

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 8889

SunE Solar XVI Lessor, LLC compliance with )  
certificate of public good for the installation and )  
operation of an 800 kW solar electric generation )  
facility to be located in the Town of Rutland, )  
Vermont )

Order entered: 1/13/2017

**ORDER APPROVING STIPULATION**

**I. INTRODUCTION**

In this Order, the Vermont Public Service Board (“Board”) approves a stipulation between the Vermont Department of Public Service (the “Department”) and SunE Solar XVI Lessor, LLC (the “CPG Holder”) negotiated to resolve issues associated with the CPG Holder’s failure to comply with the certificate of public good (“CPG”) issued in Docket 7957 (the “Stipulation”).<sup>1</sup> In the Stipulation, the CPG Holder agrees to: (1) pay \$16,201.16 to the Town of Rutland Fire Department solely for the purchase of additional firefighting hoses and related equipment to be used at the project site in the event of a fire in the building on which the rooftop portion of the solar facility is installed; (2) relocate an external fire department connection for the building’s sprinkler system; and (3) pay a civil penalty of \$17,000.00 for failing to comply with the CPG requirement that the CPG Holder maintain a 20-foot fire lane adjacent to the building.

**II. BACKGROUND**

On May 22, 2013, in Docket 7957, the Board issued a CPG pursuant to 30 V.S.A. § 248 to Clarke Solar Center, LLC (“Clarke”), authorizing the construction and operation of a rooftop and ground-mounted 800 kW AC solar electric generation facility in Rutland, Vermont (the “Project”). On September 6, 2013, the Board approved the transfer of the CPG from Clarke to

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1. *Petition of Clark Solar Center for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, Docket 7957.*

Enfinity Rutland Solar, LLC (“Enfinity”). On November 24, 2014, the Board approved the transfer of the CPG from SunE Rutland Solar VT, LLC (formerly Enfinity) to SunE Rutland Solar DE, LLC (“SunE DE”). On December 22, 2014, the Board approved the transfer of the CPG from SunE DE to the CPG Holder.<sup>2</sup>

On January 23, 2015, the Project began operating.

On June 27, 2016, Frank Cioffi, Jr., the Chief Engineer of the Town of Rutland Fire Department, filed a request that the Board investigate whether the CPG Holder was in compliance with the CPG. Mr. Cioffi asserted that the CPG Holder was not in compliance with condition 1 of the CPG, which requires that the Project be constructed, operated, and maintained in accordance with the evidence and plans submitted in Docket 7957. Specifically, Mr. Cioffi alleged that the CPG Holder failed to construct and maintain a fire lane at the Project site. The evidence in Docket 7957 included the second supplemental prefiled testimony of Andrew Foukal, the Project developer, who testified that “[t]he Project will preserve a minimum of a 20-foot fire lane between the eastern side of the building and the Project.”<sup>3</sup>

On July 8, 2016, the Board, pursuant to 30 V.S.A. § 30(g), ordered the CPG Holder to file an affidavit of compliance with the CPG.

On August 12, 2016, the CPG Holder filed the affidavit of Jeff Lewis. Mr. Lewis acknowledged the CPG requirement for the fire lane and stated that the CPG Holder was negotiating with the Town of Rutland for the purchase of supplemental fire equipment “in order to provide adequate fire protection services in lieu of creating the 20-foot fire lane” which had not been created as required by the CPG.<sup>4</sup>

On November 14, 2016, the Board received a letter from Mr. Cioffi stating that the CPG Holder and the Department had agreed to the Stipulation in response to the Board’s Order of July 8, 2016, in which the Board ordered the CPG Holder to file a compliance affidavit stating whether the Project was in compliance with fire protection requirements. Mr. Cioffi represented that the Division of Fire Safety of the Vermont Department of Public Safety, the Rutland Town Fire

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2. The CPG Holder is wholly owned by TerraForm Power, Inc. Stipulation at 1.

3. Docket 7957, second supplementary prefiled testimony Andrew Foukal of 3/21/13 at 2.

4. Affidavit of Jeff Lewis of 8/12/16 at 2.

Department, and the Town of Rutland Selectboard “have agreed to this [S]tipulation because it provides adequate fire protection.”<sup>5</sup>

On December 7, 2016, the CPG Holder filed the Stipulation and a motion requesting that the Board approve the Stipulation and amend the CPG in Docket 7957 to reflect the use of supplemental fire equipment to provide adequate fire protection services in lieu of creating a 20-foot fire lane (the “Motion”).

