

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 17-5024-PET

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of the “Chelsea Solar Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont	
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Order entered:

SCHEDULING ORDER

I. INTRODUCTION

On March 2, 2018, Chelsea Solar LLC (“Chelsea” or the “Petitioner”) filed a proposed schedule for this proceeding (the “Chelsea Schedule”). Also on March 2, 2018, the Vermont Department of Public Service (“DPS” or the Department”) filed a proposed schedule for this proceeding representing that the Vermont Agency of Natural Resources and the Town of Bennington agreed to it (the “DPS Schedule”). In this Order, I issue a schedule for this proceeding.

II. BACKGROUND AND DISCUSSION

On October 12, 2017, the Vermont Public Utility Commission (the “Commission”) issued an Order in Docket 8302 that had the effect of requiring Chelsea to request an extension of the commissioning deadline in the standard-offer contract for the Chelsea project to December 3, 2018 (the “October 12 Order”).¹

¹ *Petition of Chelsea Solar*, Docket 8302, Order of 10/12/17. The October 12 Order informed Chelsea that if Chelsea withdrew its then-pending Vermont Supreme Court appeal of the Commission’s orders denying the petition for the Chelsea project in Docket 8302, and then filed a new petition for an amended Chelsea solar project that was deemed complete within six months of the petitioner’s filing, then the Commission would be responsive to a request for an extension of Chelsea’s standard-offer contract to one year from the date the new petition was deemed complete. On October 20, 2017, Chelsea withdrew its appeal. On October 25, 2017, Chelsea filed a request for the extension of its standard-offer contract. On November 29, 2017, Chelsea filed a petition for an amended project. On December 4, 2017, in case no. 17-5024-PET, the Commission filed notice that Chelsea’s new petition for an amended project was complete. This determination had the effect of limiting the date for Chelsea’s request for an extension of the project’s commissioning deadline to December 3, 2018.

On March 7, 2018, I held a prehearing conference in this matter. Appearances were entered by Traci Leibowitz, Esq.,² for the Department; Donald Einhorn, Esq., for the Vermont Agency of Natural Resources; Merrill E. Bent, Esq., for the Town of Bennington; Annette Smith, for Vermonters for a Clean Environment; Libby Harris, *pro se*;³ and Michael Melone, Esq., and Kimberly K. Hayden, Esq., for the Petitioner.

I then discussed the proposed schedules filed by the Department and Chelsea with the parties. The DPS Schedule included a full litigation schedule with two rounds of discovery for the parties and concluded with an evidentiary hearing on September 18, 2018. The Chelsea schedule was shorter, allowed for a single round of discovery, and ended with an evidentiary hearing on April 20, 2018. The Chelsea Schedule was premised on achieving the December 3, 2018, commissioning deadline projected from the October 12 Order.

On March 9, 2018, the Department and Chelsea each filed briefs with the Commission in support of their proposed schedules (the “DPS Brief” and Chelsea Brief,” respectively).

The Department argues that the DPS Schedule is appropriate because the schedule will allow for the thorough review of the case consistent with projects of similar size and scope and will allow all the parties to participate in the review of the petition. The Department requests that the review of the petition not be expedited using the Chelsea schedule.⁴

Chelsea asserts that an expedited schedule is needed to meet the December 3, 2018, commissioning deadline in the October 12 Order and because, as the second petition for the Chelsea project, the scope of the proceeding is more narrowly focused allowing for the expedited review foreseen by the October 12 Order.⁵ Chelsea argues that the scope of the proceeding should be limited and an expanded litigation schedule is unnecessary because some issues may be precluded from the review of this petition inasmuch as they were previously litigated and ruled upon in Docket 8302.⁶ Chelsea further argues that it has a vested right to rely on the

² From the bench, I ruled that a *pro hac vice* motion filed by the Department was moot because Attorney Leibowitz had recently been admitted to the Vermont bar. Tr. 3/7/18 at 4 (Tousley).

