

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM**

In Re THOMAS MELONE

PRB File No. 120-2025

RESPONDENT’S MOTION TO DISMISS FOR STRUCTURAL ERROR

Respondent Thomas Melone respectfully moves this Hearing Panel for an order dismissing the Petition of Misconduct in its entirety. This motion addresses a fatal structural defect in the proceedings against Respondent: the participation of Attorney Ronald Shems as Chair of the Probable Cause Hearing Panel that authorized the filing of formal disciplinary charges. Shems had disqualifying conflicts of interest and possessed knowledge of facts forming the basis for the charged conduct—rendering him both a conflicted adjudicator and a percipient witness to the very matters he was called upon to evaluate for probable cause. These conflicts compromised the integrity of the probable cause determination and, by extension, have infected the entirety of these proceedings. The resulting prejudice to Respondent cannot be cured by any remedy short of dismissal.¹

BACKGROUND

I. The Disciplinary Proceedings

In May 2025, following a complaint filed by Attorney Merrill Bent, Conflict Disciplinary Counsel Michael F. Hanley was appointed to investigate allegations against Respondent arising from his efforts to develop solar-electric generation facilities in Bennington, Vermont, through his companies Apple Hill Solar LLC (“Apple Hill”) and Chelsea Solar LLC (“Chelsea”). In 2013 and 2014, Apple Hill and Chelsea entered into Standard Offer Contracts pursuant to Vermont’s SPEED

¹ Respondent has not previously moved to dismiss the Petition of Misconduct, or moved to disqualify Shems, based on this structural error.

Program, but to date, the Vermont Public Utility Commission (“PUC”) has not provided the required Certificates of Public Good for either facility. As a result, the projects have been in litigation for several years. The disciplinary charges against Respondent largely arise from his filings with, and communications directed to, governmental entities—including the PUC—in connection with those solar projects.

On or about August 18, 2025, Conflict Disciplinary Counsel filed a motion for a probable cause determination with a Probable Cause Hearing Panel. In this case, the Probable Cause Hearing Panel consisted of Ronald Shems, Chair, Elizabeth Kruska, and Laura Bozarth. On September 4, 2025, that Probable Cause Hearing Panel found probable cause for violations of Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, and 8.4(d) of the Vermont Rules of Professional Conduct. Shems signed the probable cause finding on behalf of the Probable Cause Hearing Panel. **Exhibit 1** (Notice of Probable Cause Decision, Sept. 4, 2025). Respondent did not participate in the probable cause decision process—he received no prior notice of the probable cause proceeding and was not advised of the composition of the Hearing Panel members. No transcript or written opinion was issued by the Hearing Panel.

II. Shems Did Not Disclose Various Conflicts

Shems, who served as Chair of the Probable Cause Hearing Panel in this case, has multiple conflicts of interest which infected the probable cause finding against Respondent—whether Shems himself was aware of them or not. First, Shems serves as General Counsel to Washington Electric Cooperative (“WEC”), which his law firm’s website describes as a “customer-owned utility that provides 100% renewable energy to rural areas of Central and Northern Vermont.”²

² Tarrant Gillies Shems LLP, *About Ronald A. Shems*, <https://www.tarrantgillies.com/our-team/ronald-a-shems/> (last visited May 29, 2026). Shems’s online biography documents, for instance, his successful representation of WEC in 2019 before the PUC in a rate design proceeding.

Shems also works for the Montpelier-based law firm, Tarrant, Gillies & Shems LLP, a small firm comprised of approximately 11 attorneys. Shems appeared as counsel for WEC in more than 35 separate PUC proceedings in 2025 and 2026 alone. Although the development of new solar facilities in Vermont directly impacts WEC,³ Shems did not disclose his role as General Counsel.

Second, WEC was an adverse party to the Standard Offer contract proceedings that form the backdrop for the instant Petition of Misconduct. Conflict Disciplinary Counsel's own Bates-stamped evidence confirms Shems's appearance in those proceedings on behalf of WEC, reflecting his name as counsel of record. **Exhibit 2**, Doc. 001064-1077 at 1077, Order Denying Apply Hill Solar's Request for Extension of the Standard Offer Contract Commission Milestone, PUC Case No. 24-3101-PET, Nov. 20, 2024 (listing Shems on service list as WEC's counsel); **Exhibit 3**, Doc. 000566-579 at 579 (same). Shems also did not disclose this adverse interest, even though the charged conduct here arises from Respondent's advocacy relating to those same Standard Offer proceedings before the PUC.

Third, Shems's current partners at Tarrant, Gillies & Shems LLP, Michael J. Tarrant, II and Stephen F. Coteus, recently represented parties whom Respondent named as defendants in other litigation pertaining to the Bennington solar projects. In 2018, Tarrant and Coteus

³ WEC is one of three Vermont utilities that is currently exempt from the Standard Offer program's purchasing and pro rata cost sharing requirements, meaning that it is not required to buy renewable power from eligible generators at specified prices for a specified time period. WEC's exemption, which is based in part on its status as a provider of 100% renewable power, is evaluated on an annual basis pursuant to 30 VSA § 8005a(k)(2)(B). If WEC failed to qualify for the exemption in the future, it would be responsible for the Standard Offer program costs, i.e., fixed payments to solar generators. The exemption, however, only addresses WEC's purchase obligation, not its competitive economic interest: WEC self-generates approximately 65% of its load from its 8 MW Coventry landfill-gas facility, and every megawatt of Chelsea/Apple Hill output that clears the Standard Offer queue places downward pressure on the REC and renewable-PPA values against which WEC's own generation competes. WEC monetizes the renewable attributes of that generation by selling renewable energy credits—generating \$1,882,175 in REC sales in fiscal year 2024 alone, an amount more than double its total net margins for that year.

represented two members of the Bennington Solar Siting Committee, Mary Morrissey and Richard Carroll, who were staunch opponents of Respondent’s projects. **Exhibit 4**, Doc. 001079-1084 at 1081 (PACER docket sheet for *PLH LLC et al. v. Town of Bennington et al.*, Case No. 18-cv-00041 (D. Vt. Feb. 26, 2018)). In that declaratory judgment and injunctive action, Respondent—through his companies, including PLH LLC—challenged the validity of a solar ordinance as well as provisions of the Bennington Town Plan restricting the siting of solar energy facilities. Shems did not disclose his firm’s adverse representation, even though it is exactly the type of intra-firm conflict that standard “conflicts checks” regularly performed by law firms are intended to identify. And once again, this conflict of interest is apparent from Conflict Disciplinary Counsel’s own production, which includes a Bates-stamped copy of the federal docket sheet reflecting Tarrant, Gillies & Shems LLP’s representation of Morrissey and Carroll in a suit brought by Respondent. *Id.*

Finally, Shems has a potential conflict arising from his financial interest in an entity involving his former law partners, SDKS Holdings, LLC, which was formed in 2004. According to his CV, Shems was a partner at a law firm called Shems Dunkiel Kassel & Saunders from 2001 to 2011.⁴ SDKS Holdings, LLC’s members are Shems, Brian Dunkiel, John Kassel, and Mark Saunders, and the entity remains in good standing as of the date of this filing. Shems’s former law partner Kassel has served as counsel in the past to Green Mountain Power (GMP),⁵ a utility that is adverse to Respondent’s solar development companies in multiple contested proceedings before

⁴ See Tarrant Gillies Shems LLP, *Ronald A. Shems Resume*, available at <https://www.tarrantgillies.com/wp-content/uploads/2022/07/Rons-Resume.2021.9.10.pdf> (last visited May 29, 2026).