No comments on the Motion have been filed.

### **III. THE STIPULATION**

In the Stipulation, the CPG Holder and the Department agree that, subject to the Board’s approval, the MOU fully resolves the “matters associated with the CPG.”<sup>6</sup> Specifically, the parties agree that the CPG Holder shall: (1) pay \$16,201.16 to the Town of Rutland Fire Department solely for the purchase of additional firefighting hoses and related equipment to be used at the Project site in the event of a fire in the building on which the rooftop portion of the solar facility is installed; (2) relocate an external fire department connection for the building’s sprinkler system; and (3) pay a civil penalty of \$17,000.00 for failing to comply with the CPG requirement that the CPG Holder maintain a 20-foot fire lane adjacent to the building.

### **IV. LEGAL STANDARD FOR A CIVIL PENALTY**

30 V.S.A. § 30(a)(1) states: “A person, company or corporation . . . who fails within a reasonable time to obey a final order or decree of the Board . . . shall be required to pay a civil penalty . . . after notice and opportunity for a hearing.”

Further, 30 V.S.A. § 30(c) states:

In determining the amount of a fine under subsection (a) of this section, the Board may consider any of the following factors:

(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;

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5. Letter from Frank Cioffi to Judith Whitney, Clerk of the Board, dated November 14, 2016.

6. Stipulation at 2, 3.

- (2) whether the respondent knew or had reason to know the violation existed and whether the violation was intentional;
- (3) the economic benefit, if any, that could have been anticipated from an intentional or knowing violation;
- (4) the length of time that the violation existed;
- (5) the deterrent effect of the penalty;
- (6) the economic resources of the respondent;
- (7) the respondent's record of compliance; and
- (8) any other aggravating or mitigating circumstance.

#### **V. DISCUSSION AND CONCLUSION**

In this case, the Board has received evidence offered by the CPG Holder – in the form of the affidavit of Mr. Lewis and the Stipulation – from which the Board could reasonably conclude that the CPG Holder failed to obey the CPG issued in Docket 7957 by failing to maintain a 20-foot fire lane next to the building on which the rooftop portion of the solar facility is installed. In lieu of the fire lane, the CPG Holder agrees to pay for supplemental firefighting equipment that the Town of Rutland has determined would “provide adequate fire protection” and to relocate the external fire department connection for the building’s sprinkler system. The Department and the CPG Holder also agree that the CPG Holder should pay a civil penalty of \$17,000.00 for the CPG Holder’s failure to comply with the CPG.

We have considered the factors set forth in 30 V.S.A. § 30(c) and the penalty amount agreed upon by the Department and the CPG Holder, and find that the public interest will be served by the remedial measures and the proposed civil penalty provided for in the Stipulation. Accordingly, we accept the terms of the Stipulation.<sup>7</sup> Further, as requested by the CPG Holder, we will separately issue an order in Docket 7957 amending the requirements of the CPG to reflect

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7. We grant the CPG Holder ten days from the date of this Order to request a hearing before the CPG Holder’s right to a hearing is deemed to have been waived. Though waiver could be implied by its agreement to the penalty amount, the Stipulation does not expressly waive the CPG Holder’s right to notice and a hearing prior to the imposition of the civil penalty.

the CPG Holder’s procurement of supplemental fire equipment addressed in the Stipulation as adequate fire protection in lieu of maintaining a 20-foot fire lane.

**VI. ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The Stipulation filed on December 7, 2016, between the Vermont Department of Public Service and SunE Solar XVI, LLC, is accepted.
2. Within thirty days of the date of this Order, SunE Solar XVI, LLC, shall pay a civil penalty in the amount of seventeen thousand dollars (\$17,000.00) by submitting to the Public Service Board a check in that amount, made payable to the State of Vermont and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701.

Dated at Montpelier, Vermont, this 13th day of January, 2017.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/Margaret Cheney</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/Sarah Hofmann</u>	)	

OFFICE OF THE CLERK

FILED: January 13, 2017

ATTEST: s/Judith C. Whitney  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)*

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