

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 8, 2018
SCC-CLERK'S OFFICE
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APPLICATION OF

PLEINMONT SOLAR, LLC *et al.*

2018 AUG -8 P 4: 18

CASE NO. PUR-2017-00162

180820045

For certificates of public convenience and necessity for a 500 MW solar generating facility in Spotsylvania County pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia

ORDER GRANTING CERTIFICATES

On November 28, 2017, Pleinmont Solar, LLC ("Pleinmont") along with certain other special purpose entities ("SPEs," collectively with Pleinmont, the "Joint Applicants") filed an application ("Application" or "Joint Application") with the State Corporation Commission ("Commission") for Certificates of Public Convenience and Necessity ("CPCNs") for the construction and operation of a nominal 500 megawatt ("MW") solar generating facility in western Spotsylvania County (the "Project"). The Joint Applicants filed their Application pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia ("Code") and the Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility, 20 VAC 5-302-10 *et seq.*

The proposed Project is a 500 MW solar generating facility that would be constructed in four phases by four different SPEs that would each develop, construct, own, and operate a separate phase of the Project.¹ The four SPEs are: Pleinmont Solar 1, LLC (75 MW); Pleinmont Solar 2, LLC (240 MW); Highlander Solar Energy Station 1, LLC (165 MW); and Richmond

¹ The Joint Application originally identified the Project as being completed in seven phases by seven unidentified SPEs. The Joint Applicants amended and supplemented their Application through a motion filed April 6, 2018. The Joint Applicants represented in their Motion to Amend and Supplement the Joint Application that the proposed Project would be constructed by these four SPEs in four, rather than seven, phases. The Commission accepted the Joint Applicants' Motion to Amend and Supplement the Joint Application by Order dated May 8, 2018. *Compare* Ex. 2 (Application) at 3, *with* Ex. 3 (Motion to Amend and Supplement the Joint Application) at 2.

Spider Solar, LLC (20 MW).² The Joint Applicants anticipate the in-service date for Phase 1 of the proposed Project, constructed by Pleinmont Solar 1, LLC, to be on or before June 30, 2019.³ The Joint Applicants anticipate the in-service date for the remaining phases of the proposed Project to be December 31, 2019.⁴

Each of the SPEs is a direct wholly owned subsidiary of sPower Development Company, LLC, which is a wholly owned direct subsidiary of FTP Power, LLC ("FTP Power").⁵ The Joint Applicants assert that they, along with FTP Power, bring significant resources and expertise to support the successful development of the proposed Project.⁶ The Joint Applicants represent that none of the SPEs are regulated utilities.⁷ Therefore, the business risk associated with the proposed Project would be borne solely by the Joint Applicants, with no direct impact on rates paid by ratepayers in Virginia.⁸

The proposed Project would be located in western Spotsylvania County on approximately 6,000 acres of land (the "Site"), of which approximately 3,500 acres would be used for construction.⁹ The Site is rural, consisting primarily of cleared forest and timber land.¹⁰ The

² Ex. 3 (Motion to Amend and Supplement) at 2. In addition, the Joint Applicants identified Highlander IA, LLC. Highlander IA, LLC is another SPE involved in the Project, however Highlander IA, LLC is not requesting a CPCN in this case because Highlander IA, LLC would not own or operate any phase of the Project.

³ Ex. 3 (Motion to Amend and Supplement) at 2.

⁴ *Id.*

⁵ Ex. 2 (Application) at 2; Ex. 3 (Motion to Amend and Supplement) at 3. AES Corporation (through AES Lumos Holdings, LLC) and Alberta Investment Management Corporation (through PIP5 Lumos, LLC) each own fifty percent (50%) of the common voting equity (for a cumulative total of one hundred percent (100%)) of FTP Power.

⁶ Ex. 2 (Application) at 2.

⁷ *Id.* at 7; Ex. 3 (Motion to Amend and Supplement) at 3.

⁸ Ex. 2 (Application) at 7.