⁵ See, e.g., Petition of Green Mountain Power Corporation for approval of a temporary limited regulation plan pursuant to 30 V.S.A. §§ 209, 218, and 218d, Case No. 17-3232-PET (PUC May 22, 2017) (reflecting Kassel as counsel for GMP).

the PUC. Shems again failed to disclose a conflict: his former law partner and LLC co-member has represented GMP.

III. Shems Was a Percipient Witness to the Underlying Events in This Case

Beyond these conflicts, Shems possesses personal knowledge of facts underlying the charged conduct. As counsel for WEC in the various Standard Offer matters before the PUC, Shems was engaged in the very proceedings that gave rise to the allegations against Respondent. More specifically, Shems appears on the service list as counsel for WEC in *at least six* PUC matters involving Respondent's Bennington solar projects:

- Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone, 20-0185-PET, filed January 23, 2020;
- Petition of Apple Hill Solar LLC for extension of standard-offer commissioning milestone, 21-1485-PET, filed April 21, 2021;
- Petition of Chelsea Solar LLC for contingent amendment to standard-offer purchase power agreement, 21-3192-PET, filed August 24, 2021;
- Petition of Apple Hill Solar LLC for contingent amendment to standard-offer purchase power agreement, 21-3191-PET, filed August 24, 2021;
- Petition of Chelsea Solar LLC for extension of standard-offer contract commissioning deadline milestone, 23-1138-PET, filed April 13, 2023;
- Petition of Apple Hill Solar LLC sixth request for extension of standard-offer contract milestone, 24-3101-PET, filed October 8, 2024.

As noted, Shems's name even appears in discovery in this case, making his involvement in the issues in this case indisputable. *See Exhibits 2 & 3.*

IV. Respondent's Efforts to Depose Shems

In February 2026, Respondent issued a subpoena commanding Shems to appear for a deposition on April 21, 2026, in order to question him on the probable cause determination and his alleged conflicts of interest. On March 12, 2026, the Attorney General moved to quash the subpoena to Shems and multiple other witnesses. That motion stated, "[n]one of the Petitioners

here were involved in, nor do they have any factual information about, the underlying conduct that comprise the challenges to Mr. Melone’s law license.” That Shems failed to inform the Attorney General of these conflicts is troubling.

LEGAL STANDARDS

I. The Professional Responsibility Board

The Professional Responsibility Board (the “Board”) and its hearing panels do not operate as freestanding bodies—they act as an arm of the Vermont Supreme Court itself. The Board was “created by this Court pursuant to its ‘exclusive responsibility . . . for the structure and administration of the lawyer discipline and disability system.’” *In re Berk*, 157 Vt. 524, 527 (1991). The Board “acts on behalf of this Court and pursuant to rules adopted by this Court,” and the Supreme Court “retains ‘inherent power . . . to dispose of individual cases of lawyer discipline.’” *Id.* (internal citations omitted).

A probable cause finding is the necessary predicate for all formal charges before the Board.

Pursuant to the Vermont Supreme Court Administrative Orders and Rules:

Disciplinary counsel’s decision to proceed with a petition of misconduct shall be reviewed for probable cause by a hearing panel assigned by the chair of the Board pursuant to a fixed rotation, and such review shall be based upon written application and affidavit setting forth a factual basis for the charges.

A.O. 9, Rule 13(C). The purpose of probable cause review is to ensure that only meritorious charges proceed to formal hearing. When that review is conducted by a conflicted individual with personal knowledge and adverse interests, that safeguard is rendered meaningless, and the Petition of Misconduct must be voided. Unlike the disqualification of trial counsel, which may be remedied by substitution, the disqualification of an adjudicator who has already rendered a decision can only be remedied by vacating the tainted decision. *See Velardo v. Ovitt*, 182 Vt. 180, 193 (2007)

(vacating custody determination and remanding for new trial because of assistant judge’s undisclosed conflict).

II. Vermont Code of Judicial Conduct

The first words of the Preamble to the Vermont Code of Judicial Conduct emphasize that the Code’s primary objective is to promote public confidence in the judiciary:

An independent, fair, and impartial judiciary is indispensable to our system of justice. . . . Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Vt. Code Judicial Conduct, Preamble (2019). The Vermont Code of Judicial Conduct is explicit about potential conflicts: “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned[.]” Vt. Code 2019, Rule 2.11 (2019). Put another way, there need not be an actual conflict—a reasonable question about a judge’s impartiality is all that is required. *See id.* Thus the standard for recusal is objective, and scienter is not an element of the analysis. *See id.*; *see also Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859 (1988) (analyzing federal statute requiring federal judge to disqualify himself “in any proceeding in which his impartiality might reasonably be questioned,” and holding vacatur required even where judge lacked personal knowledge that university for which he was a trustee had financial interest in trial); *Velardo*, 182 Vt. at 193 (endorsing *Liljeberg* “in general”). Thus, disqualification or vacatur may be required even where the judge was unaware of the conflict.

ARGUMENT

As stated, the Vermont Code of Judicial Conduct requires disqualification in any proceeding “in which the judge’s impartiality might reasonably be questioned[.]” Vt. Code 2019, Rule 2.11 (2019). Even if no single specific ground were dispositive, the cumulative weight of

Shems’s multiple conflicts gives the obvious appearance of impartiality. The probable cause finding rendered under these circumstances cannot stand.

I. The Vermont Code of Judicial Conduct Applies to Shems

As a threshold matter, the Vermont Code of Judicial Conduct applies to Shems as Chair of the Probable Cause Hearing Panel. Rule 14(D) of A.O. 9 expressly incorporates by reference the Vermont Code of Judicial Conduct’s disqualification standards. It states, “Hearing panel members must disqualify themselves from taking part in any proceeding in which a judge, similarly situated, would be required to do so under the Vermont Code of Judicial Conduct.” A.O. 9, Rule 14(D). Thus the Board’s hearing panel members, including Shems, are subject to the conflicts of interest rules embedded in the Vermont Code of Judicial Conduct.⁶

II. The Vermont Code of Judicial Conduct Requires Dismissal

Rule 2.11(A) of the Code of Judicial Conduct sets out a non-exhaustive list of circumstances in which a “judge’s impartiality might reasonably be questioned,” all of which require judges to disqualify themselves from the proceeding. Shems satisfies at least *three* of those circumstances—whether knowingly or inadvertently.

First, Rule 2.11(A)(1) requires disqualification where a judge possesses “personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute

⁶ The Vermont Code of Judicial Conduct defines a “judge” as “anyone, whether or not a lawyer, who is an officer of the judicial system and who performs judicial functions, including an assistant judge, a probate judge, and an officer such as a magistrate, commissioner, traffic hearing officer, master, or referee.” Vt. Code, Terminology (2019). A.O. 9 also establishes that hearing panels ruling upon requests for findings of probable cause are performing an *adjudicatory* function. See A.O. 9, Rule 14(C) (“Hearing panels adjudicate all formal disciplinary and disability proceedings. The powers and duties of the hearing panel include: (1) Ruling upon requests from Disciplinary Counsel for findings of probable cause; . . .”). There can be no question that the Chair of a Probable Cause Hearing Panel is subject to the Code of Judicial Conduct’s disqualification standards.

in the proceeding.” Shems, through his representation of WEC in at least six related Standard Offer contract proceedings before the PUC, acquired personal knowledge of the facts in dispute, as well as of Respondent’s legal challenges and litigation style that form the basis for the Petition of Misconduct. Shems was not a neutral adjudicator encountering these facts for the first time; he is a percipient witness who is personally connected to the underlying proceedings on which the allegations are based. Where a presiding officer’s knowledge of the facts at issue derives from his own involvement as an advocate for an adverse party, the risk of prejudgment, personal bias, and prejudice is precisely the harm that Rule 2.11(A)(1) is designed to prevent.

