

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 “Willow Road Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont	
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Order entered: 02/14/2019

**PROCEDURAL ORDER RE ADDITIONAL BRIEFING**

**I. INTRODUCTION**

On January 31, 2019, the Apple Hill Homeowners Association and the Mt. Anthony Country Club (collectively, the “Intervenors”) filed comments with the Vermont Public Utility Commission (the “Commission”) on the proposal for decision issued by the hearing officer and a request for an oral argument.

The Intervenors argue that this Project and the neighboring Apple Hill Project, which we approved in Docket 8454,<sup>1</sup> are a single “plant” as defined by 30 V.S.A. § 8002(18). As part of our review of this argument, we examined the record of the Vermont Supreme Court case that decided that a previous iteration of the two Projects, as described to the Court in exhibits PC 155 and PC 156, were not a single plant pursuant to the statutory definition.<sup>2</sup> We now ask the parties to examine and comment on the attached exhibits PC 155 and PC 156, which are part of the public record of that case.

In this Order, the Commission directs the parties to file legal briefs by March 1, 2019, further addressing the applicability of the definition of a single plant in this case considering PC 155 and PC 156. We will hear oral argument after reviewing these briefs and reply briefs.

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<sup>1</sup> *Petition of Apple Hill Solar LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the installation and operation of a 2.0 MW solar electric generation facility at 1133 Willow Road in Bennington, Vermont, Docket 8454, Order of 9/26/18, appeal pending.*

<sup>2</sup> *In re Programmatic Changes to the Standard-Offer Program and Investigation into the Establishment of Standard-Offer Prices under the Sustainably Priced Energy Enterprise Development (SPEED) Program, 2014 VT 29.*

## II. BACKGROUND

On May 21, 2013, Ecos Energy LLC (“Ecos”) filed PC 155 and PC 156 with the Commission as attachments to its motion seeking the Commission’s reconsideration of its decision in Dockets 7873 and 7874. PC 155 and PC 156 are diagrams of the projects proposed for standard-offer contracts by Ecos on Apple Hill in Bennington. The decision in Dockets 7873 and 7874 denied a standard-offer contract to Ecos for the Apple Hill Project and granted a standard-offer contract for the neighboring project, then called the Bennington Solar Project, because the Commission determined that together the two projects were a single plant.

On June 20, 2013, Chelsea Solar LLC (“Chelsea Solar”) executed a standard-offer contract for a 2.0 MW solar facility to be located in Bennington, Vermont. This facility was previously referred to as the Bennington Solar Project by Ecos. This is the standard-offer contract that is applicable in this case.

On October 18, 2013, Ecos filed PC 155 and PC 156 with the Vermont Supreme Court as part of Ecos’s printed case seeking a reversal of the Commission’s decision.

On March 28, 2014, the Vermont Supreme Court reversed the Commission’s decision.<sup>3</sup>

On May 12, 2014, Apple Hill Solar LLC (“Apple Hill”) executed a standard-offer contract for a 2.0 MW solar facility to be located in Bennington, Vermont.

On March 15, 2015, Apple Hill filed a petition for a certificate of public good authorizing the construction and operation of a 2.0 MW solar electric generation facility at 1133 Willow Road, Bennington, Vermont (the “Apple Hill Project”).

On November 28, 2017, Chelsea Solar filed the petition for the Willow Road Project. The Willow Road Project petition is a significantly amended version of the petition filed by Chelsea Solar on June 19, 2014, in Docket 8302 (the “Chelsea Solar project”).<sup>4</sup> The Chelsea Solar project was sited in approximately the same location as the Willow Road Project but had a larger footprint and was accessed from Apple Hill Road. The Chelsea Solar project was denied by the Commission on February 16, 2016.<sup>5</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Petition of Chelsea Solar LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the installation and operation of a 2.0 MW solar electric generation facility at 500 Apple Hill Road, Bennington, Vermont, Docket 8302.*

<sup>5</sup> Docket 8302, Order of 2/16/16.

On November 30, 2017, the hearing officer in Docket 8454 issued an order which determined that materials filed by Apple Hill in support of an amendment of the Apple Hill Project were administratively complete and deemed the proposed amendments effective as of October 30, 2017.

On September 26, 2018, the Commission approved the Apple Hill Project as amended.<sup>6</sup> Libby Harris, an adjoining landowner and the Apple Hill Homeowners Association have jointly appealed the Commission's approval of the Apple Hill Project to the Vermont Supreme Court. The single-plant issue was not raised in that pending appeal.

On January 2, 2019, the hearing officer issued a proposal for decision in this case recommending that the Commission approve the Willow Road Project, with conditions.

On January 31, 2019, the Intervenors filed timely comments on the proposal for decision (the "Intervenors' Comments"). Among other things, these comments argue that the Willow Road Project and the Apple Hill Project are a single plant as defined by 30 V.S.A. § 8002(18).

### **III. DISCUSSION AND CONCLUSION**

In their comments on the proposal for decision, the Intervenors argue that the Willow Road Project and the Apple Hill Project are "functionally one 4 MW solar array . . . in exceedance of the 2.2 MW cap for standard-offer projects."<sup>7</sup> This argument reiterates an argument that the Intervenors made in their brief on the petition. The hearing officer dismissed the Intervenors' argument in the proposal for decision as follows:

The Intervenors assert that because the Willow Road Project and the neighboring Apple Hill Solar Project are both accessed from Willow Road and are both connected to the electric distribution grid via the same GMP line extension, the two contiguous projects share infrastructure and therefore are functionally a single 4 MW solar array. The Intervenors further assert that the projects do not qualify as separate plants under "30 V.S.A. § 8002(14)." The Intervenors therefore argue that the Willow Road Project "does not meet the requirements to find the Project is in the public good."

