

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-0789-INV

Vermont Public Utility Commission orders and memoranda issued in response to COVID-19 pandemic	
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Order entered: 05/21/2020

**ORDER GRANTING FURTHER EXTENSION OF COMMISSIONING DEADLINES
AND SEEKING COMMENTS ON REQUEST TO EXTEND INTERCONNECTION AGREEMENT
EXECUTION DEADLINES**

I. INTRODUCTION

Both the State of Vermont and the federal government have declared a state of emergency due to the outbreak of the new coronavirus known as COVID-19. The Vermont Public Utility Commission (“Commission”) recognizes the importance of helping to slow the spread of COVID-19 in Vermont.

Construction and interconnection of new generation facilities have been affected by measures put in place to slow the spread of the virus on Vermont, including Governor Scott’s Stay Home, Stay Safe Executive Order 01-20 and addenda to that order. In addition, measures put in place to help slow the spread of COVID-19 in Vermont and elsewhere are affecting supply chains.

The Commission recognizes that these disruptions to supply chains and construction activities may affect the ability of new generation facilities to meet their commissioning deadlines, as established in their certificates of public good or in their standard-offer contracts. Therefore, in this order the Commission grants a one-year extension of all commissioning deadlines for net-metering and standard-offer projects whose commissioning deadlines fall on or after March 25, 2020, through December 31, 2020.

This order also seeks public comments by June 10, 2020, on Triland Partners, LP’s (“Triland”) request for a waiver of a portion of Commission Rule 5.508(B) such that the execution deadlines of all Standard Generation Interconnection Agreements for net-metering or standard-offer projects that fall on or after March 25, 2020, through December 31, 2020, would be extended by one year.

II. PROCEDURAL HISTORY

On March 27, 2020, the Commission extended commissioning deadlines for net-metering and standard-offer projects whose commissioning deadlines fall on or after March 25, 2020, through June 1, 2020. Commissioning deadlines during that time period were extended to September 1, 2020.¹

On April 30, 2020, the Commission issued an order seeking public comments on whether further changes to commissioning deadlines would be appropriate. Specifically, the Commission asked for public comments on whether it would be appropriate to grant a one-year extension of all commissioning deadlines for net-metering and standard-offer projects whose commissioning deadlines fall on or after March 25, 2020, through December 31, 2020.

Public comments were filed in response to the Commission's April 30 order by the following entities: AllEarth Renewables, Inc. ("AllEarth"); Green Lantern Development, LLC ("Green Lantern"); Green Mountain Power Corporation ("GMP"); Kendall Sustainable Infrastructure; MHG Solar, LLC; Norwich Solar Technologies ("Norwich Solar"); Orchard Road Solar I, LLC; SolarSense, LLC; Southern Vermont Solar ("SVS"); SunCommon; Triland; the Vermont Agency of Natural Resources ("ANR"); the Vermont Department of Public Service ("DPS"); and Renewable Energy Vermont ("REV"). REV's filing states that ANR, the Agency of Agriculture, Food & Markets, the Division of Historical Preservation, and GMP authorized REV to represent that they support the proposed extension.

III. DISCUSSION

All public commenters supported the proposed extension of commissioning deadlines, although AllEarth stated that it supported the proposed extension provided that any such extension is without prejudice to prospective further commissioning date extensions on either a generic or individual basis. No public commenters opposed the proposed extension.

The Commission determines that, because of the disruptions to supply chains and construction activities resulting from the COVID-19 pandemic, it is appropriate to grant a one-year extension of all commissioning deadlines for net-metering and standard-offer projects whose commissioning deadlines fall on or after March 25, 2020, through December 31, 2020.

¹ Order of 3/27/20.

The new commissioning deadline is one year from the last commissioning deadline established for a project before the Commission's March 27, 2020, order that extended certain deadlines. In other words, the September 1, 2020, deadline no longer applies. As an example, the new commissioning deadline for a project whose commissioning deadline was originally May 1, 2020, is now April 30, 2021.