Second, Rule 2.11(A)(6) of the Code of Judicial Conduct requires disqualification where the judge “served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association” or “was a material witness concerning the matter[.]” Shems’s role as counsel for WEC in the Standard Offer proceedings satisfies multiple prongs of this provision. Because Shems serves as General Counsel to a party embroiled in the extended litigation surrounding the Respondent’s solar developments in Bennington, Shems has had a front-row seat to Respondent’s litigation style since at least 2020 and has necessarily formed views about the underlying cases, his character, and his conduct. When he sat as Chair of the Probable Cause Hearing Panel and evaluated Conflict Disciplinary Counsel’s three-page affidavit and two-page memorandum, Shems did so with a reservoir of personal knowledge and, critically, with the perspective of one who represented a party in related proceedings. This prior exposure creates an unacceptable risk of prejudgment and bias, rendering Shems unfit to serve on the Probable Cause Panel in this matter. Under these circumstances, Shems could qualify as a material witness to the charged conduct or related conduct. Shems’s law

partners' representation of two individuals directly adverse to Respondent in recent related federal litigation is likewise disqualifying.

Third, Rule 2.11(A)(3) requires disqualification where the judge "has an economic interest in the subject matter in controversy or in a party to the proceeding." As General Counsel for WEC, Shems may have a direct financial interest in matters bearing on Respondent's ability to pursue the Bennington solar projects. Shems also has an apparent financial interest in an entity involving his former law firm partners, one of whom has represented GMP, a party generally adverse to Respondent. These affiliations give rise to a more than de minimis economic interest that could be substantially affected by the outcome of this proceeding. This is precisely the kind of economic stake that Rule 2.11(A)(3) prohibits.

III. The Prejudice to Respondent Requires Dismissal

In *Velardo*, the Vermont Supreme Court recognized that even the *appearance* of impropriety is sufficient to require disqualification and, in appropriate cases, vacatur of the proceedings. The *Velardo* Court endorsed the three-factor test from *Liljeberg* for determining whether a judgment should be vacated due to a judge's failure to recuse: (1) the risk of injustice to the parties in the particular case; (2) the risk that denial of relief will produce injustice in other cases; and (3) the risk of undermining the public's confidence in the judicial process. *Velardo*, 182 Vt. at 191–95. Here, all three factors are satisfied.

The risk of injustice to Respondent cannot be understated because the taint goes to the very root of the proceedings. Shems chaired the Panel that authorized formal charges carrying the potential sanction of disbarment—the most severe professional sanction—which carries loss of a significant property interest (license to practice) that is protected by due process. *See In re Watts*, 219 Vt. at 607. The probable cause determination was made without Respondent's participation,

without a transcript, and without any written opinion, and thus Respondent had no opportunity to raise the conflict before the Panel acted. Shems's role in the probable cause determination cannot be surgically excised while the charges he authorized remain pending. As the *Velardo* Court recognized, "we cannot invade the sanctity of the deliberations that led to those findings, nor should we. We must assume that they represent the collegial work product of all participants in the decision." 182 Vt. at 190. So too here: we cannot know the extent to which Shems's personal knowledge and adverse interest influenced the Panel's deliberations.⁷

As to the second prong, failing to provide relief here would produce injustice in future cases by signaling that hearing panel members may sit in judgment of attorneys whose conduct they observed as adverse counsel—without disclosure, without the opportunity for challenge, and without consequence. As the *Velardo* Court observed, "providing relief in cases such as this will not produce injustice in other cases; to the contrary, [it] may prevent a substantive injustice in some future case by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered." *Id.* at 193 (quoting *Liljeberg*, 486 U.S. at 868); *see also Liljeberg*, 486 U.S. at 864 ("We must continuously bear in mind that to perform its high function in the best way[,] justice must satisfy the appearance of justice.") (internal quotations omitted). And because the Board and its hearing panels exercise authority delegated by the Supreme Court, the integrity of their proceedings reflects directly on the Court itself. *See In re Berk*, 157 Vt. at 527; *see also* Vt. Const. ch. II, § 30 (empowering the Supreme

⁷ This structural defect is further compounded by other procedural infirmities that have been raised in prior filings, including the questionable appointment of Conflict Disciplinary Counsel, *ex parte* communications between Conflict Disciplinary Counsel and the Board Chair, and the successive recusal of hearing panel members. The cumulative effect of these irregularities demonstrates a pattern of structural unfairness in this case.

Court with “disciplinary authority concerning all judicial officers and attorneys at law in the State”). When a probable cause panel—the gatekeeping mechanism through which the Court’s disciplinary authority is first exercised—is chaired by a conflicted adjudicator, the taint extends not merely to the panel’s finding but to the legitimacy of the Court’s disciplinary apparatus.

Finally, allowing the current proceeding to continue on the foundation of a conflicted probable cause determination undermines public confidence in the judicial process. Allowing charges to stand on the basis of a tainted probable cause finding does not protect the public—it undermines our legal system and public confidence in it.

IV. Respondent’s Due Process Right to an Impartial Decisionmaker Requires Dismissal

Beyond the Vermont Code of Judicial Conduct, the Vermont Supreme Court has made clear that due process demands impartiality on the part of the decisionmaker, whether functioning in judicial or quasi-judicial capacities. *In re JLD Properties of St. Albans, LLC*, 190 Vt. 259, 263 (2011), referencing *Rissler vs. Jefferson Cnty. Bd. Of Zoning Appeals*, 225 W.Va. 346 (2010) (applying due process principles to hold that member of local zoning board should have been disqualified from considering application for conditional use permit based on conflict of interest); *see also Schweiker v. McClure*, 456 U.S. 188, 195 (1982). “The presence of bias—or prejudgment, a form of bias—may preclude a fair and impartial hearing.” *Burch-Clay v. Taylor*, 200 Vt. 166, 178 (2015), citing *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (stating that “a biased decisionmaker [is] constitutionally unacceptable.”). Bias may manifest as “actual bias” or “probability of actual bias.” *Burch-Clay*, 200 Vt. At 178, quoting *Withrow*, 421 U.S. at 47. Where, as is the case here, the appearance of fairness was compromised by Shems’s participation in the probable cause decision, Respondent’s due process rights have been violated. *See Rissler*, 225 W.Va. at 353–58.

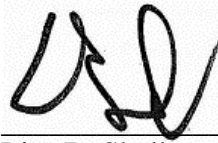
CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Respondent respectfully requests that this Hearing Panel dismiss the Petition of Misconduct in its entirety on the grounds that the probable cause finding was rendered by a Probable Cause Hearing Panel chaired by a conflicted individual in violation of A.O. 9, the Vermont Code of Judicial Conduct, and Respondent's due process rights.

Dated: May 29, 2026

Respectfully submitted,

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EXHIBIT 1

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
File No. 25-120

NOTICE OF PROBABLE CAUSE DECISION

The Probable Cause Hearing Panel, consisting of Ronald A. Shems, Chair, Elizabeth Kruska and Laura Bozarth, having reviewed the Motion for *Finding of Probable Cause*, the proposed *Petition of Misconduct*, the *Affidavit of the Michael F. Hanley, Conflict Disciplinary Counsel*, and the *Memorandum of Law*, find:

_____ No probable cause;

 X Probable cause for violation of Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5 and 8.4(d).