³ During the prehearing conference, Chelsea stipulated that it did not object to the intervention of Ms. Harris, and I granted her permissive intervention from the bench. *Id.*

⁴ DPS Brief at 2.

⁵ Chelsea Brief at 2.

⁶ *Id.* at 10.

Bennington Town Plan that was in effect in 2014 rather than the 2016 Bennington Town Plan.⁷ Finally, Chelsea requests that if an extended schedule is ordered “the Commission also extend the commissioning deadline so that Chelsea has at least five decent weather months (i.e., the months of April to October) between the date of a final order and the commissioning deadline, as part of the scheduling order.”

On March 15, 2018, the Commission extended the commissioning deadline in Chelsea’s standard-offer contract to August 31, 2019 rather than December 3, 2018.⁸

The extension of the standard-offer contract’s commissioning deadline nearly nine months beyond the date projected in the October 12 Order is consistent with Chelsea’s request, obviates the need for the expedited schedule requested in the Chelsea Schedule, and allows for a full review of the petition with participation by all the parties as sought by the Department. The schedule issued below will also allow the parties to address the threshold legal issues brought out by Chelsea, that is, the questions of which Town Plan is applicable and the impact, if any, that issue preclusion may have on the review of the petition.

III. SCHEDULE

Based on the proposed schedules, the discussion at the prehearing conference, and the briefs of the parties, I adopt the following schedule for this matter:

Date	Event
March 30, 2018	Non-Petitioner parties file briefs in response to Petitioner’s threshold legal issues re the Town Plan and issue preclusion
April 6, 2018	Petitioner replies to the non-Petitioner parties re threshold legal issues
TBD in the Week of April 9, 2018	Site Visit, Information Session, and Public Hearing
April 16, 2018	Motions to intervene due
April 23, 2018	Responses to motion to intervene due
April 27, 2018	Deadline for Round I discovery on Petitioner by statutory parties
April 30, 2018	Deadline for Round I discovery on Petitioner by intervenors

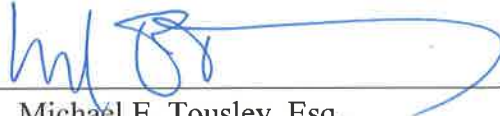
⁷ Chelsea Brief at 9-10.

⁸ *Petition of Chelsea Solar, LLC for relief from standard-offer contract milestone*, case no. 17-4695-PET, Order of 3/15/18.

May 11, 2018	Deadline for Petitioner to respond to Round I discovery by statutory parties
May 18, 2018	Deadline for Petitioners to respond to Round I discovery by intervenors'
June 1, 2018	Deadline for Round II discovery on Petitioner by all parties
June 13, 2018	Deadline for Petitioner to respond to Round II discovery by all parties
<i>If matter is uncontested</i>	
June 22, 2018	Petitioner files stipulations, if any
July 2, 2018 at 9:30 A.M.	Evidentiary Hearing
July 13, 2018	Petitioner files proposed findings of fact and order
<i>If matter is contested</i>	
June 22, 2018	Non-petitioner parties file direct testimony
June 29, 2018	Deadline for discovery by Petitioner on non-Petitioner parties
July 20, 2018	Deadline for non-Petitioner parties to respond to discovery
July 27, 2018	Petitioner files rebuttal testimony
August 10, 2018	Non-petitioner parties file discovery on Petitioner's rebuttal
August 17, 2018	Deadline for Petitioner to respond to discovery
August 31, 2018	Non-Petitioner parties file sur-rebuttal
September 13, 2018	Evidentiary Hearing
September 28, 2018	Parties file post-hearing briefs with proposed findings of fact and order
October 12, 2018	Parties file post-hearing reply briefs

SO ORDERED.

Dated at Montpelier, Vermont, this 21st day of March, 2018.



Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: March 21, 2018

Attest: Jessica C. Whitney
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)

PUC Case No. 17-5024-PET - SERVICE LIST

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