⁹ Ex. 2 (Application) at 2; Ex. 2 (Appendix) at 2.

¹⁰ *Id.*

Site generally is bounded by West Catharpin Road (Route 608) to the south, Old Plank Road (Route 621) to the north, and Dulin Road to the west.¹¹ The Site is traversed by several logging roads and two transmission lines, including an east-west 115 kilovolt ("kV") line and a north-south 500 kV line, which bisect the Site.¹²

According to the Application, each phase of the proposed Project would use photovoltaic modules mounted on racking systems supported by a pile-driven foundation design.¹³ The racking configuration would be a single-axis tracking configuration with north-south trending rows that would track the sun from east to west over the course of the day.¹⁴ Each phase would share interconnection facilities.¹⁵

The electricity generated by the proposed Project would be sold into the PJM Interconnection, LLC ("PJM") wholesale market.¹⁶ Each SPE has entered into one or more agreements with third parties for the conveyance of green attributes associated with the energy sold into the PJM wholesale market.¹⁷

The Joint Applicants assert that the proposed Project would promote the public interest by providing economic benefits to Spotsylvania County and the surrounding area.¹⁸ The Joint

¹¹ Ex. 2 (Appendix) at 2.

¹² Ex. 2 (Application) at 3.

¹³ *Id.*

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 4. Highlander IA, LLC would be the SPE's jointly owned subsidiary. Highlander IA, LLC would enter into an interconnection agreement on behalf of the Joint Applicants for the Project. As noted in footnote 2, *supra*, because Highlander IA, LLC will not own or operate any phase of the Project, the Joint Applicants do not believe a CPCN is required for this entity. Ex. 3 (Motion to Amend and Supplement the Joint Application) at 2.

¹⁶ Application at 4.

¹⁷ *Id.* The Joint Applicants represented at the hearing that all third-party agreements have been concluded. Tr. 449-450.

¹⁸ Ex. 2 (Application) at 6, 8.

Applicants assert that the proposed Project would have no material adverse effect on the reliability of electric service provided by any regulated public utility.¹⁹ The Joint Applicants further assert that the proposed Project promotes the goals set out in the 2010 and 2014 Virginia Energy Plans, as well as the 2016 update to the 2014 Energy Plan, by providing renewable generating capacity in the Commonwealth.²⁰

The Joint Applicants represent that the proposed Project would obtain all necessary permits and approvals required for environmental impacts.²¹ The Joint Applicants anticipate that there would be no or minimal adverse environmental impacts associated with the proposed Project.²²

On December 28, 2017, the Commission issued an Order for Notice and Hearing ("Procedural Order") that, among other things, docketed the Joint Application; required the Joint Applicants to publish notice of the Joint Application; gave interested persons the opportunity to comment on, or participate in, the proceeding; scheduled a public hearing for the purpose of receiving testimony and evidence on the Joint Application; directed the Commission Staff ("Staff") to investigate the Joint Application and file testimony and exhibits containing its findings and recommendations; and assigned a Hearing Examiner to conduct all further proceedings in this matter. Rappahannock Electric Cooperative ("REC") and Mr. Russell J. Mueller ("Mr. Mueller") filed notices of participation.

In the Procedural Order, the Commission noted that Staff had requested the Department of Environmental Quality ("DEQ") to coordinate an environmental review of the proposed

¹⁹ *Id.*

²⁰ *Id.* at 7, 9.

²¹ *Id.* at 5.

²² *Id.* at 5, 9.

Project.²³ The DEQ filed a report ("DEQ Report") on the proposed Project on February 8, 2018.²⁴ The DEQ Report summarizes the proposed Project's potential impacts, makes recommendations for minimizing those impacts, and outlines the Joint Applicants' responsibilities for compliance with certain legal requirements governing environmental protection.