Dated this 4th day of September 2025.



Chair, Probable Cause Hearing Panel

EXHIBIT 2

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-3101-PET

Petition of Apple Hill Solar LLC for a sixth request for extension of standard-offer contract milestone	
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Order entered: 11/20/2024

ORDER DENYING APPLE HILL SOLAR LLC'S SIXTH REQUEST FOR AN EXTENSION OF THE STANDARD OFFER CONTRACT COMMISSIONING MILESTONE

I. INTRODUCTION

This case concerns a petition filed by Apple Hill Solar LLC ("Petitioner") with the Vermont Public Utility Commission ("Commission"), seeking, for the sixth time, an extension of its standard-offer contract commissioning milestone deadline related to the construction and operation of a proposed 2.0 MW solar electric generation facility in Bennington, Vermont ("Petition"). In this order, the Commission denies the Petition.

II. BACKGROUND AND PROCEDURAL HISTORY

On May 13, 2014, the Petitioner was awarded a standard-offer contract for the facility ("Contract").

On March 15, 2015, the Petitioner filed a petition with the Commission seeking a certificate of public good ("CPG") for the facility. The petition was assigned Docket No. 8454.

On December 10, 2015, the Petitioner filed its first request for an extension of the Contract's commissioning milestone deadline. The Commission approved the first extension request on March 31, 2016.¹

On September 26, 2018, the Commission issued an order and CPG authorizing the construction and operation of the facility.² A group of intervening neighbors appealed the Commission's decision.

¹ *In re request of Apple Hill Solar LLC for an extension of time to commission a solar electric generating project in Bennington, Vermont*, Order of 3/31/16 (no case or docket number was assigned to this order).

² *Petition of Apple Hill Solar LLC for a certificate of public good*, Docket 8454, Order and CPG of 9/26/18.

On October 29, 2018, the Petitioner filed its second request for an extension of the Contract's commissioning milestone deadline. The Commission approved the second extension request on December 27, 2018.³

On September 3, 2019, the Vermont Supreme Court reversed in part and remanded the Commission's September 26, 2018, order approving the facility ("First Remand").⁴

On September 10, 2019, the Petitioner filed its third request for an extension of the Contract's commissioning milestone deadline. On October 17, 2019, the Commission denied the third extension request without prejudice because the request was not ripe for consideration.⁵

On January 22, 2020, the Petitioner filed its fourth request for an extension of the Contract's commissioning milestone deadline. The Commission approved the fourth extension request on March 12, 2020.⁶

On May 7, 2020, the Commission issued its order in response to the First Remand, denying the Petitioner a CPG.⁷ The Petitioner appealed the Commission's May 7, 2020, denial to the Vermont Supreme Court.

On April 21, 2021, the Petitioner filed its fifth request for an extension of the Contract's commissioning milestone deadline.

On September 3, 2021, the Vermont Supreme Court reversed in part and remanded the Commission's May 7, 2020, order denying the Petitioner's petition for a CPG ("Second Remand").⁸

On May 16, 2022, the Commission issued its order in response to the Second Remand, again denying the Petitioner a CPG.⁹ The Petitioner appealed the Commission's May 16, 2022, denial to the Vermont Supreme Court.

³ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 18-3727-PET, Order of 12/27/18.

⁴ *In re Apple Hill Solar LLC*, 2019 VT 64

⁵ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 19-3482-PET, Order of 10/17/19.

⁶ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 20-0185-PET, Order of 3/12/20.

⁷ Docket 8454, Order of 5/7/20.

⁸ *In re Petition of Apple Hill Solar LLC*, 2021 VT 69.

⁹ Docket 8454, Order of 5/16/22.

On October 27, 2023, the Vermont Supreme Court issued its decision affirming the Commission's May 16, 2022, order denying the Petitioner a CPG.¹⁰

On May 29, 2024, the Commission issued its order denying the Petitioner's fifth extension request as moot due to the passage of time and the Commission's denial of Apple Hill's CPG petition.¹¹

On June 26, 2024, the Petitioner filed a motion for reconsideration of the Commission's order denying its fifth extension request.

On October 8, 2024, the Commission issued an order denying the Petitioner's motion for reconsideration of the Commission's May 29, 2024, order.

Also on October 8, 2024, the Petitioner filed the Petition, containing a sixth request for an extension of the Contract's commissioning milestone deadline.

On November 4, 2024, the Petitioner filed a notice of appeal to the Vermont Supreme Court of the Commission's denial of the fifth extension request.¹²

On November 13, 2024, the Vermont Department of Public Service ("Department") filed comments recommending that the Commission stay this proceeding while the appeal of the fifth extension request denial is resolved.¹³

III. DISCUSSION AND CONCLUSION

The Vermont statute establishing the Standard Offer Program requires that a standard-offer contract terminate when "a proposed plant accepting a standard offer fails to meet the requirements of the Program in a timely manner."¹⁴ As with other standard-offer contracts, there are two milestone requirements embedded in Apple Hill's contract: submitting an application for a CPG for the facility and commissioning the facility.¹⁵ Extensions of time to fulfill these

¹⁰ *In re Petition of Apple Hill Solar LLC*, 2023 VT 57.

¹¹ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 21-1485-PET, Order of 5/29/24.

¹² Case No. 21-1485-PET, Notice of Appeal to the Vermont Supreme Court, filed 11/4/24.

¹³ Although not directly related to the standard-offer contract milestone extension request, on November 14, 2024, a public comment from a resident abutting the proposed facility was filed, voicing support for issuance of a CPG.

¹⁴ 30 V.S.A. § 8005a(j).

¹⁵ See 30 V.S.A. § 8005a(j)(1) (establishing a 24-month commissioning deadline).

obligations are entirely within the Commission's discretion.¹⁶ Without an extension of a milestone deadline, a standard-offer contract expires on its own terms.¹⁷

The Commission considers extensions of standard-offer contract commissioning deadlines pursuant to the provisions of 30 V.S.A. § 8005a(j)(2). That section provides that the Commission *may* extend a standard-offer contract commissioning deadline "if it finds that the plant owner has proceeded diligently and in good faith and that commissioning of the plant has been delayed because of litigation or appeal or because of the need to obtain an approval the timing of which is outside the Commission's control, or for other good cause as determined by the Commission."¹⁸ An extension of a standard-offer contract commissioning deadline is therefore a matter left to the discretion of the Commission. It is not something the Commission must grant if the statutory criteria are met, but rather is something that the Commission may provide if it concludes that relief is warranted.

In previous cases, "the Commission has found good cause to grant requests for extensions when they are timely filed and when the CPG holder has shown that the need for an extension has arisen from circumstances outside of the CPG holder's control."¹⁹ This is a two-part inquiry. First, the Commission must find the request is timely. Then, the Commission must find that there is good cause to grant an extension. The timeliness of an extension request is essential because once the 24 months have lapsed, the contract is revoked by operation of the statute and the terms of the contract.²⁰ It is an extraordinary request to reinstate a contract that has been terminated, which will only be granted when in our discretion we find that a petitioner has demonstrated good cause for its failure to file its request in a timely fashion. Timely filing of an

¹⁶ 30 V.S.A. § 8005a(j)(2).

¹⁷ Paragraph 8 of the contract states that a failure to meet the commissioning milestone deadline renders the contract "null and void and of no further force and effect, absent an order of the [Commission] to the contrary." The contract uses the term "Board" because, at the time it was executed, the Vermont Public Utility Commission was known as the Vermont Public Service Board.

¹⁸ 30 V.S.A. § 8005a(j)(2).

