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STATE CORPORATION COMMISSION

AT RICHMOND, MAY 30, 2023

STATE-CORPORATION
DOCUMENT CONTROL CENTER

APPLICATION OF

KEYDET SOLAR CENTER, LLC

2023 MAY 30 A 9:00
CASE NO. PUR-2022-00154

For Certificates of Public Convenience and Necessity for a solar generating facility totaling up to 145 MW and associated interconnection facilities to be located in Charles City County, Virginia

FINAL ORDER

On September 16, 2022, pursuant to Code §§ 56-46.1, 56.265.2, and 56-580 D, and the State Corporation Commission ("Commission") Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility,¹ Keydet Solar Center, LLC ("Keydet" or "Company"), by counsel, filed an application ("Application") and supporting documents for certificates of public convenience and necessity ("CPCNs") with the Commission for the construction and operation of: (1) a solar generating facility totaling up to 145 megawatts ("MW") alternating current in Charles City County (the "Solar Generating Facility"); and (2) the transmission lines and associated facilities necessary to interconnect the Solar Generating Facility to the transmission grid (the "Interconnection Facilities") (together with Solar Generating Facility, the "Project"), which include: (a) 34.5 kilovolt ("kV") medium voltage feeder lines ("Feeder Lines") to interconnect the Solar Generating Facility with an existing collector substation ("Skipjack Collector Substation"); and (b) an existing 0.9 mile 230 kV

¹ 20 VAC 5-302-10 *et seq.*

generation-tie line to interconnect the Skipjack Collector Substation to the transmission grid at the existing Virginia Electric and Power Company Chickahominy Substation.²

On October 11, 2022, Skipjack Solar Center, LLC ("Skipjack"), filed a Notice of Participation stating that it supports the Application and the relief requested therein.³

On October 24, 2022, the Commission issued an Order for Notice and Hearing ("Procedural Order") that, among other things: directed Keydet to provide public notice of its Application; scheduled public witness and evidentiary hearings for the purpose of receiving testimony from public witnesses and evidence on the Application; provided interested persons an opportunity to file written comments on the Application or participate as respondents in this proceeding; directed the Commission Staff ("Staff") to investigate the Application and file testimony with the results of the investigation; and assigned this case to a Hearing Examiner to conduct all further proceedings in this matter and to file a report

Staff requested the Department of Environmental Quality ("DEQ") to coordinate an environmental review of the Project by the appropriate agencies and to provide a report on the review. On February 16, 2023, DEQ filed its report ("DEQ Report"), which included a Wetlands Impact Consultation prepared by DEQ.⁴ The DEQ Report provides general recommendations for the Commission's consideration that are in addition to any requirements of federal, state, or local law. Specifically, the DEQ Report contains the following Summary of Recommendations regarding the Project. According to the DEQ Report, the Company should:

² Ex. 2 (Application) at 5-6.

³ Skipjack Notice of Participation at 3.

⁴ Ex. 13 (DEQ Report). On March 24, 2023, DEQ filed the updated comments of the Department of Conservation and Recreation's Division of Natural Heritage ("DCR"). Ex. 14 (DEQ Report Update).

1. Follow DEQ's recommendations including the avoidance and minimization of impacts to wetlands and streams.
2. Take all reasonable precautions to limit emissions of oxides of nitrogen and volatile organic compounds, principally by controlling or limiting the burning of fossil fuels.
3. Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, and follow DEQ's recommendations to manage waste, as applicable.
4. Provide DCR with a copy of the New Jersey Rush survey.
5. Coordinate with DCR on a plan to minimize the fragmentation of ecological cores at identified sites.
6. Development of an invasive species management plan and the planting of native pollinator plants may be coordinated with DCR.
7. Coordinate with DCR for updates to the Biotics Data System database.
8. Coordinate with Department of Wildlife Resources ("DWR") on recommendations for the protection of the Herring Creek Anadromous Fish Use Area.
9. Coordinate with DWR on its recommendations for the establishment of wildlife corridors.
10. Coordinate with DWR on its recommendations for the protection of aquatic resources.
11. Coordinate with the Department of Forestry on its recommendations for the protection of forest resources.
12. Employ best management practices and Spill Prevention and Control Countermeasures as appropriate for the protection of water supply sources.
13. Limit the use of pesticides and herbicides to the extent practicable.

On November 10, 2022, Keydet filed its Supplemental Information in Support of Application and Motion to Revise Notice and Request for Expedited Consideration ("Motion to Supplement"). Therein, Keydet explained that subsequent to the Application's filing and based on feedback from adjacent neighbors and stakeholders, it had decided to remove approximately 200 acres from the Project's scope. The Motion to Supplement was subsequently granted by the Hearing Examiner on November 16, 2022.