The DEQ Report contains the following recommendations:

- Conduct an on-site delineation of all wetlands and stream crossings within the project area with verification by the U.S. Army Corps of Engineers, using accepted methods and procedures, and follow DEQ's recommendations to avoid and minimize impacts to wetlands and streams;
- Follow DEQ's recommendations regarding air quality protection, as applicable.
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable;
- Coordinate with the Department of Conservation and Recreation's ("DCR") Division of Natural Heritage regarding its recommendations to protect natural heritage resources, a survey for the small whorled pogonia and an invasive species management plan. Contact DCR for updates to the Biotics Data System database;
- Coordinate with the Department of Game and Inland Fisheries ("DGIF") regarding its recommendations to protect wildlife resources;
- Coordinate with DGIF regarding its recommendations to implement a monitoring plan on the potential thermal island impacts and lake effect perception by wildlife as a condition of Project operation.
- Coordinate with the Virginia Outdoors Foundation regarding its recommendation for additional coordination if necessary.
- Coordinate with the Department of Health regarding recommendations to protect water supplies.
- Follow the principles and practices of pollution prevention to the maximum extent practicable; and

²³ Procedural Order at 4-5.

²⁴ Ex. 12 (DEQ Report).

- Limit the use of pesticides and herbicides to the extent practicable.²⁵

On March 26, 2018, Mr. Mueller filed respondent testimony.²⁶ Through his prefiled respondent testimony, Mr. Mueller, among other things, made several recommendations, including that the Commission condition any approval of the proposed Project to: (1) ensure that the proposed Project minimizes stress on the local aquifer; (2) ensure that only non-toxic chemicals are applied to the Site; (3) ensure that adequate barriers, berms and storm water runways are positioned so that the Project is setback at least 100 yards from Fawn Lake and other residential property-owner borders; (4) plan for the containment of many tons of toxic and genotoxic cadmium-related materials inside the solar glass casings; (5) plan specifically to minimize damage or traffic problems on certain roads that the Joint Applicants frequently use; and (6) plan specifically to assure that taxpayers do not pay for the cost of remediation and decommissioning in the event the Site is abandoned or in the event of bankruptcy by any of the Joint Applicants.²⁷ Mr. Mueller also recommended that the Commission condition final approval on several requirements applicable to "all owners and operators (and other companies exercising control, in fact, through financing or other means over the actions of such owners and operators) of each phase of the solar facility."²⁸

The Commission received numerous requests for local hearings in this case. Through its March 26, 2018 Order, the Commission scheduled local hearings in Spotsylvania County. At the Commission's direction, the Hearing Examiner convened local hearings in this matter on

²⁵ *Id.* at 6.

²⁶ Inadvertently, Mr. Mueller's prefiled testimony was not entered at the hearing. We hereby enter Mr. Mueller's prefiled direct testimony as Exhibit 17 into the record. REC did not file testimony in this proceeding.

²⁷ Ex. 17 (Mueller) at 3-4.

²⁸ Mr. Mueller's recommended requirements are set forth on pages 3-8 of his prefiled testimony.

May 9, 2018. Numerous public witnesses attended these hearings and testified on the Joint Application. The local hearing testimony is memorialized in the transcript to this matter and summarized in the Hearing Examiner's July 6, 2018 Report.

On April 23, 2018, Staff filed their testimony. Staff found, among other things, that the proposed Project is expected to impose material adverse effects on the reliability of electric service provided by Dominion, but that such effects could be mitigated by the Joint Applicants through network upgrades.²⁹ Staff noted its understanding that the Joint Applicants would be required to pay for system upgrade costs assigned to them by PJM.³⁰ Staff therefore recommended that the Commission require the Joint Applicants to file the final Interconnection Services Agreement with the Commission within 30 days of its execution.³¹ Staff further noted that it had discovered an allocation error by PJM.³² Staff committed to monitoring future cost recovery filings submitted by Dominion to confirm PJM's assertion that there will be no impact to Virginia ratepayers due to this allocation error.³³

On May 8, 2018, the Joint Applicants filed rebuttal testimony. In their rebuttal testimony, the Joint Applicants took issue with Staff's characterization of the Project's reliability impacts.³⁴ The Joint Applicants asserted that the Interconnection Service Agreement, which is required prior to the proposed Project being permitted to interconnect with the transmission system, requires compliance with Section 217.3 of PJM's Open Access Transmission Tariff,

²⁹ Ex. 9 (White) at 8-10, 16; Ex. 11 (Essah) at 5.