¹⁹ *Request of Middle Road Solar LLC for extension of CPG# 18-0901-NMP*, Case No. 19-4688-PET, Order of 2/27/21 at 4; see also Commission Rule 5.110(C).

²⁰ *Cf. In re K.S.*, 2021 VT 51, ¶¶ 13-18, 215 Vt. 205, 260 A.3d 387 (upholding trial court decision denying enlargement of time to file notice of appeal where appellant did not demonstrate good cause or excusable neglect for untimely filing).

extension request avoids harm to the regulatory process — “a process that cannot function when regulated entities ignore their obligations.”²¹

As we explained in our recent order denying reconsideration of our denial of the Petitioner’s fifth commissioning milestone extension request, the standard-offer contract commissioning milestone that the Petitioner seeks to extend terminated on October 25, 2022. This rendered the contract null and void by the contract’s own terms and under 30 V.S.A. § 8005a(j).²² Put simply, there no longer is an operative standard-offer contract related to this proposed facility for us to consider extending the commissioning milestone.

In this case, the request was not timely filed. Absent a compelling explanation for the late filing, the Commission does not grant extensions to commissioning milestones that are not timely filed.²³ The Petitioner demonstrated knowledge of this requirement by making such requests on numerous occasions. The following events in the Apple Hill facility’s history with the Commission should have caused the Petitioner to file an amended or new extension request with the Commission before its fifth request expired.

- The last extension of the commissioning milestone deadline granted by the Commission expired on May 7, 2021.²⁴

²¹ *Petition of Otter Creek Solar LLC*, Case Nos. 19-3031-PET/19-1596-INV, Order of 4/1/21 at 4-5; *see also Investigation pursuant to 30 V.S.A. §§ 30, 209, and 248 regarding the 2.2 MW solar plant owned by Charlotte Solar, LLC in Charlotte, Vermont*, Case No. 8636, Order of 10/23/17; *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into potential violations of Coolidge Solar I, LLC’s certificate of public good issued in Docket 8685*, Case No. 19-3671-INV, Order of 7/24/20.

²² *See Contract ¶ 8*; 30 V.S.A. § 8005a(j) (“In the event a proposed plant accepting a standard offer fails to meet the requirements of the [Standard Offer] Program in a timely manner, the plant’s standard offer contract shall terminate . . .”).

²³ *Compare Request of Rieley Properties, LLC to extend CPG #22-3795-NMR*, Case No. 23-3700-PET, Order of 12/29/23 (denying extension request); *Request of Rieley Properties, LLC to extend CPG #22-3796-NMR*, Case No. 23-3700-PET, Order of 12/29/23 (same); *Request of Moretown Milling LLC to extend CPG # 20-3386-NMR*, Case No. 21-5196-PET, Order of 1/6/22 (same); *Request of Marjorie Halloran to extend the commissioning deadline in CPG #20-1131-NMR*, Case No. 21-4106-PET, Order of 11/5/21 (same); *Request of Larry Michaels to extend CPG # 18-0846-NMR*, Case No. 19-1440-PET, Order of 6/13/19 (same), and *In re request of Brian Hurley to extend CPG #16-2688-NMR*, Case No. 18-0951-PET, Order of 5/3/18 (same), with *Request of Barnet 5 Solar LLC to extend commissioning deadline of certificate of public good #22-3514-NMP*, Case No. 23-3923-PET, Order of 12/11/23 (granting extension request).

²⁴ *See Case No. 20-0185-PET*, Order of 3/12/20 at 2. That order extended the deadline until 12 months after the Commission issued its decision in response to the first remand. That decision was issued on May 7, 2020, making the new deadline May 7, 2021.

- On May 16, 2022, after eight-and-a-half years of litigation, including three appeals to the Vermont Supreme Court, the Commission denied Apple Hill's CPG petition — originally filed on March 15, 2015.
- On October 27, 2023, the Vermont Supreme Court affirmed the Commission's May 16, 2022, order denying the Apple Hill facility a CPG.²⁵

The Petitioner failed to make a timely request for an extension of the commissioning milestone before the Contract terminated.

Even if this request was timely filed, the Petitioner provides no basis for us to exercise our discretion and determine that granting an extension of the commissioning milestone deadline is warranted. The Petitioner merely recites the lengthy history of development efforts and litigation surrounding the proposed facility and states that the Petitioner intends to file a new CPG petition for the facility. First, this is not a case where an extension should be granted because “commissioning of the plant has been delayed because of litigation or appeal.”²⁶ In this case, the Contract has terminated and the result of the Vermont Supreme Court's decision of October 27, 2023, is that the facility that was the subject of the Contract cannot be constructed. Protracted litigation that results in a facility that can be commissioned under a still-in-force contract might support such an extension but that is not this case. The Contract cannot be resurrected by an intent to file, or even filing, a new CPG petition to start the process anew.

Given that, after eight-and-a-half years of litigation, there has been a final and unappealable denial of a CPG for the facility that was the subject of the Contract, the Commission does not find good cause to grant an extension and it declines to resurrect the Contract.²⁷

We further decline to stay this proceeding while the Petitioner's appeal of our orders in Case No. 21-1485-PET — denying the fifth extension request — is pending. The Department urges a stay “as an exercise of [our] inherent discretionary power to manage [Commission] cases efficiently and effectively.”²⁸ As discussed below, we reach the opposite conclusion.

²⁵ 2023 VT 57.

²⁶ 30 V.S.A. § 8005a(j).

²⁷ See 30 V.S.A. § 8005a(h) (“The Commission shall administer the process of applying for and obtaining a standard-offer contract in a manner that ensures that the resources and capacity of the Standard Offer Program are used for plants that are reasonably likely to achieve commissioning.”).

²⁸ Department Comments at 2 (quotation omitted).

Although federal and Vermont statutes and rules provide for an automatic stay after a final judgment has issued to allow for a direct appeal,²⁹ Commission decisions are not automatically stayed pending an appeal.³⁰ A stay of this sixth extension request would generate ambiguity about the status of the Contract depending on the result of the appeal of Case No. 21-1485-PET. We concur with the Department that the Petitioner's sixth extension request raises many of the same legal questions as the fifth extension request that is now on appeal. However, our decision in this case renders a final decision on whether the Contract can be resurrected by a further extension request — an issue left open in Case No. 21-1485-PET. If anything, deciding that issue presents a clearer picture of the legal status of the Contract for the Vermont Supreme Court's review.

Although the parties may not take issue with the Department's stay request, the Commission has an independent obligation to assess whether staying our proceedings is consistent with efficient, effective regulation as well as the processing of siting petitions, particularly when they are associated with time-limited contracts or programs. Unlike most stay requests the Commission receives — where the parties seek additional time to work out contested issues and areas of concern to help bring a case to its conclusion — this request comes at the end of extensive litigation. The central issue now is a question of law that, in substantial part, is on appeal to the Vermont Supreme Court, and a stay would only forestall the case's conclusion. Granting a stay in these circumstances is not warranted.


For the above reasons, the Petitioner's sixth request to extend its standard-offer commissioning milestone is denied.

SO ORDERED.

²⁹ See, e.g., V.R.C.P. 62(d) (providing for stay pending appeal); V.R.A.P. 8 (describe stay motion filing practice); F.R.A.P. 18 (describing stay motion filing practice when appealing a federal agency determination).


³⁰ See 30 V.S.A. § 12 (“Notwithstanding the provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided herein, shall operate as a stay of enforcement of an order of the Commission unless the Commission or the Supreme Court grants a stay under the provisions of section 14 of this title.”).

