

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: 05/30/2018

ORDER RE: MOTION TO INTERVENE

I. INTRODUCTION

On April 19, 2018, Roberta Caslin filed a motion requesting permissive intervention in this proceeding (the “Caslin Motion”). On April 20, 2018, David Griffin and Maru Leon (“Griffin and Leon”) filed a motion requesting permissive intervention in this proceeding (the “Griffin and Leon Motion”). On April 24, 2018, Caroline McEver filed a motion requesting permissive intervention in this proceeding (the “McEver Motion” and, collectively with the Caslin Motion and the Griffin and Leon Motion, the “Intervention Motions”). In this Order, I grant the Intervention Motions limited to the substantive criteria stated in the motions. The Intervention Motions are also granted subject to the condition that Ms. Caslin, Griffin and Leon, and Ms. McEver shall participate in this proceeding coordinating their efforts with each other, Libby Harris, and the Apple Hill Homeowners Association (“AHHA”)¹ as discussed further, below.

II. PROCEDURAL HISTORY

On November 28, 2017, Chelsea Solar LLC (“Chelsea”) filed a petition with the Vermont Public Utility Commission (the “Commission”) requesting that the Commission issue a certificate of public good authorizing the installation and operation of the “Chelsea Solar

¹ Ms. Harris and the AHHA are existing parties who were granted intervention on March 2, 2018, and April 13, 2018, respectively. In the Order granting its intervention, the AHHA was directed to coordinate its efforts with Ms. Harris per Commission Rule 2.209(C).

Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont (the proposed “Project”).

On April 27, 2018, Chelsea and the Vermont Department of Public Service (the “Department”) each filed comments on the Intervention Motions.

No other comments were filed on the Intervention Motions.

III. POSITIONS OF THE PARTIES

Ms. Caslin

Ms. Caslin requests permissive intervention because she claims she has substantial interests concerning: (1) traffic on Hewitt Drive and Willow Road during Project construction; (2) the aesthetic and economic cost of the view of the Project; (3) wetlands; and (4) wildlife.

Griffin and Leon

David Griffin and Maru Leon are the owners of Mt. Anthony Country Club. Their interests relate to the potential impacts of the Project on the Country Club. They request permissive intervention because they claim they have substantial interests concerning: (1) the view of the Project from their public golf course; (2) the impact of the Project on orderly development, tourism, and the local economy; (3) cleared forest remediation using hydroseeding; and (4) the maintenance of vegetation at the Project site after construction.

Ms. McEver

Ms. McEver requests permissive intervention because she claims she has substantial interests concerning the view of the Project from her Monument Avenue home.

Chelsea

Chelsea objects to the Caslin Motion because Ms. Caslin’s interests are limited to the duration of the construction phase of the Project, which Chelsea argues is a generalized concern that does not rise to the level of a substantial interest. Chelsea asserts that Ms. Caslin’s concerns with wetlands and wildlife are adequately protected by the Vermont Agency of Natural Resources, which is a statutory party to this proceeding. Chelsea also contends that review of the

economic benefit of the Project to Bennington has been waived because it is a standard-offer Project.

Chelsea objects to the Griffin and Leon Motion. Chelsea argues that Griffin and Leon's interest in orderly development is local rather than regional and is therefore irrelevant to an assessment under Section 248(b)(1). Chelsea asserts that Griffin and Leon's interests in aesthetics and tourism are economic interests and that review of the economic benefit of the Project to Bennington has been waived because it is a standard-offer Project. Chelsea contends that Griffin and Leon's interest in hydroseeding and site maintenance do not rise to the level of substantial interests.

Chelsea objects to the McEver Motion. It argues that Ms. McEver's interest is a private interest concerning her property, which is 2.5 miles from the Project, and is not properly before the Commission.

In the alternative, Chelsea requests that, if some or all of the Intervention Motions are granted, the new intervenors be grouped with Ms. Harris and the AHHA because of their similar interests.

The Department

The Department does not object to the Intervention Motions. The Department recommends that these requests for intervention are based on substantially similar interests to the interests of Ms. Harris and the AHHA and recommends that given the commonality of interests "if the Commission decides to grant permissive intervention, that these additional parties, to the extent practicable, be consolidated with Ms. Harris and the AHHA."²

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 Department Comments at 1.

- (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.

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 objecting to the Intervention Motions. I observe that Chelsea misstates the waiver of the review of economic benefit under 30 V.S.A. § 248(b)(4), which is conditioned on no party presenting testimony that would warrant rescinding the waiver. I also disagree with Chelsea's argument that Ms. McEver's private view of the Project is irrelevant.

These parties have a commonality of interests with each other, Ms. Harris and the AHHA. Given this commonality of interest and Ms. Harris and the AHHA's experience with the process, I direct a coordination of efforts between these new parties, Ms. Harris, and the 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 and (5) aesthetics. Coordination shall also be required on the following incorporated criteria from 10 V.S.A. § 6086: (a)(1)(g) wetlands, (a)(5) transportation services, and (a)(8)(A) necessary wildlife habitat or endangered species.

Griffin and Leon and Ms. Caslin shall coordinate their efforts in addressing the economic benefit of the Project under 30 V.S.A. § 248(b)(4). Permitting Griffin and Leon and Ms. Caslin to present information regarding the economic benefit of the Project is the first step in determining whether evidence has been submitted sufficient to warrant rescinding the conditional waiver. It is not a rescission of the waiver. Should evidence be admitted that warrants rescission of the waiver, the determination to rescind the waiver would be duly noticed, and Chelsea and the other parties would have the opportunity to present additional information for admission on this criterion.

In coordinating their efforts, the intervening parties shall work together 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 witness³ at the technical hearing; and 4) submit a single brief and reply brief.

SO ORDERED.

³ 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.

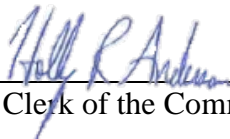
Dated at Montpelier, Vermont, this 30th day of May, 2018 .



Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: May 30, 2018

Attest: 
Deputy 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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