

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No.

Putney Green Acres Solar, LLC petition to extend)
the commissioning deadline for a 500 kW net-)
metered solar array approved in Case No. 21-)
0401-NMP and located on a former paper sludge)
dump site in Putney, Vermont)

MEMORANDUM OF LAW IN SUPPORT OF
COMMISSIONING DEADLINE EXTENSION REQUEST

Putney Green Acres Solar, LLC (PGAS or CPG Holder) is seeking a CPG extension until September 1, 2024 to construct and commission the 500 kW net-metered solar array that the Public Utility Commission approved in Case No. 21-0401-NMP on September 8, 2021. The facility is proposed for a parcel of land that hosts a paper sludge dump site under the jurisdiction of the Agency of Natural Resources Solid Waste Management Division (SWMD). Site preparation and construction of the solar array could not commence until SWMD issued a Post-Closure Certification Amendment for the dump site that Case No. 21-0401-NMP CPG Condition 13 requires. SWMD issued the Certification Amendment on October 11, 2023. The Certification Amendment will become final and unappealable on November 12, 2023.

Public Utility Commission Rule 5.110(C) provides that a CPG is considered abandoned or expired if the project it authorizes is not commissioned within one year of the CPG date. Pub. Util. Comm'n R. 5.110(C). The Commission has authority to waive the rule and grant an extension of time to commission a project for good cause shown.

Id. The Commission has found good cause to extend a net-metering facility's commissioning deadline where circumstances beyond the CPG holder's control delayed the facility's commissioning. For example, the Commission extended the commissioning deadline for a facility where "unforeseen circumstances, including seasonal constraints, have delayed the issuance of a necessary wetland permit for the Project." *Application of Vince Illuzzi for a certificate of public good for an interconnected group net-metered photovoltaic electric power system re: request for extension*, CPG NM-1746, Order of 12/4/2014; see also *In re request of Steven Landau to extend CPG #17-0029-NMR*, Case No. 18-0137-PET, Order of 2/21/2018 (granting the request to extend the commissioning deadline where the project was delayed due to the contractor's abandonment). The Commission also found good cause to extend a net-metering facility's commissioning deadline when the CPG holder delayed construction of the facility due to other priorities affecting the CPG holder's organization. See *Application of Agri-Mark, Inc. for a certificate of public good for an interconnected group net-metered photovoltaic electric power system re: request for extension*, CPG NM-3330, Order of 12/4/2014 (granting request to extend commissioning deadline based on CPG holder's statement that "other priorities associated with moving its employees into [CPG holder's] new facility precluded the construction of the facility").


Good cause to extend the commissioning deadline for CPG 21-0401-NMP exists in this case because the timing for ANR's Post-Closure Certification Amendment required by CPG Condition 13 was not within the CPG holder's control. As detailed in

the accompanying petition, CPG Condition 13 prohibits PGAS from doing any site preparation or construction until the host landowner received a Post-Closure Certification Amendment from SWMD. Before a post-closure plan could be developed, however, a Phase II Environmental Site Assessment (ESA) had to be completed. After the property was sold and the Phase II ESA was complete, a plan to maintain and monitor the landfill was developed in consultation with the SWMD. On February 15, 2023, an application for a Post-Closure Certification Amendment was filed with SWMD. A draft Certification Amendment issued roughly six (6) months later and was open for public comment from August 11 to September 11, 2023. The final Certification Amendment was issued on October 11, 2023 after the commissioning deadline for the PGAS facility had lapsed and was subject to appeal until November 11, 2023. PGAS could not begin work to satisfy other CPG conditions or commence site preparation for the solar array until the Post-Closure Certification Amendment was final and unappealable. Therefore, and due to the seasonal timing of the Certification issuance, PGAS is requesting an extension of the CPG to September 1, 2024.

CONCLUSION

The Commission should extend the commissioning deadline for the PGAS net-metered solar array authorized by CPG 21-0401-NMP because good cause exists to do so. The CPG restricts when PGAS could begin site preparation and construction by conditioning it on the receipt of a Post-Closure Certification Amendment issued by the

Agency of Natural Resources Solid Waste Management Division. The timing for issuing the required Certification Amendment is outside of PGAS's control.

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