Dated at Montpelier, Vermont, this 20th day of November, 2024.

 _____)	PUBLIC UTILITY COMMISSION OF VERMONT
Edward McNamara)	
_____)	
Margaret Cheney)	

OFFICE OF THE CLERK

Filed: November 20, 2024

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.

PUC Case No. 24-3101-PET - SERVICE LIST

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EXHIBIT 3

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-3101-PET

Petition of Apple Hill Solar LLC for a sixth request for extension of standard-offer contract milestone	
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Order entered: 11/20/2024

ORDER DENYING APPLE HILL SOLAR LLC'S SIXTH REQUEST FOR AN EXTENSION OF THE STANDARD OFFER CONTRACT COMMISSIONING MILESTONE

I. INTRODUCTION

This case concerns a petition filed by Apple Hill Solar LLC (“Petitioner”) with the Vermont Public Utility Commission (“Commission”), seeking, for the sixth time, an extension of its standard-offer contract commissioning milestone deadline related to the construction and operation of a proposed 2.0 MW solar electric generation facility in Bennington, Vermont (“Petition”). In this order, the Commission denies the Petition.

II. BACKGROUND AND PROCEDURAL HISTORY

On May 13, 2014, the Petitioner was awarded a standard-offer contract for the facility (“Contract”).

On March 15, 2015, the Petitioner filed a petition with the Commission seeking a certificate of public good (“CPG”) for the facility. The petition was assigned Docket No. 8454.

On December 10, 2015, the Petitioner filed its first request for an extension of the Contract’s commissioning milestone deadline. The Commission approved the first extension request on March 31, 2016.¹

On September 26, 2018, the Commission issued an order and CPG authorizing the construction and operation of the facility.² A group of intervening neighbors appealed the Commission’s decision.

¹ *In re request of Apple Hill Solar LLC for an extension of time to commission a solar electric generating project in Bennington, Vermont*, Order of 3/31/16 (no case or docket number was assigned to this order).

² *Petition of Apple Hill Solar LLC for a certificate of public good*, Docket 8454, Order and CPG of 9/26/18.

On October 29, 2018, the Petitioner filed its second request for an extension of the Contract's commissioning milestone deadline. The Commission approved the second extension request on December 27, 2018.³

On September 3, 2019, the Vermont Supreme Court reversed in part and remanded the Commission's September 26, 2018, order approving the facility ("First Remand").⁴

On September 10, 2019, the Petitioner filed its third request for an extension of the Contract's commissioning milestone deadline. On October 17, 2019, the Commission denied the third extension request without prejudice because the request was not ripe for consideration.⁵

On January 22, 2020, the Petitioner filed its fourth request for an extension of the Contract's commissioning milestone deadline. The Commission approved the fourth extension request on March 12, 2020.⁶

On May 7, 2020, the Commission issued its order in response to the First Remand, denying the Petitioner a CPG.⁷ The Petitioner appealed the Commission's May 7, 2020, denial to the Vermont Supreme Court.

On April 21, 2021, the Petitioner filed its fifth request for an extension of the Contract's commissioning milestone deadline.

On September 3, 2021, the Vermont Supreme Court reversed in part and remanded the Commission's May 7, 2020, order denying the Petitioner's petition for a CPG ("Second Remand").⁸

On May 16, 2022, the Commission issued its order in response to the Second Remand, again denying the Petitioner a CPG.⁹ The Petitioner appealed the Commission's May 16, 2022, denial to the Vermont Supreme Court.

³ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 18-3727-PET, Order of 12/27/18.

⁴ *In re Apple Hill Solar LLC*, 2019 VT 64

⁵ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 19-3482-PET, Order of 10/17/19.

⁶ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 20-0185-PET, Order of 3/12/20.

⁷ Docket 8454, Order of 5/7/20.

⁸ *In re Petition of Apple Hill Solar LLC*, 2021 VT 69.

⁹ Docket 8454, Order of 5/16/22.

On October 27, 2023, the Vermont Supreme Court issued its decision affirming the Commission's May 16, 2022, order denying the Petitioner a CPG.¹⁰

On May 29, 2024, the Commission issued its order denying the Petitioner's fifth extension request as moot due to the passage of time and the Commission's denial of Apple Hill's CPG petition.¹¹

On June 26, 2024, the Petitioner filed a motion for reconsideration of the Commission's order denying its fifth extension request.

On October 8, 2024, the Commission issued an order denying the Petitioner's motion for reconsideration of the Commission's May 29, 2024, order.

Also on October 8, 2024, the Petitioner filed the Petition, containing a sixth request for an extension of the Contract's commissioning milestone deadline.

On November 4, 2024, the Petitioner filed a notice of appeal to the Vermont Supreme Court of the Commission's denial of the fifth extension request.¹²

On November 13, 2024, the Vermont Department of Public Service ("Department") filed comments recommending that the Commission stay this proceeding while the appeal of the fifth extension request denial is resolved.¹³

III. DISCUSSION AND CONCLUSION

The Vermont statute establishing the Standard Offer Program requires that a standard-offer contract terminate when "a proposed plant accepting a standard offer fails to meet the requirements of the Program in a timely manner."¹⁴ As with other standard-offer contracts, there are two milestone requirements embedded in Apple Hill's contract: submitting an application for a CPG for the facility and commissioning the facility.¹⁵ Extensions of time to fulfill these

¹⁰ *In re Petition of Apple Hill Solar LLC*, 2023 VT 57.

¹¹ *Petition of Apple Hill Solar LLC for relief from standard-offer contract milestone*, Case No. 21-1485-PET, Order of 5/29/24.

¹² Case No. 21-1485-PET, Notice of Appeal to the Vermont Supreme Court, filed 11/4/24.

¹³ Although not directly related to the standard-offer contract milestone extension request, on November 14, 2024, a public comment from a resident abutting the proposed facility was filed, voicing support for issuance of a CPG.

¹⁴ 30 V.S.A. § 8005a(j).

¹⁵ See 30 V.S.A. § 8005a(j)(1) (establishing a 24-month commissioning deadline).

obligations are entirely within the Commission's discretion.¹⁶ Without an extension of a milestone deadline, a standard-offer contract expires on its own terms.¹⁷

The Commission considers extensions of standard-offer contract commissioning deadlines pursuant to the provisions of 30 V.S.A. § 8005a(j)(2). That section provides that the Commission *may* extend a standard-offer contract commissioning deadline “if it finds that the plant owner has proceeded diligently and in good faith and that commissioning of the plant has been delayed because of litigation or appeal or because of the need to obtain an approval the timing of which is outside the Commission's control, or for other good cause as determined by the Commission.”¹⁸ An extension of a standard-offer contract commissioning deadline is therefore a matter left to the discretion of the Commission. It is not something the Commission must grant if the statutory criteria are met, but rather is something that the Commission may provide if it concludes that relief is warranted.

In previous cases, “the Commission has found good cause to grant requests for extensions when they are timely filed and when the CPG holder has shown that the need for an extension has arisen from circumstances outside of the CPG holder's control.”¹⁹ This is a two-part inquiry. First, the Commission must find the request is timely. Then, the Commission must find that there is good cause to grant an extension. The timeliness of an extension request is essential because once the 24 months have lapsed, the contract is revoked by operation of the statute and the terms of the contract.²⁰ It is an extraordinary request to reinstate a contract that has been terminated, which will only be granted when in our discretion we find that a petitioner has demonstrated good cause for its failure to file its request in a timely fashion. Timely filing of an

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¹⁷ Paragraph 8 of the contract states that a failure to meet the commissioning milestone deadline renders the contract “null and void and of no further force and effect, absent an order of the [Commission] to the contrary.” The contract uses the term “Board” because, at the time it was executed, the Vermont Public Utility Commission was known as the Vermont Public Service Board.

