

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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Entered: 11/13/2018

**DENIAL OF INTERVENORS’ MOTION FOR LEAVE TO FILE ADDITIONAL EVIDENCE AND
MOTION FOR STAY**

I. INTRODUCTION

On October 19, 2018, the Apple Hill Homeowners Association and Mount Anthony Country Club (together, the “Intervenors”) filed a motion with the Vermont Public Utility Commission (“Commission”) requesting that I grant leave to file additional evidence in this matter after the evidentiary record had closed and a motion requesting that I stay the proceedings in this case pending an investigation of compliance with the mandated aesthetic mitigation in Docket No. 8225¹ (the “Intervenors’ Motions”). In this Order, I deny the Intervenors’ Motions.

II. BACKGROUND

On November 28, 2017, Chelsea Solar LLC (“Chelsea”) filed a petition (the “Petition”) requesting a certificate of public good (“CPG”) authorizing the installation and operation of a 2.0 MW solar electric generating facility accessed from Willow Road in Bennington, Vermont.

On September 20 and 21, 2018, I conducted an evidentiary hearing on the Petition in Montpelier, Vermont. At the evidentiary hearing, prefiled testimony and exhibits of the parties were admitted into the evidentiary record.

On October 19, 2018, the Intervenors filed their motions.

On October 26, 2018, Chelsea filed a response in opposition to the Intervenors’ Motions.

¹ *Petition of Sudbury Solar LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the construction and operation of a 2.0 MW solar electric generation facility on Vermont Route 30, Sudbury, Vermont, Docket 8225, Final Order of 9/3/15.*

No other comments have been filed on the Intervenors' Motions.

III. POSITIONS OF THE PARTIES

The Intervenors

The Intervenors request that I allow them to submit additional evidence reflecting their allegation that “the Petitioner has failed to install the mandated landscape planting” in Docket 8225.² The Intervenors argue that Sudbury Solar LLC is the “same developer as here” and that the attachments to the Intervenors' Motions “clearly demonstrate that as of last week, no plantings have been installed” and that an “investigation of this failure to install the mandated aesthetic mitigation in Sudbury Solar LLC is imminent.”³

Specifically, the Intervenors seek the admission of: (1) photos represented to have been taken by the attorney for the Town of Sudbury on October 12, 2018; (2) a letter from Sudbury Solar LLC submitting the final landscaping plan; and (3) the Commission's Order of 11/16/15 in Docket 8225 acknowledging receipt of Sudbury Solar's final landscaping plan.⁴

The Intervenors argue that:

With substantial reason to believe that the Petitioner here has, in another solar development case of similar size in a rural setting, failed to install the required aesthetic mitigation in a timely fashion, additional evidence is relevant to the Commission's consideration of this case.⁵

The Intervenors also contend that the Commission should stay processing this case and future cases and stay the “site work and construction of all [the developer's] already-permitted projects in the Town of Bennington.”⁶

Chelsea

Chelsea argues that the Intervenors' Motions should be denied because: (1) the alleged factual basis for the Intervenors' Motions has nothing to do with this case; (2) the Intervenors have no standing to file any complaints in the Sudbury Solar case; (3) the Intervenors' Motions

² Intervenors' Motions at 1.

³ *Id.* at 1-2.

⁴ Exhibits 1-3 of the Intervenors' Motions.

⁵ Intervenors' Motions at 2.

⁶ Intervenors' Motions at 2-3, referring to the *Petition of Apple Hill Solar LLC*, Docket 8454, Final Order of 9/26/18, and the *Petition of Otter Creek Solar*, Case No. 17-3727-PET, Order of 6/13/18. The Intervenors also refer to the proposed “Stark” and “Warner” solar projects in Bennington, which have not been filed with the Commission.

are “a transparent attempt to delay this case for no justifiable cause;”⁷ (4) the Intervenors make no showing as to why these materials were only recently discovered; (5) the materials sought to be entered into evidence are not so relevant as to require another evidentiary hearing in this proceeding; and (6) any potential relevancy of these materials is outweighed by the unfair prejudice that would be suffered by Chelsea.