The extension granted today applies to net-metering projects with a certificate of public good as well as to those for which a certificate of public good was deemed issued. Projects whose commissioning deadlines fall within this time period do not need to file individual requests for extensions.

In addition, the Commission will instruct the standard-offer facilitator to similarly extend any commissioning deadlines for standard-offer projects that fall on or after March 25, 2020, through December 31, 2020.

This order does not limit the ability of any CPG holder to file for an extension of a specific commissioning deadline; the Commission will consider any such requests at the time they are filed. In addition, the Commission will continue to monitor the situation related to the COVID-19 pandemic to determine whether any further generic extensions of commissioning deadlines may be appropriate.

Today's order also does not affect any deadlines, restrictions, or timeframes associated with activities related to natural resources and environmental concerns that are required by individual CPGs, Commission orders, or memoranda of understanding executed with ANR. ANR noted in its public comments that some of these activities may have seasonal restrictions associated with conducting them or specific timeframes for reporting the results. There might also be restrictions on the timing of certain construction activities. All such deadlines, restrictions, and timeframes for these activities will remain in place. As requested by ANR and supported by the DPS, the Commission clarifies that we will consider any requests for extensions for these activities on a case-by-case basis at the time they are filed.

Requests for a Broader Extension of Commissioning Deadlines

AllEarth, Green Lantern, and REV addressed Commission Rule 5.110(C), which provides that non-use of a net-metering CPG for a period of one year following the date the CPG

is issued will result in the revocation of the CPG. Green Lantern and REV referred to a proposed change to Commission Rule 5.110(C) that is being discussed in Case 19-0855-RULE. We clarify that nothing in today's order affects the ongoing discussions in Case 19-0855-RULE.

AllEarth specifically requested that the Commission extend the abandonment provision of Commission Rule 5.110(C) from one year to two for all existing net-metering registrations as well as those filed between now and September 30, 2020. While not referring specifically to Commission Rule 5.110(C), SVS also asked that all CPG deadlines established before March 27, 2020, be extended.²

These requests are broader than the extension granted in today's order, and the Commission declines to grant them at this time. It is presently unknown how long the construction and supply-chain disruptions as a result of the COVID-19 pandemic will last. For this reason, the basis for granting extensions of net-metering commissioning deadlines that fall in 2021 is currently unclear. However, as stated above, the Commission will continue to monitor the situation related to the COVID-19 pandemic to determine whether any further generic extensions of commissioning deadlines may be appropriate.

Request to Extend Interconnection Agreement Execution Deadlines

Triland asks the Commission to:

authorize, enable and direct Vermont's utilities to similarly extend, for net metering and standard offer projects, the execution deadline of all Standard Generation Interconnection Agreements whose execution deadlines fall on or after March 25, 2020 through December 31, 2020.³

Triland states that "this extension will be critical to preserving the interconnection queue positions for the very same projects requiring the protection of a commissioning deadline extension."⁴

Commission Rule 5.508(B) provides, in relevant part:

The Interconnection Requester shall return the executed Interconnection Agreement within one calendar year or the Interconnection Requester's

² SVS also requested extensions of the commissioning deadlines for two CPGs that were deemed issued. There is no need for us to take specific action regarding those two cases because both of their commissioning deadlines are in August 2020, and therefore the generic extension that we grant in this order applies to them.

³ Triland Public Comments at 1.

⁴ Triland Public Comments at 1.

Application shall be deemed withdrawn and the Interconnection Requester shall lose Interconnection Queue position.

Therefore, the Commission interprets Triland's request as a request for a waiver of that sentence of Commission Rule 5.508(B) for those execution deadlines that fall on or after March 25, 2020, through December 31, 2020. The Commission is seeking public comments on the waiver request, including more information on how the execution of an interconnection agreement may be affected by conditions related to the COVID-19 pandemic. The Commission requests that such public comments be filed by June 10, 2020. Such public comments should be filed in Case No. 20-0789-INV in ePUC; if you are attaching a document, instead of typing "See attached file" in the comment text box, please type "re interconnection agreement execution deadlines" to make it easier for all users to identify those public comments that are responsive to this order.