¹⁸ 30 V.S.A. § 8005a(j)(2).

¹⁹ *Request of Middle Road Solar LLC for extension of CPG# 18-0901-NMP*, Case No. 19-4688-PET, Order of 2/27/21 at 4; *see also* Commission Rule 5.110(C).

²⁰ *Cf. In re K.S.*, 2021 VT 51, ¶¶ 13-18, 215 Vt. 205, 260 A.3d 387 (upholding trial court decision denying enlargement of time to file notice of appeal where appellant did not demonstrate good cause or excusable neglect for untimely filing).

extension request avoids harm to the regulatory process — “a process that cannot function when regulated entities ignore their obligations.”²¹

As we explained in our recent order denying reconsideration of our denial of the Petitioner’s fifth commissioning milestone extension request, the standard-offer contract commissioning milestone that the Petitioner seeks to extend terminated on October 25, 2022. This rendered the contract null and void by the contract’s own terms and under 30 V.S.A. § 8005a(j).²² Put simply, there no longer is an operative standard-offer contract related to this proposed facility for us to consider extending the commissioning milestone.

In this case, the request was not timely filed. Absent a compelling explanation for the late filing, the Commission does not grant extensions to commissioning milestones that are not timely filed.²³ The Petitioner demonstrated knowledge of this requirement by making such requests on numerous occasions. The following events in the Apple Hill facility’s history with the Commission should have caused the Petitioner to file an amended or new extension request with the Commission before its fifth request expired.

- The last extension of the commissioning milestone deadline granted by the Commission expired on May 7, 2021.²⁴

²¹ *Petition of Otter Creek Solar LLC*, Case Nos. 19-3031-PET/19-1596-INV, Order of 4/1/21 at 4-5; *see also Investigation pursuant to 30 V.S.A. §§ 30, 209, and 248 regarding the 2.2 MW solar plant owned by Charlotte Solar, LLC in Charlotte, Vermont*, Case No. 8636, Order of 10/23/17; *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into potential violations of Coolidge Solar I, LLC's certificate of public good issued in Docket 8685*, Case No. 19-3671-INV, Order of 7/24/20.

²² *See* Contract ¶ 8; 30 V.S.A. § 8005a(j) (“In the event a proposed plant accepting a standard offer fails to meet the requirements of the [Standard Offer] Program in a timely manner, the plant’s standard offer contract shall terminate . . .”).

²³ *Compare Request of Rieley Properties, LLC to extend CPG #22-3795-NMR*, Case No. 23-3700-PET, Order of 12/29/23 (denying extension request); *Request of Rieley Properties, LLC to extend CPG #22-3796-NMR*, Case No. 23-3700-PET, Order of 12/29/23 (same); *Request of Moretown Milling LLC to extend CPG # 20-3386-NMR*, Case No. 21-5196-PET, Order of 1/6/22 (same); *Request of Marjorie Halloran to extend the commissioning deadline in CPG #20-1131-NMR*, Case No. 21-4106-PET, Order of 11/5/21 (same); *Request of Larry Michaels to extend CPG # 18-0846-NMR*, Case No. 19-1440-PET, Order of 6/13/19 (same); *and In re request of Brian Hurley to extend CPG #16-2688-NMR*, Case No. 18-0951-PET, Order of 5/3/18 (same), *with Request of Barnet 5 Solar LLC to extend commissioning deadline of certificate of public good #22-3514-NMP*, Case No. 23-3923-PET, Order of 12/11/23 (granting extension request).

²⁴ *See* Case No. 20-0185-PET, Order of 3/12/20 at 2. That order extended the deadline until 12 months after the Commission issued its decision in response to the first remand. That decision was issued on May 7, 2020, making the new deadline May 7, 2021.

- On May 16, 2022, after eight-and-a-half years of litigation, including three appeals to the Vermont Supreme Court, the Commission denied Apple Hill’s CPG petition — originally filed on March 15, 2015.
- On October 27, 2023, the Vermont Supreme Court affirmed the Commission’s May 16, 2022, order denying the Apple Hill facility a CPG.²⁵

The Petitioner failed to make a timely request for an extension of the commissioning milestone before the Contract terminated.

Even if this request was timely filed, the Petitioner provides no basis for us to exercise our discretion and determine that granting an extension of the commissioning milestone deadline is warranted. The Petitioner merely recites the lengthy history of development efforts and litigation surrounding the proposed facility and states that the Petitioner intends to file a new CPG petition for the facility. First, this is not a case where an extension should be granted because “commissioning of the plant has been delayed because of litigation or appeal.”²⁶ In this case, the Contract has terminated and the result of the Vermont Supreme Court’s decision of October 27, 2023, is that the facility that was the subject of the Contract cannot be constructed. Protracted litigation that results in a facility that can be commissioned under a still-in-force contract might support such an extension but that is not this case. The Contract cannot be resurrected by an intent to file, or even filing, a new CPG petition to start the process anew.

Given that, after eight-and-a-half years of litigation, there has been a final and unappealable denial of a CPG for the facility that was the subject of the Contract, the Commission does not find good cause to grant an extension and it declines to resurrect the Contract.²⁷

We further decline to stay this proceeding while the Petitioner’s appeal of our orders in Case No. 21-1485-PET — denying the fifth extension request — is pending. The Department urges a stay “as an exercise of [our] inherent discretionary power to manage [Commission] cases efficiently and effectively.”²⁸ As discussed below, we reach the opposite conclusion.

²⁵ 2023 VT 57.

²⁶ 30 V.S.A. § 8005a(j).

²⁷ See 30 V.S.A. § 8005a(h) (“The Commission shall administer the process of applying for and obtaining a standard-offer contract in a manner that ensures that the resources and capacity of the Standard Offer Program are used for plants that are reasonably likely to achieve commissioning.”).

²⁸ Department Comments at 2 (quotation omitted).

Although federal and Vermont statutes and rules provide for an automatic stay after a final judgment has issued to allow for a direct appeal,²⁹ Commission decisions are not automatically stayed pending an appeal.³⁰ A stay of this sixth extension request would generate ambiguity about the status of the Contract depending on the result of the appeal of Case No. 21-1485-PET. We concur with the Department that the Petitioner's sixth extension request raises many of the same legal questions as the fifth extension request that is now on appeal. However, our decision in this case renders a final decision on whether the Contract can be resurrected by a further extension request — an issue left open in Case No. 21-1485-PET. If anything, deciding that issue presents a clearer picture of the legal status of the Contract for the Vermont Supreme Court's review.

Although the parties may not take issue with the Department's stay request, the Commission has an independent obligation to assess whether staying our proceedings is consistent with efficient, effective regulation as well as the processing of siting petitions, particularly when they are associated with time-limited contracts or programs. Unlike most stay requests the Commission receives — where the parties seek additional time to work out contested issues and areas of concern to help bring a case to its conclusion — this request comes at the end of extensive litigation. The central issue now is a question of law that, in substantial part, is on appeal to the Vermont Supreme Court, and a stay would only forestall the case's conclusion. Granting a stay in these circumstances is not warranted.


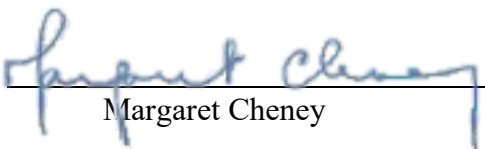
For the above reasons, the Petitioner's sixth request to extend its standard-offer commissioning milestone is denied.

