

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	
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Order entered: 02/23/2021

PROCEDURAL ORDER RE: SIGNIFICANT ISSUES AND NOTICE OF SCHEDULING CONFERENCE

I. INTRODUCTION

This case involves an application filed by MHG Solar, LLC (“Applicant”) with the Vermont Public Utility Commission (“Commission”) for a certificate of public good (“CPG”), pursuant to 30 V.S.A. §§ 248 and 8010, to install and operate a 500 kW solar group net-metering system off Richville Road in Manchester Town, Vermont (the proposed “Project”).

In this order, the Commission finds that significant issues exist in this case regarding orderly development and aesthetics and determines that a hearing will be convened to review these issues.

II. PROCEDURAL HISTORY

On May 19, 2020, the Applicant filed an application for the Project with the Commission. Notice and copies of the application have been provided pursuant to Commission Rule 5.100. The deadline for filing comments or requesting a hearing in this matter was June 26, 2020.

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

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

On June 24, 2020, the Agency of Natural Resources (“ANR”) filed comments on the Project. ANR requested additional information from the Applicant about a potential stream on the Project site and recommended several conditions of approval. Provided that the Applicant responded satisfactorily to ANR’s information request, ANR recommended that the Commission

find that the Project does not raise a significant issue with respect to the environmental criteria of Section 248(b)(5).

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

On June 26, 2020, the Department of Public Service (“Department”) filed comments on the Project. The Department recommended that it conduct an independent assessment of the Project’s effect on aesthetics.

On June 26, 2020, the Division for Historic Preservation filed a motion to intervene.

On June 26, 2020, the Agency of Agriculture, Food and Markets (“AAF”) filed comments on the Project. AAFM recommended four conditions of approval to mitigate potential impacts to primary agricultural soils.

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

On June 29, 2020, Mark Slade filed a notice of intervention.

On August 11, 2020, the Applicant filed reply comments.

On August 27, 2020, the Commission issued a procedural order granting the Department’s request for additional time to conduct an independent aesthetics review. All pending motions to intervene were granted.

On October 23, 2020, the Department requested additional information from the Applicant.

On December 30, 2020, the Department filed its aesthetic report. The Department recommended that the Commission grant a CPG to the Applicant, subject to conditions.

Between December 24, 2020, and January 11, 2021, the Commission received 14 written comments from intervenors and members of the public regarding the Project.

On January 5, 2021, the Applicant responded to the comments of the intervenors and the public and the Department’s aesthetic report.

III. SUMMARY OF COMMENTS

The Commission received numerous comments from the intervenors as well as members of the public in opposition to the Project. The commenters are primarily concerned about the aesthetic impact of the Project on the residential neighborhood that is on the opposite side of

Richville Road. The comments also expressed concern that the Project would decrease property values of nearby residences.

The comments also disagreed with the conclusions in the Department's aesthetic report. According to the comments, the issue with the Project is not whether the Project will block views of the Taconic Mountains but the fact that the Project will be visible from Richville Road and the adjacent residential neighborhood. Other comments also expressed concern that the proposed plantings would not be mature until 20 years and requested that any visual mitigation be 6 to 7 feet tall at the time of planting. Some comments also stated that the Project site is prone to flooding.

IV. DISCUSSION

Based on our review of the application materials and the comments received, we find that the application raises a significant issue with respect to the orderly development criterion under Section 248(b)(1).¹ According to the Regional Plan, "Commercial-scale solar energy facilities occupy large open areas and should not be sited at important gateway locations or in the foreground of viewsheds that have been identified by communities as being of particular value."² The Applicant contends that the Project site is consistent with this policy because the Project would not be located in a gateway area or viewshed identified as being of particular value.³

The Manchester Town Plan states that "[o]ther roads in Manchester also provide such scenic amenities, including . . . Richville Road. . . . Public or private actions which would impact these roads must be carefully evaluated, and development must be planned to minimize adverse impacts."⁴ The Project would occupy the foreground of views of Equinox Mountain, and the Town of Manchester requested that the Project's aesthetic mitigation be limited in height so that it would not obstruct those views.⁵ For these reasons, the Commission needs to examine

¹ The hearing will not address impacts on individual property values, as "the Commission's jurisdiction in this proceeding is limited to review of the Project under the relevant Section 248 criteria." Petition of T&M Enterprises, Inc., No. 19-2842-NMP, 2019 WL 5085471, at *2 (Oct. 1, 2019) (citing *Vermont Electric Power Co. v. Bandel*, 135 Vt. 141, 145 (1977)); *see also id.* ("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.").

² Exh. MGH-TH-8 at 115.

³ Prefiled Testimony of Thomas Hand, Applicant ("Hand") at 11-12.

