

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Petition of DG Vermont Solar, LLC,            )  
pursuant to 30 V.S.A. § 8005a(j)(2), for an    )  
amendment to the Standard Offer Contract    )  
between DG Vermont Solar, LLC and            )  
VEPP, Inc., the Standard Offer Facilitator    )

Case No. \_\_\_\_\_

**PETITION TO EXTEND COMMISSIONING MILESTONE  
UNDER STANDARD-OFFER CONTRACT**

By this Petition, pursuant to 30 V.S.A. § 8005a(j)(2), DG Vermont Solar, LLC (“DG Vermont Solar” or “Petitioner”) requests that the Public Utility Commission (“Commission”) issue an order amending its standard-offer contract for the Ethan Allen Solar Project by extending the contract’s commissioning milestone to November 1, 2022.

In support of this Petition, DG Vermont Solar represents:

1. The Ethan Allen Solar Project is a proposed approximate 2.2 megawatt (“MW”) alternating current (“AC”) ground mounted solar generation facility located at 1125 Sheldon Road, St. Albans, Vermont. (“Ethan Allen Project” or “Project”), for which DG Vermont Solar filed a petition for a certificate of public good that is being reviewed in **Case No. 21-1051-PET**.

2. VEPP Inc., the Standard-Offer Facilitator, and DG Northeast 1, LLC executed a standard-offer contract on November 13, 2019 (the “Project PPA”). All rights, title, interest, liabilities, duties, and obligations of DG Northeast 1, LLC under the Project PPA were assigned to the Petitioner on July 21, 2020. A copy of the Project PPA is attached hereto as Petition Attachment A.

3. Pursuant to Section 7 of the original Project PPA, the Ethan Allen Project must meet two milestones for the Project PPA to remain in full force and effect. First, the Ethan Allen

Project had to file a complete application for a certificate of public good pursuant to 30 V.S.A. § 248 (“Section 248”) with the Commission by November 12, 2020. In addition, the Project must be commissioned by November 12, 2021.

4. On September 22, 2020, Petitioner filed a request to extend the application and commissioning milestones in the Project PPA.

5. On November 5, 2020, the Commission granted the motion in part, amending the Project PPA to extend the application milestone to March 15, 2021. The Commission instructed that DG Vermont Solar “should renew its motion for an extension of its commissioning milestone in the Section 248 petition case.” Case No. 20-2716-PET, Order of 11/05/20 at 8.

6. The Commission may extend the commissioning milestone “if it finds the plant owner has proceeded diligently and in good faith and that the commissioning of the plant has been delayed because of litigation or an appeal or because of the need to obtain an approval the timing of which is outside the Commission’s control.” 30 V.S.A. § 8805a(j)(2).

7. Applying this standard, the Commission found that “Petitioner’s extensive efforts to develop the Project, detailed above, demonstrate that it has pursued the Project diligently and in good faith.” Case No. 20-2716-PET, Order of 11/05/20 at 5.

8. The Commission also determined that “the unique circumstances of the pandemic have delayed the filing of a complete Section 248 petition, making Commission approval and completion of construction within the current milestone very challenging.” Therefore, Commission concluded that “the Project has been delayed by the need to obtain an approval, the timing of which is outside the Commission’s control,” for purposes of extending the commissioning milestone under 30 V.S.A. § 8805a(j)(2). Case No. 20-2716-PET, Order of 11/05/20 at 5.

9. While the Commission advised it was “likely to grant a reasonable extension of the commissioning milestone,” a renewed motion was appropriate to “allow the Commission to

determine the length of the extension based on the time needed to complete the Section 248 review and commission the Project, taking seasonal construction restrictions and any other relevant scheduling issues under consideration.” Case No. 20-2716-PET, Order of 11/05/20 at 6.

10. Since the Commission’s order extending the application milestone, Petitioner has continued to work with diligence and good faith to develop the Project. During this time, the Petitioner utilized prior completed natural resources and existing conditions assessment completed to finish detailed site plans to support the CPG petition. The Petitioner also completed detailed analysis and reporting as part of the field/database natural resource assessments, historic resources assessments, sound assessments, primary agricultural soils impact assessments, visual/aesthetic impact assessments, and coordinated with the Agency of Natural Resources and other stakeholders.

