

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

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| Petition of E South Hero Co. LLC for certificates of public good, pursuant to 30 V.S.A. §§ 231 and 248(j), authorizing the ownership, installation, and operation of a 4.99 MW battery energy storage system in South Hero, Vermont | Case No. 21-____-PET |
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**PETITION FOR CERTIFICATES OF PUBLIC GOOD
PURSUANT TO 30 V.S.A §§ 231 AND 248(j)**

NOW COMES E South Hero Co. LLC (“Petitioner”), in accordance with 30 V.S.A. §§ 231 and 248(j), and petitions the Vermont Public Utility Commission (“Commission”) for certificates of public good (“CPG”) to own, install, and operate a 4.99 MW battery energy storage system at 21 Eagle Camp Road in South Hero, Vermont (“Project”) and for de minimis regulation. In support of these requests, Petitioner represents:

I. Introduction.

1. Petitioner is a Vermont limited liability company with a business address of 6655 Sugarloaf Pkwy, Duluth, GA 30097. Petitioner is registered to do business in Vermont and is in good standing (Business ID 0387373).

2. Petitioner is a single-purpose entity established by WEG Electric Corp. (“WEG”) for the purpose of permitting, installing, owning, and operating the Project. WEG, the sole owner of Petitioner, is a Georgia corporation registered to do business in Vermont and in good standing (Business ID 0356757).

3. WEG is a Brazilian company, operating worldwide in electrical engineering, power, and automation technology areas, among others. WEG develops innovative solutions to meet the major trends in energy efficiency, renewable energy, and electric mobility. With manufacturing units in 12 countries and present in more than 135 countries, the company has more than 33,800 employees worldwide.

4. Petitioner wishes to install, own, and operate a 4.99 MW/14.94 MWh battery energy storage system adjacent to an existing Vermont Electric Cooperative (“VEC”) substation

and VELCO radio tower at 21 Eagle Camp Road in South Hero, Vermont. The Project will occupy approximately 0.36 acres.

5. Some of the Project's operational benefits will be contracted to VEC through an Energy Storage Service Agreement ("ESSA"). Generally, the ESSA is similar to a power purchase agreement: it allows for operation a battery energy storage system to reduce both regional network service costs and capacity load obligations owed to ISO New England. The ESSA allows Petitioner to participate and operate in the ISO-NE markets at times when not providing contracted services to VEC.

6. The following materials are provided in support of the Petition:

- (i) A Rule 5.402 index of evidence;
- (ii) A Rule 5.402(f) list of adjoining landowners;
- (iii) A statement of required notice;
- (iv) A list of entities to be served following the completeness determination;
- (v) Copies of the fee forms submitted to the Agency of Natural Resources and the Department of Public Service;
- (vi) Prefiled Testimony and Exhibits from Kyle J. Ellis of WEG Electric Corp., Seth D. Goddard of Krebs and Lansing Consulting Engineers, Inc., Dori S. Barton of Arrowwood Environmental Inc., Jeremy B. Owens of T.J. Boyle Associates, and Kenneth H. Kaliski of Resource Systems Group, Inc.; and
- (vii) Proposed findings of fact and proposed CPGs.

7. The prefiled evidence filed in support thereof demonstrates that this Petition is appropriately processed and resolved by the Commission under the provisions of 30 V.S.A. § 248(j), and that Petitioner's installation, ownership, and operation of the Project will promote the general good of the State of Vermont consistent with 30 V.S.A. § 231 subject to de minimis regulation.

II. Section 231 Criteria.

8. Pursuant to 30 V.S.A. §§ 102 and 231, a company intending to own or operate a business over which the Commission has jurisdiction must obtain a CPG authorizing such business. “Section 102 applies to newly formed corporations, while Section 231 applies to all others.”¹

9. In determining whether to issue a Section 231 CPG, the Commission is authorized to exercise its jurisdiction “so far as may be necessary to enable [the Commission] to perform the duties and powers conferred upon [it] by law.”²

10. With respect to non-utility merchants, the Commission has previously considered the following five criteria to evaluate whether a Section 231 CPG should be issued:

- (i) Technical expertise,
- (ii) Facility maintenance,
- (iii) Financial stability,
- (iv) Company’s ability to obtain finance, and
- (v) Business reputation.³

11. Petitioner has the technical, operational, and regulatory expertise and experience, as well as the financial stability and means to own and operate the Project, as supported by the prefiled testimony of Kyle J. Ellis. Based on this evidence, Petitioner’s ownership and operation

¹ *Petition of China Unicom (Americas) Operations Limited*, CPG No. 1019, Order of 9/12/17 at 2 n.2.

² 30 V.S.A. § 203.

