

Administrative Citation
30 V.S.A. § 30(h)
Issue Date: April 10, 2024
Citation No. 1001

Certificate of Public Good held by: SolarSense VT XXIV, LLC

Address: c/o Leslie Cadwell, Legal Counselors & Advocates PLC
P.O. Box 827, Castleton, VT 05735

Phone: (802) 342-3114

Email: lac@lac-lca.com

SolarSense VT XXIV, LLC violation of the terms and conditions of its Certificate of Public Good (“CPG”), issued in Vermont Public Utility Commission (“Commission”) Case No. 18-2048-PET, dated January 10, 2019, and Commission Rule 5.805, under sections 248 and 8010 of Title 30.

Following its investigation and review of filings made with the Vermont Public Utility Commission, the Vermont Department of Public Service determined that the CPG Holder (SolarSense VT XXIV) did commit the following acts in violation of Vermont Law, Statute, Rule, or Permit:

Under 30 V.S.A. §§ 248 and 8010 and Commission Rule 5.800, the CPG Holder violated Commission Rule 5.805(D) and Condition 19 of CPG Case No. 18-2048-NMP issued on January 10, 2019, (Requiring three years of annual inspection of the facility to determine the health, vigor, and continued effectiveness of the aesthetic mitigation. Commission Rule 5.805(D) and Condition 19 further requires the CPG Holder to file annual certification documenting the results of the year’s inspection and any corrective action(s) taken).

Description:

The SolarSense VT XXIV Project is a 500 kW ground mounted net-metered photovoltaic electric generation system located on Lower Newton Road, in the Town of St. Albans, Vermont.

1. On August 1, 2023, the Vermont Public Utility Commission (“Commission”) issued an order, in Case No. 18-2048-NMP, which requested that SolarSense VT XXIV, LLC (“CPG Holder”) provide the compliance filings required by Condition 19 of the certificate of public good (“CPG”) issued in that matter.

2. Condition 19 of the CPG issued in Case No. 18-2048-NMP requires the CPG Holder to conduct annual inspections of the facility to determine the health, vigor, and continued efficacy of the aesthetic mitigation measures approved in the CPG. Condition 19 also requires the CPG Holder to file annual reports detailing the results of these inspections, and any corrective actions taken, for three consecutive years following the filing of an initial certification that the aesthetic mitigation plan was fully implemented (which occurred in this case on August 29, 2019) by the anniversary of the initial certification.¹
3. The requirements of CPG No. 18-2048-NMP Condition 19 are also provided pursuant to Commission Rule 5.805(D).
4. Per the August 29, 2019, initial certification (filed pursuant to CPG Condition 18) indicating that the aesthetic mitigation plan had been constructed, the Condition 19 annual inspection reports were thereby due to be filed by August 19, 2020; August 19, 2021; and August 19, 2022.
5. The Commission's August 1, 2023, request for compliance filings noted that it had no record of annual aesthetics mitigation inspection reports being submitted for the years 2020-2022 and requested that the CPG Holder provide the reports, or explain why it could not, by August 11, 2023.
6. On August 11, 2023, in Case No. 18-2048-NMP, the CPG Holder admitted that it failed to document and certify the annual inspections of the aesthetic mitigation landscape plantings in either 2020, 2021, or 2022.²
7. In its August 11, 2023, filings, the CPG Holder asserted that the aesthetic mitigation was effective and mostly healthy despite the failure to make the required compliance filings. Only a single tree was dead out of the entire aesthetic mitigation landscaping plan and was therefore to be replaced.
8. On August 14, 2023, in Case No. 18-2048-NMP, the CPG Holder submitted the affidavit of Thomas Hungerford, owner of the company whose land hosts the facility via a lease. Mr. Hungerford's affidavit attests to the health and vigor of the aesthetic mitigation landscaping, save the dead tree which was subsequently replaced. The affidavit was accompanied by (and discusses)

¹ Condition 18 of CPG 18-2048-NMP requires the filing of an initial certification that the aesthetic mitigation plan (as approved in the CPG) had been installed, within 30 days of completion. The CPG Holder filed such a certification (including a cover letter, affidavits, and a photographic exhibit) in Case No. 18-2048-NMP on August 29, 2019. The requirements of Condition 18 are also required under Commission Rule 5.805(B).

² All filings made by the CPG Holder in Case No. 18-2048-NMP, in response to the Commission's August 1, 2023, inquiry, which were relied upon in developing this citation are appended hereto in "Attachment A."

photographs of plantings, including a dead sapling, which were taken by Mr. Hungerford on August 4 and 11, 2023.

