

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2019-02

Application of Chinook Solar, LLC for a Certificate of Site and Facility

ORDER ON REQUEST FOR CLARIFICATION

March 23, 2021

On December 17, 2020, the Subcommittee issued a Decision Granting a Certificate of Site and Facility (Decision) and a Certificate (Certificate) permitting Chinook Solar LLC (Chinook) to site, construct, and operate a 30 MW solar energy generation facility in Fitzwilliam. On January 15, 2021, Chinook’s counsel filed a letter seeking clarification of three issues (“Request”).¹ The letter specifically states it is not a motion for rehearing.

In accordance with RSA 162-H:4, V., the presiding officer may hear and decide procedural matters in any matter before the committee. Pursuant to the November 8, 2019, Order Appointing Subcommittee, I serve as the presiding officer in Docket 2019-02. In accordance with this authority, this Order denies the request for clarification.

I. Interconnection with the National Grid Transmission Line.

The Application for a Certificate of Site and Facility (Application), as originally filed, specified the project would interconnect to the National Grid 115-kV transmission line via short underground 115-kV bonds that would loop the existing National Grid 115-kV transmission line to the substation. App. Ex. 1, p. 30. In describing the project on page 7 of the Decision, the Subcommittee used the description of the interconnection in the original Application. But the Supplemental Prefiled Testimony of Heath Barefoot advised that National Grid required the

¹ The Request will be construed as a Motion for Clarification.

interconnection to the substation to be above ground. App. Ex. 68. Chinook filed its Request to clarify that the interconnection lines will be above ground.

The Certificate granted approval of the Application “as amended and supplemented during the adjudicative proceeding.” Certificate, p. 2. The Supplemental Prefiled Testimony of Heath Barefoot is part of the amended and supplemented Application. Site 303.13(h)(8). The Certificate states that if there is any discrepancy between the Decision and the Certificate, the Certificate is the controlling document. *See* Certificate, p. 5. Therefore, the Request is denied as the Certificate includes the aboveground interconnection referenced in Mr. Barefoot’s Prefiled Supplemental Testimony.

II. Perceived Discrepancy Between the Decision and The Fitzwilliam Memorandum of Understanding About Conservation Easements.

In its Request, Chinook highlights page 78 of the Decision which contains the following sentence: “After decommissioning, the Project area itself will also be subject to conservation easements.” The Request compares this sentence to the portion of the Fitzwilliam Memorandum of Understanding (MOU), App. Ex. 67, that addresses conservation easements on the Project lands to be disturbed by construction. The MOU specifies that the disturbed areas will either be 1.) decommissioned and dedicated to a conservation easement; or, 2.) the Project may continue to operate; or, 3.) a “similar renewable energy generating facility with similar vertical, horizontal, and subsurface footprint and impact, subject to relevant regulatory approval,” may take its place. App. Ex. 67, p. 9-10. The MOU was adopted as a condition of the Certificate. *See* Certificate, p. 3.

There is no discrepancy between the Decision and the MOU. The questioned sentence on page 78 of the Decision explains the rationale for granting Chinook's motion for a waiver of N.H. Admin. R. Site 301.08(d)(2)(d) governing the depth of infrastructure

removal required upon decommissioning. The sentence in the Decision was not an order and does not contradict the adoption of the MOU as a condition of the Certificate.

Moreover, as noted above, the Certificate states that if there is any discrepancy between the Decision and the Certificate, the Certificate is the controlling document. *See* Certificate, p. 5 (“Further ordered that if there is any discrepancy between the requirements of this Certificate and the Decision issued contemporaneously herewith the terms of the Certificate shall take precedence.”) Chinook’s Request for clarification is denied. The Decision is clear that the MOU was adopted as part of the Certificate and compliance with the MOU remains a condition of the Certificate.

III. Decommissioning and Restoration of Subdivided Parcel

The Project included plans for a substation. The Application informed the Subcommittee that the substation and the parcel of land where it sits must be transferred to National Grid, owner of the transmission line. *See* Application, p. 32. Chinook initially asked the Subcommittee to exercise its authority to preempt local planning and zoning laws to grant the subdivision. In a subsequent Memorandum dated October 7, 2020, Chinook withdrew its request and indicated that it would seek subdivision approval through the appropriate board in Fitzwilliam.