⁴ Manchester Town Plan at 30.

⁵ Hand pf. at 10.

whether the Project would be located in the foreground of a viewshed identified by the Town of Manchester as being of particular value and, therefore, is inconsistent with the provision of the Regional Plan discussed above. A hearing will provide an opportunity for the Commission to investigate the Project's consistency with the relevant portions of the Regional Plan and whether any portion of the Regional Plan constitutes a specific policy that the Commission is required to give substantial deference to.

The Commission also finds that the Project raises a significant issue with respect to aesthetics. The Project would be in close proximity to Richville Road and would be visible from the public right-of-way and several adjoining residences. The Project would also be in the foreground of views of Equinox Mountain. A hearing will allow the Commission to investigate whether the Project would have an undue adverse effect on aesthetics and whether the Applicant's proposed mitigation plan is reasonable.

In our August 27, 2020, Order, we requested that the Department's consultant explain whether any visual simulations of the proposed mitigation plan were necessary to evaluate the Project's aesthetic impact. In a report dated December 5, 2020, the Department's consultant concluded "that additional analyses will assist the Commission in evaluating the Petitioners' submittal and further understanding potential visual impacts."⁶ However, according to the consultant, the Applicant's "line-of-sight analysis" was sufficient to evaluate the Project's effect on views of Equinox Mountain.⁷

The Commission agrees with the consultant that the line-of-sight analysis is relevant to evaluating whether the Project's aesthetic mitigation will obstruct views of Equinox Mountain. However, the Project's visibility from Richville Road and the effectiveness of the proposed aesthetic mitigation are of equal importance in this case due to the proximity of the Project to the road and the lack of natural screening. The Commission has reviewed the consultant's report and the application materials and finds that a visual simulation of the Applicant's proposed aesthetic mitigation at the time it is planted and when the vegetative screening reaches maturity is necessary to evaluate the Project's aesthetic impact due to the potential for significant visual

⁶ Exh. DPS-1 at 7.

⁷ *Id.*

impacts. The timing of the submission of such analyses will be determined by the Hearing Officer.

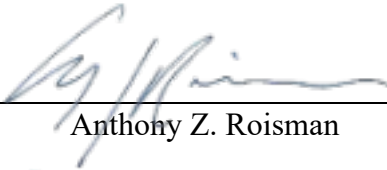
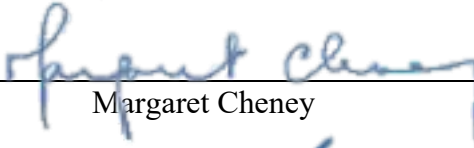
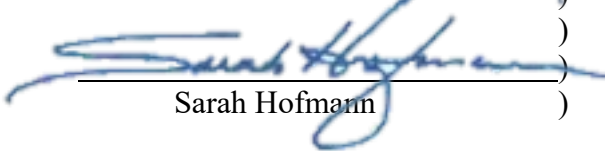
V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission (“Commission”) that:

1. Pursuant to 30 V.S.A. § 8010 and Commission Rule 5.100, the Commission determines that significant issues exist with respect to 30 V.S.A. §§ 248 (b)(1)(orderly development) and (b)(5)(aesthetics), and a hearing on these issues is warranted.
2. Pursuant to 30 V.S.A. § 8, Jake Marren, Esq., is appointed to serve as the Hearing Officer in this proceeding.
3. Pursuant to 30 V.S.A. § 10, a Scheduling Conference⁸ will be held before the Hearing Officer on March 11, 2021, commencing at 1:30 P.M. via GoToMeeting conference. Participants and members of the public may access the oral argument online at <https://global.gotomeeting.com/join/882562501> or call in using the following information: Phone Number: +1 (571) 317-3129; Access Code: 882-562-501 Participants may wish to download the GoToMeeting software application in advance of the workshop at <https://global.gotomeeting.com/install/882562501>. Guidance on how to join the meeting and system requirements may be found at <https://www.gotomeeting.com/meeting/online-meeting-support>. The parties should come prepared to discuss an appropriate process and a schedule for this proceeding.


⁸ Pursuant to 30 V.S.A. §§20 and 21, the Petitioner will be responsible for court reporter costs incurred by the Commission as a result of this scheduling conference. Invoices for these costs will be mailed to the attorney(s) of record or the official representative(s) for the Petitioner.

Dated at Montpelier, Vermont, this 23rd day of February, 2021.

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_____ Anthony Z. Roisman)	PUBLIC UTILITY
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)	
_____ Margaret Cheney)	COMMISSION
)	
)	
_____ Sarah Hofmann)	OF VERMONT

OFFICE OF THE CLERK

Filed: February 23, 2021

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)

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

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