Staff filed testimony on February 16, 2023. Keydet filed rebuttal testimony on March 14, 2023. The Commission also received public comments on the Application.

On April 4, 2023, the Hearing Examiner convened an evidentiary hearing to receive testimony and evidence on the Application.⁵

On April 24, 2023, the Hearing Examiner issued the Report of M. Renae Carter, Hearing Examiner ("Report").⁶ The Report contained the following findings:

1. The proposed Project will have no material adverse effect upon reliability of electric service provided by any regulated public utility.
2. The proposed Project will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth.
3. The proposed Project is likely to provide economic benefits to Charles City County and the Commonwealth; supports the economic and job creation objectives of the Commonwealth Clean Energy Policy; and potentially may improve service reliability.
4. Keydet should: (i) adhere to the uncontested recommendations in the DEQ Report; (ii) adhere to a 100-foot riparian buffer standard throughout the Project site, with the additional buffers as described in Company witness Saunders's rebuttal testimony; (iii) consult with DWR as to the height of fencing installed at the Project site; (iv) mark and protect wells outside of the Project site to the extent required under the Underground Utility Damage Prevention Act, Title 56, Chapter 10.3 of the Code; (v) either (a) coordinate with DCR to select a time to perform a survey of Virginia Least Trillium that will not jeopardize the Project timeline, or (b) in lieu of a survey, educate Keydet's construction team about Virginia Least Trillium prior to commencement of construction, and coordinate with DCR if the species is found in the approximately 598 acres of the Project site which will be used for construction and/or disturbance; and (vi) complete a Phase 1B Cultural Resources Survey, and consult and coordinate with DHR thereon.
5. The route chosen for the Feeder Lines will avoid or reasonably minimize impact on existing residences, scenic assets, historic resources, and the environment.

⁵ The public witness hearing was cancelled because no one signed up to testify. Tr. 6.

⁶ On May 9, 2023, the Hearing Examiner filed an errata correcting erroneous references on page 44 of the Report to a five-year sunset period and replacing those references with a three-year sunset period.

6. The Project raises no environmental justice concerns.
7. The Project is both in the public interest, pursuant to Code § 56-580 D, and not otherwise contrary to the public interest, pursuant to Code §§ 56-265.2 B and 56-580 D, provided any approved CPCNs to Keydet are conditioned upon an appropriate sunset provision.
8. I find that a three-year sunset provision is reasonable under the circumstances of this case and should be applied to Keydet's exclusively held CPCNs as well as to Keydet's interest in the Transmission and Distribution CPCNs jointly held by Keydet and Skipjack.
9. It is appropriate for Skipjack's Generation CPCN No. EG-224 to be amended and for Keydet to be granted a new Generation CPCN for its Solar Facility.
10. It is appropriate for Skipjack's Certificate No. ET-213 to be amended to be held jointly in the name of Skipjack and Keydet.
11. It is appropriate for the Commission to amend Skipjack's Certificate No. ED-1 (to reflect removal of the Joint Use Feeder Segment) and to issue two additional Distribution CPCNs, one to be held jointly by Skipjack and Keydet for the Joint Use Feeder Segment and one for the distribution facilities that Keydet will own and/or operate exclusively.
12. The record of this case is sufficient to make the statutory determinations required to approve the Application without the information for which Keydet seeks waivers.

On May 5, 2023, Keydet, Skipjack and Staff filed comments on the Report.⁷

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

⁷ On May 9, 2023, Keydet filed a Motion for Leave to File Comments and Comments ("Motion"). In its Motion, Keydet requested leave to file comments to refute the position taken by Staff in its comments to the Hearing Examiner's Report related to whether Keydet has site control over Option A. On May 10, 2022, Staff filed a letter objecting to the Motion. Because the Commission approves the Option A route herein, we find the Motion moot and do not rule thereon.

