court case and what was proposed in this Section 248 case are not so significant as to require an amendment to the standard-offer contract.

What has changed is not related to the standard-offer contract; rather, it is related to the proposed site plans that are addressed via the Section 248 permitting process. The footprint of the project, originally proposed to be 15 acres, has been modified to 9.64 acres. In order to accommodate the change in footprint, the equipment for the project has changed so as to maintain capacity of 2.0 MW. Further, the access points to the project have changed in order to accommodate concerns of adjacent landowners. These differences are not part of the standard-offer contract and therefore do not merit its amendment.

It is for these reasons that an amendment to the standard-offer contract should not be required, no additional filings by the parties should be made and no other determination by this Commission should be made.

III. Conclusion

For the foregoing reasons, the Department recommends the Commission continue to qualify the Willow Road and Apple Hill projects as separate plants and refrain from requiring an amendment to the standard-offer contract, any other additional party filings, or any other Commission determination.

Dated at Montpelier, Vermont, this 1st day of March, 2019.

Vermont Department of Public Service

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cc: Service List