

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 20-1261-NMP

---

Petition of MHG Solar LLC for a certificate of public good, pursuant to 30 V.S.A. §§ 8010 and 248, to install and operate a 500 kW group net-metered solar electric generation facility in Manchester, Vermont	
--	--

---

Order entered: 08/27/2020

**PROCEDURAL ORDER GRANTING INTERVENTION AND THE  
DEPARTMENT’S REQUEST FOR ADDITIONAL TIME**

**I. INTRODUCTION**

This proceeding concerns an application filed by MHG Solar LLC (“Applicant”) with the Vermont Public Utility Commission (“Commission”) for a certificate of public good (“CPG”) to construct and operate a 500 kW solar group net-metering system in Manchester, Vermont (the proposed “Project”).

In this order, the Commission grants the request of the Department of Public Service (the “Department”) for additional time to retain a consultant to review the Project’s aesthetic impact. The Department is requested to file a schedule for the completion of its independent review. The Commission also grants the intervention requests of Glenn Cestaro, Timothy and Dody Boucher, Mary Fran and Joseph H. Charbonneau, Cosmo Penge, and Mark Slade (collectively the “Intervenors”). The Division for Historic Preservation is also granted party status.

**II. PROCEDURAL HISTORY**

On May 19, 2020, the Applicant filed a net-metering application for the Project.

On May 27, 2020, the Commission issued a memorandum deeming the Applicant’s application complete. The deadline for comments, motions to intervene, and requests for hearing was set as June 26, 2020.

On June 9, 2020, Glenn Cestaro filed a motion to intervene.

On June 16, 2020, Timothy and Dody Boucher filed a motion to intervene.

On June 24, 2020, the Agency of Natural Resources (“ANR”) filed comments on the Project.

On June 25, 2020, Joseph H. Charbonneau filed a motion to intervene.

On June 25, 2020, Richard Cody filed public comments on the Project.

On June 26, 2020, Anne Lemke filed public comments on the Project.

On June 26, 2020, Cynthia Bush filed public comments on the Project.

On June 26, 2020, the Department filed comments on the Project.

On June 26, 2020, the Agency of Agriculture, Food and Markets (“AAF”) filed comments on the Project.

On June 26, 2020, Cosmo Penge filed a motion to intervene.

On June 26, 2020, the DHP filed a motion to intervene and a request for additional time to comment.<sup>1</sup>

On June 29, 2020, Mark Slade filed a motion to intervene.

On July 10 and 27, the Applicant advised the Commission that it was working to respond to the issues raised by ANR and preparing a response to the comments of the Intervenor.

On August 11, 2020, the Applicant filed reply comments, a revised site plan, and supplemental testimony.

### **III. MOTIONS TO INTERVENE**

Commission Rule 5.117 provides specific rules governing party status in net-metering cases. Commission Rule 5.117(B)(3) provides that certain entities and adjoining landowners will be granted party status by the Commission upon the filing of a notice of intervention. All others seeking party status in the review of a net-metering application must file a motion pursuant to Commission Rule 2.209, which governs intervention in Commission proceedings generally.

Rule 2.209(A) provides that upon timely application a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or

---

<sup>1</sup> On July 10, 2020, the Applicant filed a stipulation between the Applicant and the DHP. Accordingly, the motion for additional time is moot.

- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis when an applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." In exercising its discretionary authority under this provision, the Commission considers three factors:

- (1) whether the applicant's interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant's interest can be protected;
- and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Rule 2.209(C) further provides that the Commission may impose certain restrictions on an intervenor's participation in a proceeding. Specifically, the Commission may restrict such party's participation to only those issues in which the party has demonstrated an interest; may require such party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters; or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

The Intervenors are all residents of Manchester and live near or adjacent to the Project site. The Intervenors seek intervention based on aesthetic, potential flooding, and property-value-diminution concerns. Mr. and Mrs. Boucher and Mr. and Mrs. Charbonneau are adjoining landowners who are entitled to intervene as of right pursuant to Commission Rule 5.117(B)(3). Mr. Cestaro, Mr. Penge, and Mr. Slade are nearby landowners who have requested permissive intervention pursuant to Commission Rule 2.209(b). The Applicant has not objected to any of the intervention motions, including Mr. Slade's, which was filed after the intervention deadline. Based on the information contained in the motions, the Commission finds that the Intervenors have demonstrated a substantial interest that may be affected by the outcome of this proceeding that cannot be adequately protected by other parties or in another proceeding. The participation

of the Intervenor's will not unduly delay this proceeding. Accordingly, all of the Intervenor's motions are granted.<sup>2</sup>

The DHP is entitled to intervene as of right pursuant to Commission Rule 5.117(B)(3). Accordingly, the DHP's motion is granted.

#### **IV. SUMMARY OF COMMENTS AND DISCUSSION**

ANR submitted comments addressing the Project's potential effect on floodways, streams, wetlands, rare wood turtles, and groundwater source protection areas. ANR also requested additional information from the Applicant about the potential presence of a stream on the Project site and the Project's limits of disturbance. Provided that ANR receives the requested information, ANR recommended conditions of approval to address the issues raised in its comments.

AAFM commented on the Project's potential effects on primary agricultural soils. AAFM proposed four conditions of approval to address this issue.