³⁰ Ex. 9 (White) at 9-10.

³¹ *Id.* at 10.

³² Ex. 11 (Essah) at 7.

³³ *Id.*

³⁴ Ex. 13 (Menahem Rebuttal) at 2-5.

which states that "Each New Service Customer shall be obligated to pay for 100 percent of the costs of the minimum amount of Local Upgrades and Network Upgrades necessary to accommodate its New Service Request."³⁵

In their rebuttal testimony, the Joint Applicants also responded to Mr. Mueller's recommendations. The Joint Applicants asserted that many of Mr. Mueller's concerns are being addressed before Spotsylvania County as part of the Special Use Permit related to the Site.³⁶ The Joint Applicants also took issue with Mr. Mueller's characterization of the risks of toxic substance exposure in the event a solar panel is broken.³⁷ The Joint Applicants maintained that because the solar panel material is bonded to the glass, cleanup of the glass will remove all other materials associated with the panel, including the chemicals that Mr. Mueller is concerned with.³⁸ The Joint Applicants committed to obtaining all required permits and approvals for the Project regardless of whether this is a condition of the CPCNs or not.³⁹

The Commission convened an evidentiary hearing on July 12, 2018. The Joint Applicants, REC, Mr. Mueller, and Staff participated in the hearing. Several public witnesses as well as representatives of DEQ testified at the hearing. At the hearing, the Joint Applicants and REC submitted a Joint Motion for Partial Settlement between the two parties into the record.⁴⁰

At the hearing, Staff recommended that any CPCN be conditioned on the Joint Applicants assuming full cost responsibility for the network upgrades that have been allocated to

³⁵ *Id.* at 2-3.

³⁶ *Id.* at 6-12.

³⁷ *Id.* at 11.

³⁸ *Id.*

³⁹ *Id.* at 6.

⁴⁰ Ex. 15c (Confidential Joint Motion Submitting Partial Settlement).

them by PJM and continued to recommend that the Commission require, as a condition of the certificates, the filing of the Interconnection Service Agreement within 30 days of its execution.⁴¹ Staff also re-asserted its commitment to monitoring the PJM allocation error.⁴²

At the hearing, Mr. Mueller requested that the Commission "require the Joint Applicants to provide to the Commission upfront the detailed hydrology, storm water, erosion, and all the other studies and documents required for the federal, state, and county permits before the Commission takes any action to approve or deny any CPCNs for the Project."⁴³ Mr. Mueller also requested that the Commission impose the following conditions on any CPCNs granted in this case:

- A condition that will prevent several hundred million gallons of water from being extracted from the local aquifer during the construction period.⁴⁴
- A condition that no burning be permitted on the Site.⁴⁵
- A condition that no biosolids or phosphorus-laden fertilizer be used on the Site.⁴⁶
- A condition that before construction begins on the Site, the Joint Applicants conduct a small-scale acreage demonstration project to determine the exact methods and materials needed to prevent severe erosion, landslides, and uncontrolled storm water runoff from leaving the site into bordering neighborhoods or entering wetlands and waters leading to the Chesapeake Bay.⁴⁷

⁴¹ See, e.g., Tr. 384-386; 491-494, 500-501.

⁴² See, e.g., Tr. 385

⁴³ Tr. 357-358.

⁴⁴ Tr. 358. In addition, Mr. Mueller requested that if wells are to be drilled on the Project site, that a monitoring well be drilled to alert the Joint Applicants and all federal, state, and county agencies of any significant decline in the water level of the affected aquifer. Tr. 360.

⁴⁵ Tr. 361.

⁴⁶ Tr. 362-363. Mr. Mueller recognized that the Joint Applicants had represented to him that no biosolids would be used on the Project. Tr. 363.

