

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-3922-PET

Petition of Putney Green Acres Solar, LLC to extend commissioning deadline for certificate of public good #21-0401-NMP	
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Order entered: 02/05/2024

ORDER DENYING REQUEST FOR EXTENSION OF COMMISSIONING DEADLINE

I. BACKGROUND AND PROCEDURAL HISTORY

On September 8, 2021, the Vermont Public Utility Commission (“Commission”) issued a certificate of public good (“CPG”) to Putney Green Acres Solar, LLC (the “Petitioner”), pursuant to 30 V.S.A. §§ 248 and 8010, for a 500 kW ground-mounted solar net-metered system (the “Facility”) in Putney, Vermont.

Commission Rule 5.110(C) establishes that if a net-metering system is not commissioned within one year of the date a CPG is issued, the CPG shall be revoked unless otherwise ordered by the Commission. Accordingly, the original commissioning deadline for the Facility was September 7, 2022.

On February 24, 2022, the commissioning deadline for the Facility was extended until September 6, 2023, as part of a blanket extension ordered by the Commission in response to the COVID-19 pandemic.¹

On November 13, 2023, more than two months after the commissioning deadline had passed, the Petitioner requested that the Commission waive Commission Rule 5.110(C) and grant an extension of time until September 1, 2024, to commission the Facility even though the Facility’s CPG had already expired.

The Petitioner explained that the Facility is to be located on a closed sanitary landfill. The CPG issued for the Facility included a condition that site preparation and construction are prohibited until the landfill owner receives approval for a Post-Closure Certification Amendment from the Agency of Natural Resources (“ANR”).²

¹ Case No. 20-0789-INV, Order of 2/24/22.

² *Petition of Putney Green Acres Solar LLC*, Case No. 21-0401-NMP, CPG of 9/8/21 at 3 (Condition 13).

The Petitioner stated that shortly after the CPG was issued for the Facility the underlying landfill was transferred to a new owner, which triggered a requirement for a new post-closure plan for monitoring and maintaining the landfill site.³

The Petitioner attested that the new landowner submitted a post-closure plan to ANR on February 15, 2023.⁴

According to the Petitioner, ANR issued a draft certification on August 9, 2023, which had a comment period that ran from August 11, 2023, to September 11, 2023. The Petitioner stated that the final Post-Closure Certification Amendment was issued on October 11, 2023, and the appeal period ended on November 11, 2023.⁵

The Petitioner argued that the Commission has authority to waive Rule 5.110(C) and grant an extension of time to commission a Facility for good cause shown.⁶ The Petitioner argued that the timing regarding the issuance of the Post-Closure Certification Amendment—which was required to be in place before site preparation or construction began—was outside of its control, and therefore, constitutes good cause to grant an extension.⁷

On November 17, 2023, Commission staff issued an information request seeking comments on the Petitioner's petition.

On December 1, 2023, the Department of Public Service ("Department") filed comments. The Department stated that the Petitioner had demonstrated that there is good cause for extending the commissioning deadline for the Facility. The Department did not comment on the fact that the request was not timely filed.

On December 22, 2023, Commission staff issued a second information request. Commission staff asked the Petitioner to explain why it had not been able to file its request for an extension until more than two months after the CPG had been revoked.

On January 5, 2024, the Petitioner responded. The Petitioner stated that in the late summer and fall of 2023, the Petitioner was focused on obtaining the Post-Closure Certification Amendment, and mistakenly was not focused on the commissioning deadline. The Petitioner

³ Petitioner's Petition at 1-2.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

⁶ Petitioner's Memorandum of Law (11/13/23) at 1.

⁷ *Id.* at 3-4.

stated that missing the commissioning deadline was inadvertent and attested that it sought to obtain an extension immediately upon realizing the deadline had passed.

II. DISCUSSION AND CONCLUSION

Vermont's net-metering program is one pathway for the development of small-scale, dispersed renewable energy generation facilities in the state. Under the net-metering program, the size of net-metering facilities is capped because the program provides financial incentives for the energy generated. The statute and Commission Rule governing the qualifications for participation in the net-metering program aim to balance the State's goals of fostering renewable energy development, generally, with appropriate parameters for the financial incentives for that development.⁸

Facilities that receive a CPG to develop a net-metering system have one year to commission the facility. Commission Rule 5.110(C) states, "Non-use of a CPG for a period of one year following the date the CPG is issued will result in revocation of the CPG. For purpose of this section, for a CPG to be considered used, the net-metering system must be commissioned."⁹ In previous cases, "the Commission has found good cause to grant requests for extensions when they are timely filed and when the CPG holder has shown that the need for an extension has arisen from circumstances outside of the CPG holder's control."¹⁰

This is a two-part inquiry. First, the Commission must find the request is timely. Then, the Commission must find that there is good cause to grant an extension. The timeliness of an extension request is essential because once the year has lapsed, the CPG is revoked by operation of the Rule.¹¹ It is an extraordinary request to resurrect a CPG that has been revoked, which will only be granted when in our discretion we find that a CPG holder has demonstrated good cause for its failure to file its request in a timely fashion. Timely filing of an extension request avoids

⁸ See 30 V.S.A. § 8010; Commission Rule 5.100.

⁹ Commission Rule 5.103 defines "commissioned" as "the first time a plant is put into operation following the initial construction of the plant."

¹⁰ *Request of Middle Road Solar LLC for extension of CPG# 18-0901-NMP*, Case No. 19-4688-PET, Order of 2/27/21 at 4; see also Commission Rule 5.110(C).