After deliberation, the Subcommittee issued its final Decision stating:

The Subcommittee has approved a decommissioning and restoration plan as well as the security of a surety bond to be posted before construction begins. To assure that the purpose of the decommissioning plan and funding assurance is not frustrated at the substation location, the Subcommittee determined that it would condition the Certificate on approval of the subdivision by the Fitzwilliam Planning Board. Such approval must include provisions for decommissioning and restoration and financial assurances securing the provisions. This will be a condition of the Certificate.

Decision, p. 83. The Certificate states:

. . . should the Applicant seek to transfer a portion of the site to a third party (i.e., National Grid) it shall obtain subdivision approval from the Fitzwilliam Planning

Board and from any other municipal authority as the law may require. To the extent that subdivision approval is granted it must include the condition requiring the subdivided parcel to be subject to the conditions as contained in the decommissioning and restoration plan as well as a surety bond condition.

Certificate, p. 3. The foregoing orders were the subject of the public deliberations of the Subcommittee. Ms. Duprey led the discussion:

So, I think we should make a condition of our approval that they obtain subdivision approval from the Town. And, as part of that condition, I would require that there be a provision in the subdivision approval requiring restoration and decommissioning with respect to the subdivided lot that will be owned by the Grid or by a third party. That's it, Madam Chairman.

So, at this point, I suggest that we take a poll on there being -- that orderly development -- let me just get this language exactly right. That the orderly development of the region, with due consideration having been given to the views of the municipal and regional planning commissions and municipal governing bodies, that the Project will not unduly interfere with that orderly development. And that we add the condition that I just explained previously.

Deliberation Transcript Day 2 at p. 54-55. Ms. Duprey was joined in her concern by the Chair:

I was just going to add that the piece about the subdivision, and that a significant portion of the infrastructure related to this project would be located on that piece, to the extent if there's a subdivision. And I think we want to make sure that we have conditions related to that in effect on our Applicant, so that we're able to control even after the subdivision.

Deliberation Transcript Day 2 at p. 59. Thereafter the Subcommittee voted unanimously to impose the condition. The Subcommittee again considered the condition near the conclusion of deliberations when Mr. Oldenburg moved to grant a Certificate subject to certain conditions that included:

(8) obtain subdivision approval from the Town of Fitzwilliam and require a provision that the restoration and decommissioning also apply to the portion owned by National Grid or their successors.

Deliberation Transcript Day 2, p 75. That motion was unanimously approved.

According to the Request, Chinook seeks "clarification" that the subdivision approval must include the decommissioning, restoration and bonding requirement is "inappropriate,

impractical, unnecessary, and inconsistent with other aspects of the record.” The Request explicitly states that it is not a motion for rehearing. The Request is premised on these claims:

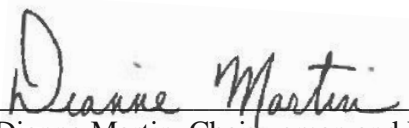
1. The subdivided parcel will be owned by a third party and not subject to control by Chinook.
2. The subdivided parcel will not contain solar panels or other equipment described in the Decommissioning Plan filed as App. Ex. 48.
3. National Grid may need to continue to operate the substation after decommissioning “for a variety of reasons.”

The Request does not explain why ownership by a third party renders the condition to be “inappropriate, impractical unnecessary or inconsistent with the record.” The Request does not explain why the substation equipment should be treated differently than the other infrastructure on the site. Finally, the Request does not identify the “variety of reasons” why the substation might be operated after decommissioning. The condition in the Certificate is clearly stated and based on the record. The Request for clarification on this issue is denied; Chinook shall abide by the condition in the Certificate.

V. Conclusion and Order

The Request for Clarification is denied. As noted above, a decision was issued and a certificate was granted on December 17, 2020 in this docket. The Request was filed on January 15, 2021. No motions to reopen the record or for rehearing were filed. This Order concludes the action in this docket. Docket No. 2019-02 is no longer an active docket pending before the Committee.

SO ORDERED this twenty-third day of March, 2021.



Dianne Martin, Chairwoman and Presiding Officer