⁴⁷ Tr. 364.

- A condition that requires a final, fully engineered Site plan that sets back solar operations at least 300 feet from neighboring property lines, and that includes berms and green screen along the entire property line of Fawn Lake and other area property lines.⁴⁸
- A condition that none of the solar panels used on the Site be composed of cadmium or cadmium telluride.⁴⁹
- A condition that all Project owners and operators, and other companies, exercising control in fact, through financing, or other means, over the action of such owners and operators, assume liability for the costs of remediation and decommissioning whether arising from abandonment, bankruptcy or end of Project life.⁵⁰

Mr. Mueller also requested that any CPCN approved in this case be conditioned on the Joint Applicants obtaining final approval of permits and other requirements related to the Project from all federal, state, and county agencies.⁵¹ Mr. Mueller also noted in his opening statement that FTP Power should be named as a Joint Applicant so that FTP Power is also liable in any future event.⁵² In his closing statement, Mr. Mueller recommended that sPower be named as a Joint Applicant.⁵³

Several DEQ witnesses and one witness from Spotsylvania County testified at the hearing. Ms. Melanie Davenport, Director, Water Permitting Division, DEQ, testified that DEQ has both administrative and judicial enforcement authority, and that permits issued by DEQ give

⁴⁸ Tr. 366. The Joint Applicants represented at the hearing that in most areas near homes, the Project would maintain a 250 foot to 300 foot buffer as part of the conditions necessary for the Special Use Permit. Tr. 515.

⁴⁹ Tr. 367. Mr. Mueller also noted his belief that no adequate emergency management plans could be proposed to address the issue of toxic materials in solar panels. Tr. 368.

⁵⁰ Tr. 371.

⁵¹ Tr. 377.

⁵² Tr. 376.

⁵³ Tr. 537.

DEQ inspection authority and right of access to properties.⁵⁴ Ms. Davenport clarified that DEQ has no authority over groundwater withdrawals at the Site, but that DEQ does have authority over surface water withdrawals throughout the Commonwealth if they exceed non-tidal water, 10,000 gallons per day.⁵⁵ Ms. Davenport stated that DEQ regulates the use of biosolids and fertilizer through different agencies.⁵⁶ Regarding Mr. Mueller's concern for toxic materials used in solar panels, Ms. Davenport asserted that she is unaware of any Virginia regulatory agency that has authority over how panels are produced or what materials are used in them.⁵⁷ However, Ms. Davenport stated that "if panels were removed, . . . they would need to be disposed of in accordance with [DEQ's] regulations. And if they were hazardous, they would have to be followed under our hazardous disposal regulations."⁵⁸

Ms. Bettina Rayfield, Manager, Office of Environmental Impact Review, DEQ, testified that the storm water erosion and Chesapeake Bay Act standards are subject to the Spotsylvania County approval process.⁵⁹ Mr. Troy Tignor, Director of Zoning and Environmental Codes, Spotsylvania County, also testified at the hearing. Mr. Tignor confirmed that he enforces Spotsylvania County ordinances related to, among other things, storm water management and erosion and sediment controls. Mr. Tignor also testified that he enforces Spotsylvania County's Chesapeake Bay Act Preservation ordinance, and zoning ordinances.⁶⁰ Mr. Tignor testified that

⁵⁴ Tr. 398-399; 402-403.

⁵⁵ Tr. 406-407.

⁵⁶ Tr. 408-409.

⁵⁷ Tr. 409, 411.

⁵⁸ Tr. 413.

⁵⁹ Tr. 458.