The Commission also received several public comments and motions to intervene. These filings addressed three topics: (1) aesthetics, (2) flooding issues, and (3) property values. According to the Intervenor's, the Project will be highly visible from Richville Road and the proposed mitigation is inadequate to screen the Project. Some of the Intervenor's and public comments also asserted that the Project site is prone to flooding and that the Project could increase flood damage. The Intervenor's did not request a hearing or opportunity to present evidence.

In light of the public comments and the issues raised by the Intervenor's, the Department requested additional time to retain an aesthetics expert to conduct an independent review of the Project pursuant to 30 V.S.A. § 20(a)(1)(C).

In its August 11, 2020, reply comments, the Applicant represented that it had provided the requested information to ANR and that it does not object to the conditions proposed by ANR

---


<sup>2</sup> With respect to the Intervenor's concerns regarding their property value, the Commission's jurisdiction in this proceeding is limited to review of the Project under the relevant Section 248 criteria. This proceeding will not address the impact of the Project on individual property values, except to the extent that the aggregate impact of the Project on property values in the region may bear on the overall economic benefit analysis of the Project.

and AAFM. The Applicant submitted a revised site plan showing the information requested by ANR and a revised proposed certificate of public good that included the conditions requested by the State agencies. The Applicant responded that an additional aesthetic review is unnecessary and not a prudent use of resources because the Applicant believes that it has appropriately mitigated the aesthetic impact of the Project.

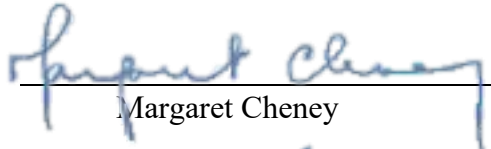
Based on the comments received, the request of the Department, and the response of the Applicant, the Commission finds that it is appropriate for the Department to conduct an independent evaluation of the Project. Accordingly, the Department's request for additional time to engage a consultant is granted. The Commission requests that the Department file a schedule for the completion of its review. The Commission also requests that the Department's consultant explain whether it is necessary for the Commission to see visual simulations of the proposed vegetative screening at the time it is planted and when the vegetative screening reaches maturity. If visual simulations are not necessary, the Department's consultant should explain why not. The other parties will have an opportunity to file comments two weeks after the Department files its consultant's report. Based on the results of the Department's review and the comments of the parties, the Commission will decide whether the application raises a significant issue with respect to aesthetics that would warrant an evidentiary hearing on the application.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 27th day of August, 2020.

  
\_\_\_\_\_)  
Anthony Z. Roisman )

PUBLIC UTILITY

  
\_\_\_\_\_)  
Margaret Cheney )

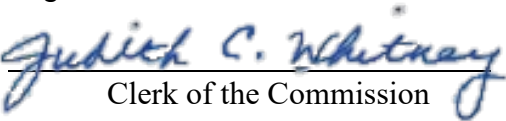
COMMISSION

  
\_\_\_\_\_)  
Sarah Hofmann )

OF VERMONT

OFFICE OF THE CLERK

Filed: August 27, 2020

Attest:   
Clerk of the Commission

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov))*

PUC Case No. 20-1261-NMP - SERVICE LIST

Parties:

Kevin Anderson (for Vermont Agency of Natural Resources)  
Vermont Agency of Natural Resources  
1 National Life Drive  
Davis 2  
Montpelier, VT 05620-3901  
Kevin.Anderson@vermont.gov

^Timothy Boucher, *pro se*  
125 Valley Pass  
Manchester Center, VT 05255  
dtboucher@yahoo.com

^Glenn Cestaro, *pro se*  
107 Valley Pass Rd  
Manchester Center, VT 05255  
glenncestaro@comcast.net

^Joseph H Charbonneau, *pro se*  
374 Green Mountain Road  
Manchester Center, VT 05255  
jos.charbonneau@gmail.com

Eric B. Guzman (for Vermont Department of Public Service)  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620  
eric.guzman@vermont.gov

Thomas Hand (for MHG Solar, LLC)  
PO BOX 1204  
Manchester Center, VT 05255  
thomas@mhgsolar.com

^Maxwell I Krieger, Esq. (for Vermont Division for Historic Preservation)  
Vermont Division for Historic Preservation  
One National Life Drive, Davis Bldg., 6th  
Floor  
Montpelier, VT 05620-0501  
maxwell.krieger@vermont.gov

^Cosmo Penge, *pro se*  
328 Green Mountain Road  
Manchester Center, VT 05255  
dom@manchestercarpetcare.com

Andrew N. Raubvogel, Esq.  
Dunkiel Saunders Elliott Raubvogel & Hand,  
PLLC  
91 College Street  
P.O. Box 545  
Burlington, VT 05402-0545  
araubvogel@dunkielsaunders.com

(for MHG Solar, LLC)

Zoë Sajor  
Dunkiel Saunders Elliott Raubvogel & Hand,  
PLLC  
91 College Street, P.O. Box 545  
Burlington, VT 05402-0545  
zsajor@dunkielsaunders.com

(for MHG Solar, LLC)

^Mark William Slade, *pro se*  
146 Carlen St  
Manchester Center, VT 05255  
mkwslade@gmail.com