SO ORDERED.

²⁹ See, e.g., V.R.C.P. 62(d) (providing for stay pending appeal); V.R.A.P. 8 (describe stay motion filing practice); F.R.A.P. 18 (describing stay motion filing practice when appealing a federal agency determination).

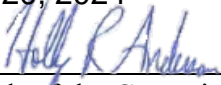
³⁰ See 30 V.S.A. § 12 (“Notwithstanding the provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided herein, shall operate as a stay of enforcement of an order of the Commission unless the Commission or the Supreme Court grants a stay under the provisions of section 14 of this title.”).

Dated at Montpelier, Vermont, this 20th day of November, 2024.

 _____)	PUBLIC UTILITY COMMISSION OF VERMONT
Edward McNamara)	
_____)	
 _____)	
Margaret Cheney)	

OFFICE OF THE CLERK

Filed: November 20, 2024

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.

PUC Case No. 24-3101-PET - SERVICE LIST

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EXHIBIT 4

**U.S. District Court
District of Vermont (Burlington)
CIVIL DOCKET FOR CASE #: 2:18-cv-00041-cr**

PLH LLC et al v. Town of Bennington et al
Assigned to: Chief District Judge Christina Reiss
Case in other court: VT Superior Court, Chittenden Unit, Civil
Division, unknown
Cause: 28:1446 Notice of Removal

Date Filed: 02/26/2018
Date Terminated: 02/28/2018
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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ATTORNEY TO BE NOTICED

Kevin L. Kite , Esq.
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ATTORNEY TO BE NOTICED

Defendant**Jane Doe, 1****Defendant****John Doe 1**

Date Filed	#	Docket Text
02/26/2018	1	NOTICE OF REMOVAL by the Town of Bennington, Town of Bennington Planning Commission, Mary Morrissey, Richard Carroll, Michael Keane, Daniel Monks, Jim Carroll, Select Board of the Town of Bennington from VT Superior Court, Chittenden Unit, Civil Division, case number # unknown. (Filing fee \$ 400) (Attachments: # 1 Exhibit A Part 1, # 2 Exhibit A Part 2, # 3 Exhibit A Part 3, # 4 Exhibit B, # 5 Civil Cover Sheet) (pac) (Entered: 02/27/2018)
02/27/2018	2	LETTER to Vermont Superior Court, Chittenden Unit, Civil Division requesting certified docket sheet and original file. (pac) (Entered: 02/27/2018)
02/28/2018	3	NOTICE OF APPEARANCE by Thomas M. Melone, Esq on behalf of Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC.(Melone, Thomas) (Entered: 02/28/2018)
02/28/2018	4	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) by Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC (Melone, Thomas) (Entered: 02/28/2018)
02/28/2018	5	STIPULATION of Dismissal Without Prejudice by Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC (Melone, Thomas) (Entered: 02/28/2018)

03/19/2018	6	RECEIVED FILE and certified copy of docket sheet from State Court. (law) (Entered: 03/19/2018)
03/19/2018	7	COMPLAINT for Declaratory and Injunctive Relief against Bennington County Regional Commission, Jim Carroll, Richard Carroll, Jane Doe, 1, John Doe 1, Michael Keane, Daniel Monks, Mary Morrissey, Select Board of the Town of Bennington, Town of Bennington, Town of Bennington Planning Commission filed by Otter Creek Solar LLC, Apple Hill Solar LLC, PLH LLC, Chelsea Solar LLC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17) (originally filed 1/24/2018 in state court) (law) (Entered: 03/19/2018)
03/19/2018	8	NOTICE of Assigned Docket Number. (law) (originally issued 1/26/2018 in state court) (Entered: 03/19/2018)
03/19/2018	9	REQUEST for Access to Court Record re: 7 Complaint.(law) (originally filed 2/8/2018 in state court) (Entered: 03/19/2018)
03/19/2018	10	NOTICE OF APPEARANCE by Constance T. Pell, Esq, Kevin Louis Kite on behalf of Jim Carroll, Richard Carroll, Michael Keane, Daniel Monks, Mary Morrissey, Select Board of the Town of Bennington, Town of Bennington, Town of Bennington Planning Commission. (Attachments: # 1 Certificate of Service)(law) (originally filed 2/26/2018 in state court) (Entered: 03/19/2018)
03/19/2018	11	NOTICE OF APPEARANCE by Michael J. Tarrant, II, Esq on behalf of Richard Carroll, Mary Morrissey. (Attachments: # 1 Certificate of Service)(law) (originally filed 2/26/2018 in state court) (Entered: 03/19/2018)
03/19/2018	12	NOTICE OF APPEARANCE by Merrill E. Bent, Esq on behalf of Town of Bennington. (law) (originally filed 2/23/2018 in state court) (Entered: 03/19/2018)
03/19/2018	13	STIPULATED MOTION for Extension of Time to File Answer re 7 Complaint filed by Bennington County Regional Commission, Jim Carroll, Richard Carroll, Michael Keane, Daniel Monks, Mary Morrissey, Select Board of the Town of Bennington, Town of Bennington, Town of Bennington Planning Commission. (Attachments: # 1 Certificate of Service)(law) (originally filed 2/23/2018 in state court) (Entered: 03/19/2018)
03/19/2018	14	ORDER granting 13 Stipulated Motion for Extension of Time to Answer. Signed by Judge on 3/8/2018. (law) (originally filed 3/9/2018 in state court) (Entered: 03/19/2018)

PACER Service Center			
Transaction Receipt			
07/22/2025 16:06:17			
PACER Login:	ph0120MFH	Client Code:	
Description:	Docket Report	Search Criteria:	2:18-cv-00041-cr
Billable Pages:	5	Cost:	0.50

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
Docket No. 78-1-18Cncv

PLH LLC,
APPLE HILL SOLAR LLC,
OTTER CREEK SOLAR LLC, and
CHELSEA SOLAR LLC

Plaintiffs,

v.

THE TOWN OF BENNINGTON,
THE SELECT BOARD OF THE TOWN OF BENNINGTON,
THE TOWN OF BENNINGTON PLANNING COMMISSION,
THE BENNINGTON COUNTY REGIONAL COMMISSION,
MARY MORRISSEY,
RICHARD CARROLL,
MICHAEL KEANE,
JIM CARROLL,
DANIEL MONKS,
JANE DOE 1
and JOHN DOE 1.
Defendants.

RECEIVED
BURLINGTON, VT

MAR 19 2018
2:18-cv-41
CLERK'S OFFICE
U.S. DISTRICT COURT

VERMONT SUPERIOR COURT
FILED

JAN 24 2018
for l.d. 252812
Chittenden Unit

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES FOR VIOLATIONS OF THE VERMONT CONSTITUTION, THE UNITED STATES CONSTITUTION, THE PUBLIC TRUST DOCTRINE, THE SHERMAN ACT, THE CLAYTON ACT, THE VERMONT CONSUMER PROTECTION ACT, AND OTHER VERMONT STATUTORY PROVISIONS, AND FOR REVIEW OF GOVERNMENTAL ACTION

NOW COMES PLH LLC ("PLH"), Apple Hill Solar LLC ("Apple Hill"), Otter Creek Solar LLC ("Otter Creek") and Chelsea Solar LLC ("Chelsea" and together with PLH, Apple Hill and Otter Creek, the "Plaintiffs") by way of complaint against the Town of Bennington (the "Town"), the Town's Select Board (the "Select Board"), the Town of Bennington Planning Commission (the "Planning Commission"), the Bennington County Regional Commission (the