⁶⁰ Tr. 461.

setbacks from property lines are dealt with at the county level through the Special Use Permit process.⁶¹ Mr. Tignor testified that the Spotsylvania County fire marshal has authority under a local Spotsylvania County ordinance on issuing burn permits.⁶² It was also established at the hearing that Spotsylvania County's Special Use Permit process addresses the surety and the bond for decommissioning, making sure it is adequate.⁶³

Mr. Tignor testified that Spotsylvania County has no oversight over how much water can be taken out during the construction process.⁶⁴ However, Mr. Tignor testified that the Board of Supervisors has extreme latitude in setting conditions on Special Use Permits as a legislative matter if the Board considers there to be any health, safety, or welfare concern.⁶⁵ Mr. Tignor asserted specifically that conditions pertaining to the Project's effect on the aquifer, for example, could be considered as part of the Special Use Permit at the county level.⁶⁶ The Joint Applicants represented at hearing that they expect to obtain a Special Use Permit for the proposed Project by third quarter of this year.⁶⁷

Mr. Ernie Aschenbach, Environmental Services Biologist, DGIF, also testified at the hearing. Mr. Aschenbach testified that DGIF had considered the potential for lake effect and

⁶¹ Tr. 472.

⁶² Tr. 471.

⁶³ *See, e.g.*, Ex. 8 (Spotsylvania County Ordinance Section 2.3-4.5.7) at (d) 10-18. Joint Applicant witness Menahem testified that every two years, the cost of decommissioning is restudied and adjusted per, at the time, the current cost of recycling materials and the construction. Tr. 428-429. Mr. Menahem testified that "on a rolling basis, every two years, the belly of the bond will be adjusted." Tr. 429.

⁶⁴ Tr. 469.

⁶⁵ Tr. 470.

⁶⁶ Tr. 470-471.

⁶⁷ Tr. 454.

recommended the Joint Applicants conduct a literature search of such effect.⁶⁸ With regard to concerns related to thermal island impacts, Mr. Aschenbach testified that the study he reviewed was inconclusive, and that thermal island impacts were not settled science, but a theory.⁶⁹ Mr. Aschenbach noted that DGIF had recommended the Joint Applicants also conduct a literature review of the thermal island effect.⁷⁰

At the conclusion of the hearing, Mr. Mueller referred to his recommendations and noted that some of his concerns are not governed by Spotsylvania County code or state law, or that there is no enforcement.⁷¹ Mr. Mueller asked, among other things, that the Commission focus on these concerns.⁷² Mr. Mueller also made an additional recommendation that any costs induced by intermittent generation of solar power be recognized by the Applicants.⁷³

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows:

Code of Virginia

Section 56-580 D of the Code provides in part:

The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, . . . and (iii) are not otherwise contrary to the public interest.

⁶⁸ Tr. 482.

⁶⁹ Tr. 482-484.

⁷⁰ Tr. 484.

⁷¹ *See, e.g.*, Tr. 538-540.

⁷² *See, e.g.*, Tr. 538.

⁷³ Tr. 541-543.

Further, with regard to generating facilities, § 56-580 D of the Code directs that "the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1 . . ." Section 56-46.1 A of the Code provides in part:

Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. . . . In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 *et seq.*) of Chapter 22 of Title 15.2.

Subsection 56-46.1 A also provides:

In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters.

Section 56-580 D of the Code contains language that is nearly identical to the language set forth in Code § 56-46.1 A.

The Code also directs the Commission to consider the effect of a proposed facility on economic development in Virginia. Section 56-46.1 A of the Code states in part:

Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

Similarly, § 56-596 A of the Code provides that "[i]n all relevant proceedings pursuant to [the Virginia Electric Utility Regulation] Act, the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth."

Reliability

We find that construction of the Project will have no adverse effect on reliability of electric service provided by regulated public utilities in Virginia.⁷⁴ We recognize, however, that the Joint Applicants will be responsible for all projects that PJM concludes are necessary to ensure reliable operation of the transmission system.⁷⁵ We recognize that the Joint Applicants' obligation to complete and/or pay for these projects will be set forth in an Interconnection Service Agreement executed between PJM, Dominion, and the Joint Applicants.⁷⁶ We therefore condition the CPCNs granted in this proceeding on the Joint Applicants paying for all network upgrade costs PJM assigns to the Joint Applicants, or their designated representative at PJM, and find that the Joint Applicants shall file the Interconnection Service Agreement for the Project within thirty (30) days of its execution.