9. On September 20, 2023, the CPG Holder filed photographs, titled “Replacement Tree Photos” in Case No. 18-2048-NMP.

Assessed Penalty:

Factors for consideration:

1. *The extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers.* The harms, or potential harms, are primarily aesthetic impacts and those made to the regulatory process itself. By failing to comply with its CPG Conditions and Rule 5.800, the CPG Holder harmed the integrity of the process by depriving regulators of the oversight the required compliance filings afford. These harms weigh in favor of assessing a civil penalty and requiring remediation.
2. *Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional.* The CPG Holder had reason to know that violations of CPG No. 18-2048-NMP, Condition 19 and Commission Rule 5.805 occurred because the CPG Holder failed to comply with the express terms of each. The CPG Holder had notice of the CPG it was issued by the Commission, and the Commission’s rules are publicly available and were developed under public processes. The CPG Holder’s August 11, 2023, filing in Case No. 18-2048-NMP states that these violations were unintentional and are attributable to the transfer of the CPG to the management of Green Street Power Partners, LLC, (“GSPP”) a then growing company which has its headquarters in Stamford, CT. The CPG Holder explained that the relatively undeveloped nature of GSPP and its struggles with remote work and employee absences during the height of the COVID-19 pandemic contributed to the violations. The Department maintains that the notice of the compliance requirements provided by the CPG gave the CPG Holder reason to know of the violation, if not actual knowledge, and that this weighs in favor of assessing a penalty and remediation. The CPG Holder’s explanation of its mistakes and its difficulties imposed by the COVID-19 pandemic are mitigating factors.
3. *The economic benefit, if any, that could have been anticipated from an intentional or knowing violation.* The CPG Holder’s August 11, 2023, filing in Case No. 18-2048-NMP asserts that the violations did not result in economic benefit but rather result in economic and reputational harm greater than the

costs of compliance. The Department maintains that the violations spared the CPG Holder of at least the costs of compiling and filing the annual compliance reports required by CPG Condition 19 and Commission Rule 5.805(D). These marginal competing costs and benefits have no impact on the recommended penalty and remediation.

4. *The length of time that the violation existed.* The first annual inspection and report was due by August 19, 2020, but no report or inspection was documented or filed through the August 19, 2022, end of the CPG Condition 19 and Rule 5.805(D) requirements. The CPG Holder did not begin to rectify these violations until its August 11, 2023, response to the Commission's inquiry in Case No. 18-2048-NMP. Thus, the violation existed, at least, for nearly four years. Moreover, each failure to make and submit an annual aesthetic mitigation inspection report is a separate violation of CPG Condition 19 and Commission Rule 5.805. The length and repeated nature of the violations weighs in favor of a penalty and remediation.
5. *The deterrent effect of the penalty.* The Department concludes that a moderate civil penalty and remediation will provide sufficient deterrence.
6. *The economic resources of the respondent.* The net-metering rate afforded the facility, comprised of a blended rate which receives renewable energy credit ("REC") transfer and siting adjustors, (as provided in conditions 5 and 6, on pages 1 and 2, of the January 10, 2019, CPG and Commission Rules 5.126 and 5.127) provides the CPG Holder sufficient economic resources to afford the Department's recommended penalty and remediation.
7. *The Respondent's record of compliance.* The Department is unaware of prior violations associated with this facility or the companies involved.
8. *Any other aggravating or mitigating circumstance.* As stated above, the unusual difficulties posed by the COVID-19 pandemic are a mitigating consideration.

For these reasons, the Department of Public Service ("Department") concludes that a **penalty of \$250.00** for the three violations is appropriate.

Remedial Action

Remedial action **is warranted**. The Department recommends a remediation plan consistent with the provisions and intent of Commission Rule 5.805, under 30 V.S.A. §§ 248 and 8010, with the following requirements:

For a period of three years, the CPG holder shall conduct an annual inspection of the facility to determine the health, vigor, and continued effectiveness of the mitigation.

The CPG holder shall file with the Commission and parties an annual certification documenting the results of the inspection and any corrective actions taken. Certifications required under this paragraph shall be submitted by the dates one, two, and three years following the CPG Holder's September 20, 2023, filing in Case No. 18-2048-NMP of "Replacement Tree Photos."

The public has an opportunity to make public comments on this draft citation for 30 days from the issuance of this draft citation, in accordance with 30 V.S.A. § 30(h)(2). **The period for public comments will end on Friday, May 10, 2024.** Public comments may be submitted to the undersigned via email or postal mail:

Dated at Montpelier, Vermont this 10th day of April, 2024.

VERMONT DEPARTMENT OF PUBLIC SERVICE



Alexander Wing

By:

Alex Wing, Special Counsel
Department of Public Service
112 State Street
Montpelier, VT 05620-2601
alexander.wing@vermont.gov
(802) 828-4011