Other Issues Raised in Public Comments

Norwich Solar asked the Commission to extend until September 1, 2020, the waivers of certain procedural requirements that the Commission granted in its March 30, 2020, order in this case. The Commission notes that the waivers requested by Norwich Solar are now included in Commission Emergency Rule 2.500. That Emergency Rule will be in effect until October 27, 2020, unless the Commission withdraws it sooner. Therefore, there is no need for the Commission to take further action regarding Norwich Solar's request.

REV noted that a technical correction appears to be needed to Emergency Rule 2.504(B)(2) with respect to who needs to receive complete applications by mail. REV is correct, and the Commission appreciates REV bringing this to our attention. The Commission will address this when the Emergency Rule comes before the Legislative Committee on Rules on June 1, 2020.

REV also asked that, for the next three months, the Commission modify the requirement that applicants send a complete copy of net-metering petitions to adjoining landowners. Green Lantern supported REV's request and asked that the Commission modify Emergency Rule 2.500 to amend Rule 5.106 and 5.107 to accomplish this.⁵ Both REV and Green Lantern proposed that the Commission allow adjoining landowners to receive a paper notification of filing, a paper

⁵ Green Lantern's May 13, 2020, public comments referred back to its April 1, 2020, public comments that also addressed this issue. The April 1 public comments asked that the requirement be modified for 120 days.

description of the project with a map, and an electronic copy of the full application (CD, thumb drive, and/or website link to full application) along with an easy way to request a full printed copy of the application if needed. Both public commenters stated that the requirement for adjoining landowners to receive a complete copy of net-metering petitions does not apply to larger projects filed under Rule 5.400. REV also stated that adjoining landowners are not required to receive a complete copy of petitions for telecommunication towers filed under Section 248a. Both public commenters described how it is difficult for people working from home offices as a result of the pandemic to photocopy and mail the complete CPG petitions, which can be voluminous. REV added that the requirement also has long had the unintentional impact of increasing the ultimate cost of local renewable electricity generation via higher permitting costs. Green Lantern stated that the change would save resources.

The two public commenters have essentially made two arguments supporting their request: (1) the current requirements are unduly burdensome, even in “normal” (non-pandemic) times; and (2) for public health reasons, the requirements should be changed now because certain tasks are difficult to perform when employees are working from home and employees are being encouraged to work remotely as much as possible due to the COVID-19 pandemic.

The Commission understands that some entities believe the requirements in Commission Rules 5.106 and 5.107 that net-metering applicants mail a complete copy of petitions to adjoining landowners were unduly burdensome even before the COVID-19 pandemic. In fact, this issue is relevant to Case No. 19-0855-RULE, which is the appropriate place for the Commission to consider concerns about the net-metering rule that are not related to the state of emergency due to the COVID-19 pandemic.

As noted by Green Lantern, the Commission has modified certain procedural requirements for public health reasons during the COVID-19 pandemic. As stated in Commission Emergency Rule 2.501:

This emergency rule amends various filing and procedural requirements and provides alternative procedures to reduce or eliminate in-person contact between members of the public and Commission staff or other members of the public to reduce the risk of exposure to the COVID-19 virus.