³ *See, e.g., Petition of USGen New England, Inc.*, Docket No. 7038, Order of 3/25/05 at 9. In this decision and others, the Commission has held that other Section 231 criteria generally applied to utilities—adequate service, balance between customers and shareholders, and relationship with customers—are irrelevant where, as here, the petitioner is a merchant developer that will not serve retail customers. *Id.* at 9-10; *see also Joint Petition of Dalton Hydro LLC*, Docket No. 7478, Order of 12/4/08 at 7-8.

of the Project will promote the general good of the State, and the company should be granted a Section 231 CPG.⁴

III. De Minimis Regulation.

12. Petitioner also respectfully requests that the Commission grant *de minimis* review over Petitioner's financial and organizational dealings pursuant to its authority under Section 203 to exercise jurisdiction "so far as may be necessary."

13. Petitioner notes that it is already exempt from regulation under Sections 107, 108, and 109 of Title 30 on account of the passage of Act 54 (H.431) earlier this year. Act 54 amended Title 30 to provide that "competitive suppliers of energy storage services that do not serve retail customers shall be exempt from sections 107, 108, and 109 of [Title 30]."⁵ Petitioner qualifies for this exemption because it will not serve any retail customers.

14. Petitioner seeks *de minimis* regulation with respect to other aspects of Title 30 that would apply to traditional utilities with monopoly service territories and captive ratepayers.

15. If the Commission so wishes, it could further define the scope of *de minimis* regulation by borrowing from the "Exemption from Utility Regulation" contained in PUC Rule 4.108.⁶ This exemption applies to every merchant solar project that has been installed in Vermont. Consistent with prior cases, Petitioner is also agreeable to notifying the Commission and the Department of Public Service within 14 days of any direct changes in the ownership of entities involved in the operation of the Project under 30 V.S.A. § 231.

⁴ See *Joint Petition of VELCO, Cent. Vt. Pub. Serv. Corp., and Green Mountain Power Corp.*, Docket No. 7174, Order of 6/20/06 at 8 (issuing a Section 231 CPG authorizing the formation of Vermont Transco, a Vermont limited liability company, for the purpose of owning and operating the Vermont bulk electric transmission system, without resolving whether Section 102 applies to limited liability companies).

⁵ 30 V.S.A. § 209.

⁶ See PUC Rule 4.108 ("Those Qualifying Facilities within the scope of this Rule that sell electricity only at wholesale shall be exempt from all regulation under Title 30 except under 30 V.S.A. §§ 202, 209(a)(3), 209(a)(8), 214, and 248."). This list would need to be expanded to include Section 231 for purposes of the Project.

16. In prior cases, the Commission has approved *de minimis* regulation where “full, traditional utility-type regulation of [a petitioner] is unnecessary to enable the [Commission] to perform its duties and power conferred by Title 30.”⁷

17. The Commission has previously stated that “[t]he primary purpose for reviewing financings is to ensure that utilities do not incur unnecessary expenses which can later be collected from consumers.”⁸ Petitioner is not a retail distribution utility that could incur expenses to be passed on to ratepayers. Thus this purpose does not exist here.

18. The Commission has also recognized that competitive energy suppliers require flexibility in financing decisions in order to respond to market conditions, and to finance / refinance assets quickly without restriction.⁹ This rationale applies equally to Petitioner, a competitive supplier of energy storage services.

19. State oversight of financial and organizational decisions related to Petitioner’s battery storage project is unnecessary to protect ratepayers and the general public, just as such oversight has been unnecessary for thousands of distributed solar projects (up to 5 MW) approved by the Commission.¹⁰

20. The Project and Petitioner will remain subject to the Commission’s jurisdiction, and Petitioner understands that it will always require advance approval from the Commission prior to transferring any CPG to another entity.

IV. Request for Relief.

WHEREFORE, Petitioner respectfully requests the Commission to:

⁷ *Petition of New England Power Co.*, Docket No. 6039, Order of 6/29/98 at 17.

⁸ *Id.* at 19 (quoting *Generic Investigation Into Regulation of Cellular Telecomms. Servs. in the State of Vt.*, Docket No. 5454, Order of 1/8/92 at 45).

⁹ *Id.*

¹⁰ *See, e.g., Vt. P.U.C., Report to the Vermont Generally Assembly on the Net-Metering Program Pursuant to Act 99 of 2014* at 3 (2017) (reporting that 8,988 net-metering systems had been approved by the Commission as of the end of 2016).

1. Give written notice to the parties specified in Section 248(a)(4)(C) and to any public interest organization that has in writing requested notice of applications proceeding under Section 248(j), requesting comments within 30 days;
2. Determine that 30 V.S.A. § 248(j) review is appropriate;
3. Find that Petitioner's ownership, installation, and operation of the Project will promote the general good of the State of Vermont; and
4. Issue certificates of public good to that effect.

DATED at Burlington, Vermont, this 23rd day of November, 2021.

E South Hero Co. LLC

By its attorneys,



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