Chelsea asserts that it is unaware of any complaint in the Sudbury Solar case. Attached to Chelsea’s response are copies of documents indicating that Sudbury Solar contracted and paid a landscaping firm to install the plantings called for in that Docket. Chelsea also represents that an aerial photo of the Sudbury Solar project published at page 30 of the January 15, 2018, Sudbury Town Plan shows the project with the mitigating plantings installed.

Finally, Chelsea argues that there is no basis for staying this proceeding and no showing that the Intervenors have met the criteria for injunctive relief.

IV. DISCUSSION AND CONCLUSION

The Intervenors request that I reopen the record in this case to enter into evidence the three exhibits described above. I am not persuaded to do so for four reasons. First, the Intervenors offer no reason why these materials were only “recently discovered” and could not have been available to them to be presented for admission into evidence at the time of the earlier evidentiary hearings.⁸ Second, having assessed the content of these materials, they do not appear to be so relevant as to require a further delay in these proceedings at an additional evidentiary hearing during which the Intervenors might attempt to have them admitted into evidence over Chelsea’s objections. Third, any potential relevance these materials may have if they are admissible is far outweighed by the unfair prejudice that would be suffered by Chelsea created by the delay caused by litigating their relevance and admissibility in an additional evidentiary hearing. Fourth, while credibility is always a relevant issue in assessing the testimony of a petitioner, there is no criterion in Section 248 for reviewing a petitioner’s compliance history like

⁷ Chelsea Opposition at 1.

⁸ See *Cent. Vt. Pub. Serv. Corp.*, Docket Nos. 6946/6988, Order of 5/25/05 at 3 (quoting *Brown v. International Harvester Corp.*, 142 Vt. 140, 142-43 (1982) (new facts should not be presented if “with the exercise of due diligence by counsel, [those facts could] have been placed before the court” at an earlier time)) and V.R.C.P 60(b)(2) (reopening may be appropriate for “newly discovered evidence which by due diligence could not have been discovered in time”).

those found in other statutes.⁹ If someone believes that a project is not in compliance with its CPG, the appropriate recourse is to file a complaint with the Commission about that project rather than to seek to delay or otherwise affect the Commission's review of a different project. For all these reasons, the Intervenor's motion to reopen the evidentiary record is denied.

The Intervenor further request that I stay this proceeding (and others) based on their belief that an investigation into Sudbury Solar is "imminent," though there has been no complaint filed about Sudbury Solar's compliance with its landscaping plan and the Commission has not initiated an investigation.


Despite Chelsea's unsupported argument to the contrary, the Intervenor do have standing, like any members of the public, to file a complaint with the Commission regarding Sudbury Solar's compliance with its aesthetic mitigation plan. But the Intervenor do not ask that the Commission initiate an investigation of the Sudbury Solar project, instead inferring that such an investigation is imminent. Were the Intervenor to request an investigation it would, through a separate proceeding, ensure the notice and opportunity for comment of all the parties to the Sudbury Solar project, which has not occurred here. Similarly, the Commission has not received complaints regarding the developer's other already permitted projects in Bennington. If these complaints are made, the parties to those other projects would need to be notified and the complaints dealt with through separate proceedings. This proceeding is not the appropriate venue to bring collateral attacks on these other projects.

At this time, in the absence of a complaint or an investigation, I am not persuaded that a stay is warranted. Therefore, the Intervenor's motion to stay this proceeding is denied.

SO ORDERED.

⁹ See e.g. 10 V.S.A. § 1264(i) (a stormwater management permit may be denied based on a review of an applicant's compliance history); and *In re Mountain Cable*, Dockets 6101 and 6223, Order of 4/28/00 (30 V.S.A. § 504 requires that the review of petition for cable television permit include an assessment of the applicant's compliance history). I also observe that an allegation of non-compliance, as is the case here, is not the same as a negative compliance history based on documented investigative proceedings.

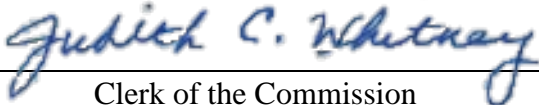
Dated at Montpelier, Vermont, this 13th day of November, 2018.



Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: November 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)

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

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