Chelsea responds that "the Intervenors' arguments are irrelevant to this case." Chelsea contends that this is both because the criteria for a standard-offer contract do not apply in a Section 248 permitting case and because the Willow Road Project and the Apple Hill Solar Project factually meet the requirements set by 30 V.S.A. § 8002 as interpreted by the Vermont Supreme Court.

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<sup>6</sup> Case No. 17-5024-PET, Order of 9/26/18.

<sup>7</sup> Intervenors' Comments at 21.

I am not persuaded by the Intervenor's argument. The fact that both projects are accessed by way of Willow Road and interconnect via the GMP line extension does not make them a single plant under Section 8002. The Willow Road Project, like the Apple Hill Solar Project, will be an independent technical facility with a separate access road from Willow Road and a separate point of interconnection with the new GMP line.

I recommend that the Commission conclude that the Willow Road Project is in the public good having been reviewed under the Section 248 criteria and that it remains in factual conformity with the Supreme Court's guidance regarding the criteria for a standard-offer contract.<sup>8</sup>

This discussion does not reflect the information provided by exhibits PC 155 and PC 156, which was not addressed in either brief of the single-plant argument.<sup>9</sup> Therefore, we are not satisfied that the single plant issue has been sufficiently litigated and seek additional information.

The standard-offer project proposed by Ecos that was reviewed by the Vermont Supreme Court as the Bennington Solar Project in exhibit PC 156 is substantially different from both the Chelsea Solar project petition denied in Docket 8302 and the Willow Road Project petition being reviewed in this case. These differences include the relocation of the interconnection line for the Project from the north to the south, in a way that the Intervenor's describe as "the same mile-long power line extension for interconnection to the grid,"<sup>10</sup> and the improvements to Willow Road to facilitate the construction and operation of both Projects.

The Commission is directing all the parties to brief whether the differences between PC 156 and the Willow Road Project are consistent with the Vermont Supreme Court's decision interpreting the definition of "plant" in 30 V.S.A. § 8002. The parties are further specifically requested to address whether the changes between what was proposed in the 2014 standard-offer Vermont Supreme Court case and what was proposed in this Section 248 case are so significant as to require an amendment to the standard-offer contract, any other additional filings by the parties, or any other determination by this Commission.

We want a full briefing because the single-plant issue has not been litigated in this case considering the difference in the current plan from exhibit PC 156.

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<sup>8</sup> Case No. 17-5024-PET, Proposal for Decision dated 1/2/19 at 13-14.

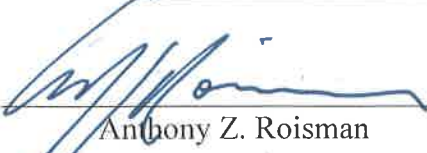
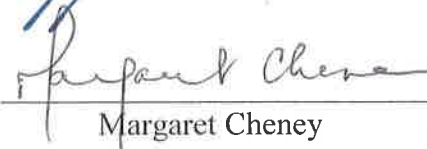
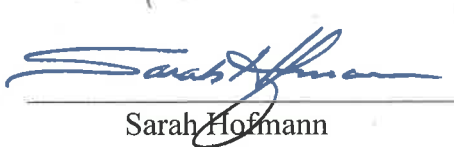
<sup>9</sup> Intervenor's Brief of 10/19/18 at 16-18; Chelsea Solar's Reply Brief of 11/2/18 at 10-11.

<sup>10</sup> Intervenor's Brief of 10/19/18 at 18.

Therefore, we direct further legal briefs be filed by no later than March 1, 2019, on the single-plant issue that more precisely address the Vermont Supreme Court's decision considering the factual basis for that decision as embodied in exhibits PC 155 and PC 156. Reply briefs will be due on March 8, 2019.

**SO ORDERED.**

Dated at Montpelier, Vermont this 14th day of February, 2019.

	)	
Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
	)	
Margaret Cheney	)	COMMISSION
	)	
	)	
Sarah Hofmann	)	OF VERMONT

OFFICE OF THE CLERK

Filed: February 14, 2019

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](mailto:puc.clerk@vermont.gov))*



**APPLE HILL SOLAR**  
 Address (TBD)  
 LAT:42.9079 / LON:-73.2042  
**SITE AREA**  
 2.0 MW (AC) / 2.376 MW (DC)  
 30° FIXED TILT



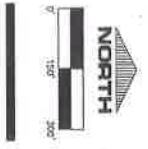
**ecogreen**  
 227 BROADWAY STREET  
 WASHINGTON, VA 22180  
 PHONE: 703.555.1111  
 WWW.ECOGREEN.COM

**PC 155**



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a  
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**BENNINGTON SOLAR**  
 Address (TBD)  
 LAT: 42.9091 / LON: -73.2064  
**SITE AREA**  
 2.0 MW (AC) / 2.376 MW (DC)  
 30° FIXED TILT



PROJECT NO. \_\_\_\_\_  
 DATE \_\_\_\_\_

**ecos**  
 ENERGY  
 CONSULTING

200 SOUTH STRENGTH  
 WILMINGTON, MASSACHUSETTS 01890

PC 156



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

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