

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: 11/19/2021

**ORDER DENYING REQUEST FOR RECONSIDERATION**

**I. INTRODUCTION**

On September 17, 2021, the Vermont Public Utility Commission denied the petition of MHG Solar, LLC (“Applicant”) 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 (the “Project”). On October 15, 2021, the Applicant filed a letter requesting reconsideration of the Commission’s decision. Responses to the request were filed on November 5, 2021, by the Department of Public Service (“Department”) and Mark Slade, Joseph Charbonneau, Timothy Boucher, Glenn Cestaro, and Cosmo Penge (collectively the “Intervenors”).<sup>1</sup>

In today’s Order we deny the Applicant’s request for reconsideration.

**II. DISCUSSION**

The Commission reviews requests for reconsideration pursuant to Rule 59(e) of the Vermont Rules of Civil Procedure, which is applicable to Commission proceedings pursuant to Commission Rules 2.103 and 2.105. Reconsideration is appropriate only to avoid an unjust result “due to mistake or inadvertence of the Commission, as opposed to that of a party.”<sup>2</sup>

---

<sup>1</sup> The Commission also received several public comments urging the Commission to reconsider its decision for the same reasons given by the Applicant. The Commission received one public comment opposing the request for reconsideration.

<sup>2</sup> *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588, 674 A.2d 782 (1996) (citing *Osborn v. Osborn*, 147 Vt. 432, 433 (1986) and *In re Kostenblatt*, 161 Vt. 292, 302 (1994)).

The disposition of a reconsideration motion rests with the discretion of the Commission.<sup>3</sup> In addressing a Rule 59(e) motion, the Commission “may reconsider issues previously before it, and generally may examine the correctness of the judgment.”<sup>4</sup> Relief pursuant to Rule 59 is an extraordinary remedy that is to be used with great caution.<sup>5</sup> Rule 59(e) recognizes the Commission’s broad power to alter or amend a judgment. However, Rule 59 does not permit parties to relitigate issues or correct previous tactical decisions.<sup>6</sup> A party’s mere disagreement with the Commission’s decision is not grounds for reconsideration.<sup>7</sup>

The Applicant states that the Commission’s decision gave undue weight to the Project’s aesthetic impact, and not enough weight to the Project’s societal benefits. The Applicant estimates that it will take approximately 120 acres of land to build the amount of solar necessary to replace fossil fuels in the town of Manchester. Therefore, the Applicant contends that “[t]ackling climate change and making renewable energy generation invisible are not compatible goals in a state like Vermont.”

The Applicant contends that the average person in Vermont is aware of climate change and is willing to account for the visual impacts of solar energy projects in day-to-day life. The Applicant argues that the town of Manchester needs as many as 30 or more solar facilities comparable in size to the Project to meet State energy goals and “it is not possible to make them all invisible.” The Applicant asserts that the average person would expect “all Vermonters to participate in difficult but necessary compromises to reach renewable energy solutions.”

The Department and the Intervenors oppose the request for reconsideration. They contend that the request merely reiterates the Applicant’s previous arguments and that the Applicant has not demonstrated that the Commission failed to consider those arguments or erred in its application of the law.

---

<sup>3</sup> *Petition of Vermont Transco LLC, et al.*, Case No. 17-3808-PET, Order of 5/9/18 at 3 (citing *Alden v. Alden*, 187 Vt. 591, 592 (2010)).

<sup>4</sup> *Id.* (citing *Drumheller v. Drumheller*, 185 Vt. 417, 432 (2009)).

<sup>5</sup> *Petition of Vermont Gas Systems, Inc. for authority to condemn easement rights in property interests of the Town of Hinesburg, Vermont, at Shelburne Falls Road, Hinesburg, Vermont, for the purpose of constructing the pipeline authorized in Docket 7970, Docket 8643*, Order of 11/3/16 at 1.

<sup>6</sup> *Id.* (citing *In re Cent. Vt. Pub. Serv. Corp.*, Docket Nos. 6946/6988, Order of 5/25/05 at 3).

