

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: 04/13/2018

ORDER RE: MOTION TO INTERVENE

I. INTRODUCTION

On March 19, 2018, the Apple Hill Homeowner’s Association (the “AHHA”) filed a motion requesting permissive intervention in this proceeding. In this Order, I grant the AHHA motion limited to the substantive criteria stated in its motion and subject to the condition that the AHHA shall participate in this proceeding coordinating its efforts with Libby Harris¹ as discussed further, below.

II. PROCEDURAL HISTORY

On November 28, 2017, Chelsea Solar LLC (“Chelsea”) filed a petition with the Vermont Public Utility Commission (“PUC” or the “Commission”) requesting that the Commission issue 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 (the proposed “Project”).

On March 19, 2018, the AHHA filed a timely motion to intervene, and Chelsea filed comments in response (the “Chelsea Comments”).

No other comments were filed on the AHHA motion to intervene.

¹ Ms. Harris is an existing party who was granted intervention on March 2, 2018. Ms. Harris is also a member of the AHHA.

III. POSITIONS OF THE PARTIES

AHHA

The AHHA requests permissive intervention because it has substantial interests in the Project as the representative of neighboring homeowners' association concerning: (1) orderly development and the Town Plan; (2) aesthetics including sound, wind, and views; (3) wildlife; (4) air pollution; (5) water pollution; (6) streams; and (7) rare, threatened, and endangered species.

Chelsea

Chelsea has no objection to the intervention of the AHHA as long as the AHHA's intervention is limited to the scope of a memorandum of understanding that Chelsea executed with the AHHA on March 2, 2015 (the "AHHA MOU"), related to Docket 8302, which addressed a petition for a different 2.0 MW solar project that was proposed at 500 Apple Hill Road in Bennington that was denied by the Commission.² Chelsea argues that "[o]ther than with respect to the AHHA MOU, the AHHA has no substantial interest in this proceeding" and the seven other interests articulated in the AHHA motion "will be protected by other parties."³

IV. DISCUSSION AND CONCLUSION

Rule 2.209 governs intervention in proceedings before the Commission. Rule 2.209(A) provides that upon timely application a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

² *Petition of Chelsea Solar*, Docket 8302, orders of 2/16/16, 4/14/17, and 4/17/17.

³ Chelsea Comments at 2.

In addition, Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis when an applicant “demonstrates a substantial interest which may be affected by the outcome of the proceeding.” In exercising its discretionary authority under this provision, the Commission considers three factors:

- (1) whether the applicant’s interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant’s interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Rule 2.209(C) further provides that the Commission may impose certain restrictions on an intervenor’s participation in a proceeding. Specifically, the Commission may restrict such party’s participation to only those issues in which the party has demonstrated an interest; may require such party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters; or may otherwise limit such party’s participation, all as the interests of justice and economy of adjudication require.

I am not persuaded by Chelsea’s arguments that the AHHA’s intervention should be limited to the substance of the AHHA MOU, which was not adopted by the Commission in Docket 8302 and is related to different specifications of a different project that was disapproved, or that the AHHA’s substantial interests will be protected by other parties. I am therefore granting the AHHA restricted permissive intervention in this proceeding.


The AHHA has a commonality of interest with Ms. Harris. Given this commonality of interest and Ms. Harris’s experience with the process I direct a coordination of efforts between Ms. Harris and AHHA pursuant to PUC Rule 2.209(C).

Accordingly, coordination of efforts, as described below, shall be required on the following § 248(b) criteria: (1) orderly development of the region; (5) air and water purity; (5) aesthetics; and (5) public health and safety. Coordination shall also be required on the following incorporated criteria from 10 V.S.A. § 6086: (a)(1)(C) water conservation; (a)(2) sufficiency of water; (a)(3) burden on existing water supply; and (a)(8)(A) necessary wildlife habitat or endangered species.

In coordinating their efforts, the AHHA shall work with Ms. Harris to: 1) develop a single set of discovery requests for these criteria for the discovery they serve pursuant to the schedule; 2) present no more than two witnesses on each of the above criteria, absent permission for good cause shown; 3) select a single representative for cross-examination of each witness⁴ at the technical hearing; and 4) submit a single brief and reply brief.

SO ORDERED.

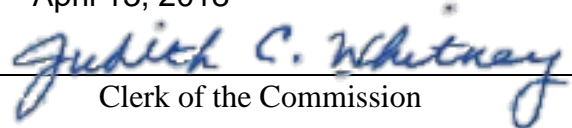
Dated at Montpelier, Vermont, this 13th day of April, 2018 .



Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: April 13, 2018

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)

⁴ This does not mean that a single individual must cross-examine every witness. It means that no single witness will be subject to cross-examination by more than one representative of Ms. Harris and AHHA. That is, different individuals may cross-examine different witnesses.

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

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