⁷⁴ See, e.g., Ex. 9 (White) at 7-10, 16; Ex. 13 (Menahem Rebuttal) at 5; Tr. 491-494, 500-501, 505-507.

⁷⁵ *Id.*

⁷⁶ See, e.g., Ex. 10 (PJM Tariff 212); Ex. 7 (Joint Applicant Response to Staff Interrogatories 8-34 through 8-44) at 7; Ex. 13 (Menahem Rebuttal) at 3; Ex. 9 (White) at 7-9; Tr. 500-501.

Economic Development

We find that the proposed Project will likely generate direct and indirect economic benefits to Spotsylvania County and the Commonwealth⁷⁷ as a result of employment and spending from construction and operation of the proposed Project.⁷⁸ The Project is projected to create 700-1,400 jobs during the construction period and thereafter approximately 10-15 full-time jobs.⁷⁹ Further, Spotsylvania County will likely benefit from an increase in the local tax base as a result of the property used, and generation facilities constructed by, the Joint Applicants.⁸⁰

Environmental Impact

The statutes direct that the Commission "shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact."⁸¹

As noted above, DEQ coordinated an environmental review of the proposed Project and submitted a DEQ Report that, among other things, set forth recommendations for the proposed Project.⁸² The Joint Applicants asserted they had no objection to the recommendations in the DEQ Report.⁸³ Beyond the recommendations in the DEQ Report, the Joint Applicants

⁷⁷ With regard to the Commonwealth, our finding of economic benefits takes into consideration that this is a non-utility generating project and the capital costs of this project will be born by private investors, not by a utility's customers.

⁷⁸ *See, e.g.*, Ex. 4 (Menahem Direct) at 6; Ex. 9 (White) at 13-14, 16

⁷⁹ *See, e.g.*, Ex. 4 (Menahem Direct) at 6; Ex. 9 (White) at 13.

⁸⁰ *See, e.g.*, Ex. 4 (Menahem Direct) at 6; Ex. 9 (White) at 16.

⁸¹ Code § 56-46.1 A. *See also* Code § 56-580 D (stating that "the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1 . . .").

⁸² Ex. 12 (DEQ Report).

⁸³ *See, e.g.*, Tr. 553.

recognized that they will need to obtain all required permits and approvals for the Project, whether a condition of CPCNs or not.⁸⁴

We find that as a condition of the CPCNs granted herein, the Joint Applicants shall comply with the recommendations in the DEQ Report, and coordinate with DEQ to implement DEQ's recommendations. Further, as a condition to the CPCNs granted herein, the Joint Applicants shall obtain all necessary environmental permits and approvals that are necessary to construct and operate the Project.

We note that the record in this case establishes that many of Mr. Mueller's concerns and recommendations fall under the jurisdiction of DEQ or Spotsylvania County.⁸⁵ To the extent Mr. Mueller's recommendations are not explicitly addressed in Spotsylvania County's ordinances governing the Special Use Permit, the evidence in this case establishes that Spotsylvania County has wide latitude in attaching conditions to the Special Use Permit necessary for the Project.⁸⁶ Specifically, the Spotsylvania County ordinance states, in part, that the:

planning commission shall not recommend, nor shall the [B]oard of [S]upervisors approve, the proposed special use unless it satisfies the following standards: (a) General Standards: . . . (4) That the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use; (5) That the proposed use will not be detrimental to the public welfare or injurious to property or improvements within the neighborhood; (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, wastewater treatment, fire and police protection, waste disposal, and similar facilities; (7) That the proposed use will not cause undue traffic

⁸⁴ See, e.g., Ex. 13 (Menahem Rebuttal) at 6.

⁸⁵ For this reason, we decline to "require the Joint Applicants to provide the Commission upfront with the detailed hydrology, storm water, erosion and all other studies and documents required for the federal, state, and county permits before the Commission takes any action to approve or deny any CPCNs for the Project." See, e.g., Tr. at 357-358.