<sup>7</sup> *Investigation to consider revising maximum and minimum water levels at Great Averill Pond, Little Averill Pond, and Norton Lake in the towns of Averill, Norton, and Warren’s Gore, Vermont*, Docket No. 8429, Order of 12/21/17 at 6.

The Commission agrees with the Applicant that substantial new renewable energy resources must be developed in Vermont to address climate change and that siting these new resources results in visual impacts. We also agree that the average Vermonter understands the need for renewable energy projects and will accept well-sited projects even where there are aesthetic impacts. But by Vermont law, a proposed energy facility cannot be built unless it meets all of the statutorily imposed Section 248 criteria, which include aesthetics as well as impacts on the natural environment and a host of other considerations.

The Applicant's argument incorrectly suggests that the Commission denied a CPG in this case because the Project is merely visible to the public and adjoining landowners. The Commission does not require renewable energy to be invisible. The Commission has approved hundreds of commercial-sized solar projects such as this one, the vast majority of which are in locations that are visible to the public and adjoining landowners. In each case, Vermont's siting statute has required the Commission to find that a proposed generation facility "will not have an undue adverse effect on aesthetics."<sup>8</sup> This case is the very rare one where the aesthetic impact of the Project would be undue because of the Project's size, its proximity and visibility to a number of residences directly across the street from the Project, its context with the immediate surroundings, and its lack of effective mitigation.<sup>9</sup> The Applicant has not demonstrated any mistake or inadvertence on our part in reaching this conclusion. Accordingly, the Applicant's request for reconsideration is denied.

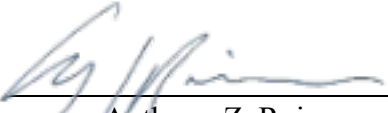
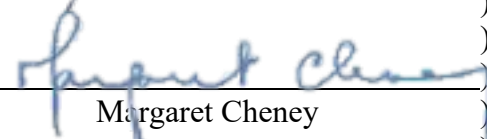
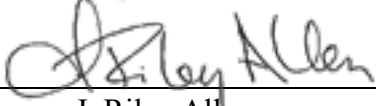
**SO ORDERED.**

---

<sup>8</sup> 30 V.S.A. § 248(b)(5).

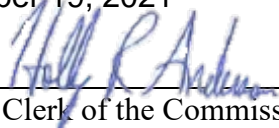
<sup>9</sup> Order of 9/17/2021 at 41-46.

Dated at Montpelier, Vermont, this 19th day of November, 2021.

	)	
Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
	)	
Margaret Cheney	)	COMMISSION
	)	
	)	
J. Riley Allen	)	OF VERMONT

OFFICE OF THE CLERK

Filed: November 19, 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)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.*

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* (for L. Brooke Dingledine, Esq.)  
125 Valley Pass  
Manchester Center, VT 05255  
dtboucher@yahoo.com

Glenn Cestaro, *pro se* (for L. Brooke Dingledine, Esq.)  
107 Valley Pass Rd  
Manchester Center, VT 05255  
glenncestaro@comcast.net

Joseph H Charbonneau, *pro se* (for L. Brooke Dingledine, Esq.)  
374 Green Mountain Road  
Manchester Center, VT 05255  
jos.charbonneau@gmail.com

L. Brooke Dingledine, Esq. (for Cosmo Penge) (for Timothy Boucher)  
Valsangiacomo, Detora & McQuesten, P.C. (for Mark William Slade) (for Glenn Cestaro)  
P.O. Box 625 (for Joseph H Charbonneau)  
Barre, VT 05641  
lbrooke@vdmlaw.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

Melanie Kehne, Esq.  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
melanie.kehne@vermont.gov

(for Vermont Agency of Agriculture, Food and  
Markets)

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

(for Vermont Division for Historic  
Preservation)

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

(for L. Brooke Dingledine, Esq.)

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

(for L. Brooke Dingledine, Esq.)