¹¹ *Cf. In re K.S.*, 2021 VT 51, ¶¶ 13-18, 215 Vt. 205, 260 A.3d 387 (upholding trial court decision denying enlargement of time to file notice of appeal where appellant did not demonstrate good cause or excusable neglect for untimely filing).

harm to the regulatory process — “a process that cannot function when regulated entities ignore their obligations.”¹²

In this case, the request was not timely filed. Absent a compelling explanation for the late filing, the Commission does not grant extensions to commissioning milestones that are not timely filed.¹³ We do not find the Petitioner’s explanation for why it was not able to file a timely request persuasive. The Petitioner states that it missed the commissioning deadline because it was focused on other aspects of the Facility. The Petitioner had notice of the commissioning deadline and was responsible for commissioning the Facility before that deadline expired. That the Petitioner was not focused on the commissioning deadline was not outside of its control and is not good cause for the Commission to take the extraordinary action of resurrecting a revoked CPG.¹⁴

We deny the Petitioner’s request to waive Commission Rule 5.107(C) and for an extension because the request was not timely filed, and the Petitioner has not alleged a good-cause reason why it could not have filed this request before the CPG was revoked.

We note that our decision does not prevent the Petitioner from developing this renewable energy facility through a new CPG. Our denial of the extension precludes the Petitioner from developing the Facility under the rates applicable under the revoked CPG. The Petitioner is free to file a new application for the Facility, which will be subject to the rates and adjustors that are available on the date any such new filing is complete. Recognizing that the Facility previously

¹² *Petition of Otter Creek Solar LLC*, Case Nos. 19-3031-PET/19-1596-INV, Order of 4/1/21 at 4-5; *see also Investigation pursuant to 30 V.S.A. §§ 30, 209, and 248 regarding the 2.2 MW solar plant owned by Charlotte Solar, LLC in Charlotte, Vermont*, Case No. 8636, Order of 10/23/17; *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into potential violations of Coolidge Solar I, LLC's certificate of public good issued in Docket 8685*, Case No. 19-3671-INV, Order of 7/24/20.

¹³ *Compare Request of Rieley Properties, LLC to extend CPG #22-3795-NMR*, Case No. 23-3700-PET, Order of 12/29/23 (denying extension request); *Request of Rieley Properties, LLC to extend CPG #22-3796-NMR*, Case No. 23-3700-PET, Order of 12/29/23 (same); *Request of Moretown Milling LLC to extend CPG # 20-3386-NMR*, Case No. 21-5196-PET, Order of 1/6/22 (same), *Request of Marjorie Halloran to extend the commissioning deadline in CPG #20-1131-NMR*, Case No. 21-4106-PET, Order of 11/5/21 (same), *Request of Larry Michaels to extend CPG # 18-0846-NMR*, Case No. 19-1440-PET, Order of 6/13/19 (same), and *In re request of Brian Hurley to extend CPG #16-2688-NMR*, Case No. 18-0951-PET, Order of 5/3/18 (same), *with Request of Barnet 5 Solar LLC to extend commissioning deadline of certificate of public good #22-3514-NMP*, Case No. 23-3923-PET, Order of 12/11/23 (granting extension request).

¹⁴ The Petitioner makes a good-cause argument—that the timing regarding the issuance of the Post-Closure Certification Amendment is outside of its control—as a basis for granting the extension request. This argument, however, applies to the second inquiry regarding whether the Facility was not commissioned due to good cause outside of the Petitioner’s control. We do not find this argument applicable to the timeliness inquiry.

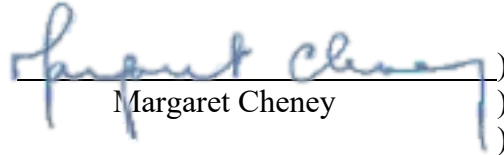
received a CPG—which required a determination that the Facility meets the criteria of 30 V.S.A. § 248, will promote the general good of the State, and complies with our rules—we will entertain any motions for waiver of the Commission’s rules or, alternatively, accept an Uncontested Net-Metering Petition Waiver Form that may be filed with a new application.¹⁵

SO ORDERED.

¹⁵ Some aspects of the Commission’s net-metering rule, such as the requirement for a 45-day advance submission period, are established by statute and outside of the Commission’s jurisdiction to waive. *See* 30 V.S.A. §§ 248(f), 8010(c)(3)(F)(ii). We also note that (1) the new petition must be filed in accordance with the current net-metering rules in place at the time of filing, and (2) any potential expedited processing would be contingent on the Petitioner submitting a petition for the same or substantially the same Facility.

SO ORDERED.

Dated at Montpelier, Vermont, this 5th day of February, 2024.

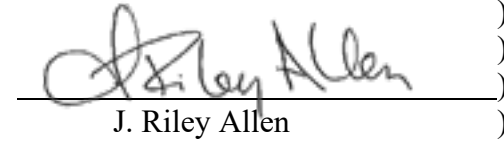

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Margaret Cheney)

PUBLIC UTILITY)

COMMISSION)

OF VERMONT)


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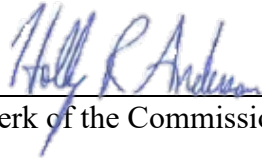
J. Riley Allen)

OFFICE OF THE CLERK

February 5, 2024

Filed:

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. 23-3922-PET - SERVICE LIST

Parties:

Erin C. Brennan, Esq.
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
Erin.Brennan@vermont.gov

(for Vermont
Department of Public
Service)

Leslie A. Cadwell, Esq.
Legal Counselors & Advocates, PLC
P.O. Box 827
Castleton, VT 05735
lac@lac-lca.com

(for Putney Green Acres
Solar LLC)

General Counsel
Vermont Agency of Natural Resources
anr.notice@vermont.gov

(for Vermont Agency of
Natural Resources)

Net-Metering Notices
Green Mountain Power Corporation
DR@greenmountainpower.com

(for Green Mountain
Power Corporation)