⁸⁶ Tr. 470. Specifically, Mr. Tignor of DGIF testified that "Boards of [S]upervisors have extreme latitude, I believe, in setting conditions on [S]pecial [U]se [P]ermits as a legislative matter . . . in issuance of a permit if they consider it to be some sort of health, safety, welfare concern." See also Tr. 454.

congestion or create a traffic hazard; (8) That the proposed use will have no unduly adverse impact on environmental or natural resources.⁸⁷

We find that Spotsylvania County, through this ordinance governing the Special Use Permit process, can address Mr. Mueller's concerns related to the health of the aquifer and the use of cadmium or cadmium telluride products in the solar panels themselves to the extent they are not otherwise addressed by local, state or federal law.

Public Interest

We find that the Project is not "contrary to the public interest" as contemplated by § 56-580 D of the Code. Among other things, the record in this case establishes that construction and operation of the proposed Project will: (i) have no material adverse effect on reliability, if the Joint Applicants fund and/or complete the upgrades PJM finds necessary for the Project; (ii) provide local and regional economic benefits; and (iii) based on the conditions imposed above, comply with all necessary federal, state and local environmental permits.⁸⁸ Additionally, as recognized by the Joint Applicants and confirmed by Staff, the business risk associated with constructing, owning, and operating the Project, which will not provide retail electric service in the Commonwealth and will not be included in the rate base of any incumbent electric utility, rests solely with the Joint Applicants.⁸⁹

⁸⁷ See, e.g., Ex. 8 (Spotsylvania County Local Ordinance Section 23-4.5.7). For Solar Energy Facilities, specifically, the cited ordinance also contains requirements for, among other things: (1) access to the Site for emergency services; (2) compliance with the Virginia Stormwater Management Program, Virginia Erosion and Sediment Control Program, Chesapeake Bay Preservation Act, and County Stormwater Management; (3) screening to minimize visibility and aesthetic impacts to neighboring uses and roadways; and (4) view shed analysis to assess visibility from adjoining property owners and roadways.

⁸⁸ See, e.g., Ex. 4 (Menahem Direct) at 6-7; Ex. 9 (White) at 8-16; Ex. 13 (Menahem Rebuttal) at 6-12; Tr. 500-501; 553.

⁸⁹ See, e.g., Ex. 2 (Application) at 12; Ex. 9 (White) at 16.

Sunset Provision

As a requirement of our approval herein, we find that the authority granted by this Order Granting Certificates shall expire five (5) years from the date hereof as to any phase of the Project if construction of that phase of the Project has not commenced, though Joint Applicants subsequently may petition the Commission for an extension of this sunset provision for good cause shown.

Accordingly, IT IS ORDERED THAT:

(1) Subject to the findings and requirements set forth in this Order Granting Certificates, the Joint Applicants are granted approval for the following Certificates of Public Convenience and Necessity to construct and operate the separate phases of the Project as set forth in this proceeding:

- Pleinmont Solar 1, LLC: Certificate No. EG-217.
- Pleinmont Solar 2, LLC: Certificate No. EG-218.
- Highlander Solar Energy Station 1, LLC: Certificate No. EG-219.
- Richmond Spider Solar, LLC: Certificate No. EG-220.

(2) The Joint Applicants shall forthwith file a map of the Project within Spotsylvania County for certification.

(3) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
John J. Beardsworth, Jr., Esquire, and Timothy E. Biller, Esquire, Hunton & Williams, LLP,
951 East Byrd Street, Richmond, Virginia 23219; Russell J. Mueller, 10819 Perrin Circle,
Spotsylvania, Virginia 22551; John A. Pirko, Esquire, James Patrick Guy, II, Esquire, and
Berkeley Horne, Esquire, LeClairRyan, 4201 Dominion Boulevard, Suite 200, Glen Allen,
Virginia 23060, and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of
Consumer Counsel, Office of the Attorney General, 202 North 9th Street, 8th Floor, Richmond,
Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel
and Divisions of Public Utility Regulation and Utility Accounting and Finance.