11. On March 11, 2021, DG Vermont Solar filed a petition seeking Section 248 approval of the Project.

12. DG Vermont Solar has diligently engaged in the Section 248 proceeding (in Case No. 21-1051-PET) in an effort to resolve contested issues with the parties in a timely and effective manner. These efforts have included responding to discovery requests On May 17, 2021, from the Agency of Natural Resources (“ANR”) as well as the Agency of Agriculture, Food, and Markets (“AAFM”) regarding environmental concerns and soil impacts, respectively. Petitioner has also provided supplemental information to ANR and AAFM through informal exchanges of information as part of settlement discussions, which included another site visit with the ANR wetland program.

13. Since responding to the discovery, Petitioner has continued to work with AAFM and ANR on developing terms of proposed stipulations with each party. Despite the parties’ diligent efforts, the timeline for finalizing the stipulations has been prolonged in part due to scheduling conflicts among the participants over the summer months, including for the scheduling of a site visit requested by the ANR in May 2020, and additional time for responses to supplemental

information provided by the Petitioner to support the proposed wetland classifications included in the Petition.

14. Under the most recent Procedural Order in Case No. 21-1051-PET, the deadline for filing stipulations and supplemental prefiled testimony is September 8, 2021. Petitioner and the other parties have made progress on negotiations with that deadline in mind, but it is unable to guarantee such stipulations will be finalized at that point.

15. In addition, as discussed in its prior Petition to Extend, DG Vermont Solar is continuing to work with VTrans (and the Federal Highway Administration, as necessary) regarding plans and approvals associated with the Project access. Access to the site affects a number of State agencies/departments, given the rail trail being present and the proposed maintenance road to access the site travels through a State controlled access right-of-way (“C.A.R.O.W.”). The intent is to utilize an existing easement in place through C.A.R.O.W., which specifies the existing access road can be utilized for agricultural purposes. The Petitioner with VHB’s support has submitted a request with the State (and FHWA) to clarify the agreement and other documents necessary for the agreement to note use for future solar maintenance operations as well as agricultural use. Neither Petitioner nor VHB have heard back from the State regarding the request. Petitioner understands the State’s R.O.W. division is extremely backed up and understaffed, which may be a reason for the delay.

16. Once the CPG is issued, Project construction is and commissioning is expected to take up to six months. This estimate does not account for any seasonal delays.

17. Given the above circumstances, the Commission will not be in a position to issue a CPG with enough time to commission the Project by the current deadline of November 12, 2021.

18. Even if this case is fully resolved in September, with stipulations and a proposal for decision having been filed, it is possible that the final order and CPG may not issue until the

November timeframe. Under that optimistic scenario, it is likely that construction would not start until the 2<sup>nd</sup> Quarter 2022 due to Vermont winter conditions. Construction and commissioning is expected to take up to 6 months. Thus, DG Vermont Solar requests to extend the commissioning date to November 1, 2022, to ensure construction and commissioning of the Project is completed by this newly approved milestone date.

19. Lastly, consistent with Section 31 of the Project PPA, approval of the requested amendments: (1) will not result in any reduction in the Project's economic value to DG Vermont Solar; (2) will not adversely affect but rather assist DG Vermont Solar's ability to meet the Project's financial obligations; (3) will not impose additional operational or other economic costs on DG Vermont Solar without full compensation; (4) will benefit ratepayers by permitting the filing of complete CPG application for review by the Commission and the ultimate commissioning of the Project; and (5) VEPP has been given notice of the proposed amendments and will have an opportunity to be heard by the Commission.

For these reasons, Petitioner respectfully asks that the Commission amend the Project PPA to extend the commissioning milestone to November 1, 2022.

DATED at Lebanon, New Hampshire, this 27<sup>th</sup> day of August, 2021.

DG VERMONT SOLAR, LLC

By its attorneys,



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