Most of the procedural requirements that the emergency rule modified are those that required a person to come into contact with another person – for example, to mail a document via

certified mail, to get a document notarized, or to go to a specific physical office to view a paper copy of a petition. Other modifications made it easier for filers to file confidential documents and documents in “legacy” paper cases with the Commission in light of the fact that the Commission’s offices are not open to the public. The situation described by REV and Green Lantern – it is difficult for an employee to perform certain tasks when working from home – does not fall into either of those categories. Nothing about Commission Emergency Rule 2.500 alters the Commission’s case-specific waiver process, which allows an applicant to file a request for a waiver of Commission Rules 5.106 and 5.107 mailing requirements where compliance would be onerous.⁶

Furthermore, unlike the modifications to requirements regarding the way filings are made with the Commission, no longer mailing copies of complete petitions to adjoining landowners of net-metering projects could affect those adjoining landowners’ ability to provide comments and determine whether they wish to intervene during the 30-day period provided under Rule 5.100.⁷ For this reason, the Commission determines that whether to modify the requirement that complete petitions be mailed to adjoining landowners of net-metering projects is appropriately considered in Case 19-0855-RULE.

IV. CONCLUSION

For the reasons set forth above, the Commission grants a one-year extension of all commissioning deadlines for net-metering and standard-offer projects whose commissioning deadlines fall on or after March 25, 2020, through December 31, 2020. The new commissioning deadline is one year from the last commissioning deadline established for a project before the Commission’s March 27, 2020, order that extended certain deadlines. In other words, the

⁶ See, e.g., Case No. 19-1289-PET, *Request of Bullrock Solar, LLC, pursuant to Commission Rule 2.107, for a waiver of certain net-metering service requirements in connection with a proposed 150 kW solar net-metered electric generation facility to be located at 650 Spear Street in South Burlington, Vermont*, Order of 5/30/19.

⁷ The Commission recognizes that the type of notification provided to adjoining landowners about larger Section 248 projects is different from that provided about net-metering applications. However, these two proceedings evolve in very different ways. For Section 248 projects (other than the few that qualify for processing under subsection (j)), there is automatically a litigated proceeding where the initial notice to adjoining landowners invites them to participate in an initial scheduling conference and potentially in a later site visit, public hearing, and litigated proceeding. For net-metering projects, an adjoining landowner receives the full application at the beginning of the process in order to facilitate immediate review for timely intervention as there is only a 30-day period for an adjoining landowner to file comments or intervene and ask for a hearing. In the net-metering context, the onus is on the adjoining landowner to instigate a litigated proceeding.

September 1, 2020, deadline no longer applies. As an example, the new commissioning deadline for a project whose commissioning deadline was originally May 1, 2020, is now April 30, 2021.

This order also seeks public comments by June 10, 2020, on Triland's request for a waiver of a portion of Commission Rule 5.508(B) such that the execution deadlines of all Standard Generation Interconnection Agreements for net-metering or standard-offer projects that fall on or after March 25, 2020, through December 31, 2020, would be extended by one year.

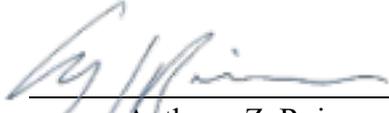
V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission ("Commission") that:

1. All commissioning deadlines for net-metering and standard-offer projects whose commissioning deadlines fall on or after March 25, 2020, through December 31, 2020, are extended by one year. The new commissioning deadline shall be calculated as set forth in this order.

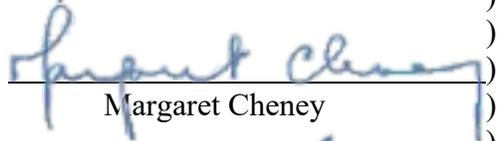
2. Public comments are requested to be filed by June 10, 2020, on Triland Partners, LP's request for a waiver of a portion of Commission Rule 5.508(B) such that the execution deadlines of all Standard Generation Interconnection Agreements for net-metering or standard-offer projects that fall on or after March 25, 2020, through December 31, 2020, would be extended by one year.

Dated at Montpelier, Vermont this 21st day of May, 2020.


_____)

Anthony Z. Roisman)

PUBLIC UTILITY)


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Margaret Cheney)

COMMISSION)


_____)

Sarah Hofmann)

OF VERMONT)

OFFICE OF THE CLERK

Filed: May 21, 2020

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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.