Hearing Examiner's Report

After analyzing the law and weighing the evidence – and providing a thorough and detailed analysis thereof – the Hearing Examiner made the following recommendations:⁸

Accordingly, I RECOMMEND the Commission issue an Order that:

1. ADOPTS the findings and recommendations in this Report;
2. APPROVES the Keydet Project subject to the conditions described herein;
3. APPROVES Option A for the route of the Project's Feeder Lines;
4. AMENDS, and does not "cancel" and "reissue," Skipjack's Generation, Transmission, and Distribution CPCNs and, if the Commission elects, REQUIRES Skipjack and Keydet to comply with the record-keeping duties in 20 VAC 5-300-40; or, in the event Staff's "cancel" and "reissue" process is used, REQUIRES Staff personnel, such as the Director of PUR, to draft a letter on Division stationery to Skipjack, explaining that CPCN cancellations and reissuances (which may include CPCN numbering changes) are part of Staff's current process, that those two events occur simultaneously, and that Skipjack is never without a certificate;
5. AMENDS Skipjack's CPCNs and GRANTS new CPCNs to Keydet and Skipjack as follows.

For Skipjack:

- Amend Certificate No. EG-224, to change the acreage amount listed in the certificate and to include a map showing the three land parcels that will be used by Keydet;
- Amend Certificate No. ET-213 to be jointly held in the names of Skipjack and Keydet and to include a three-year sunset as to Keydet's interest in the CPCN with reversion of Keydet's interest to Skipjack should the sunset occur; and
- Amend Certificate No. ED-1, to remove the Joint Use Feeder Segment.

⁸ Report at 44-45 (emphases in original).

For Keydet:

- Grant a new Distribution CPCN, with a three-year sunset provision, to Keydet for the distribution facilities that Keydet will own and/or operate exclusively, including the 34.5 kV Feeder Lines (which CPCN will not include the Joint Use Feeder Segment);
 - Grant a new Distribution CPCN, in the names of both Keydet and Skipjack, for the Joint Use Feeder Segment, with a three-year sunset as to Keydet's interest in the CPCN with reversion of Keydet's interest to Skipjack should the sunset occur; and
 - Grant a new Generation CPCN, with a three-year sunset provision, to Keydet for the 145 MW Solar Facility, with an attached map showing the three parcels it will use (in Skipjack's solar footprint) along with the rest of the land on which Keydet will construct the Solar Facility;
6. REQUIRES Skipjack and Keydet to coordinate with VA811 to clarify who should be contacted to mark and, if necessary, correct damage to the underground Joint Use Transmission Facilities;
 7. CONDITIONS Keydet's exclusive CPCNs on the environmental recommendations listed in Finding Paragraph (4) of the Hearing Examiner's Report;
 8. CONDITIONS the exclusive Keydet CPCNs on Keydet obtaining all environmental permits and approvals that are necessary to construct and operate the Project;
 9. GRANTS the waivers requested in the Application as discussed above; and
 10. DISMISSES this case from the Commission's docket of active cases.

Upon consideration of this matter, the Commission concludes that the Hearing Examiner's findings and recommendations are supported by law and the evidence, have a rational basis, and are adopted herein. With respect to recommended Recommendation No. 4, the Commission finds it appropriate to amend Skipjack's Generation, Transmission, and Distribution

CPCNs.⁹ The Commission will also require Skipjack and Keydet to comply with the record-keeping duties in 20 VAC 5-300-40.¹⁰

Accordingly, IT IS ORDERED THAT:

(1) The Commission adopts the Hearing Examiner's findings and recommendations and makes findings as set forth herein.

(2) The Hearing Examiner's recommendations, set forth herein, are hereby ordered.

(3) Subject to the findings and requirements set forth above, Skipjack and Keydet are granted the amended and new CPCNs as follows:

a) Generation

i) Skipjack Solar Center, LLC: Certificate No. EG-224-A

ii) Keydet Solar Center, LLC: Certificate No. EG-KYDT-CCY-2023-A

b) Transmission

i) Skipjack Solar Center, LLC and Keydet Solar Center, LLC: Joint Use Certificate No. ET-213-A

c) Distribution

i) Skipjack Solar Center, LLC: Certificate No. ED-1-A

ii) Skipjack Solar Center, LLC and Keydet Solar Center, LLC: Joint Use Certificate No. ED-SKPJK/KYDT-CCY-2023-A

iii) Keydet Solar Center, LLC: Certificate No. ED-KYDT-CCY-2023-A

(4) Keydet shall file for amended CPCNs from the Commission if there is a change in the route of the Project's Feeder Lines;

⁹ In approving such "amended" certificates as recommended by the Hearing Examiner based on the specific facts and circumstances herein, the Commission notes that as to the Commission's recordkeeping of such, Staff retains discretion to employ a reasonable administrative process therefor; any such process (and the terminology used by Staff attendant thereto) does not change the legal result of the Commission's granting herein of "amended" certificates.

¹⁰ As requested by Keydet, the Commission further confirms that the required recordkeeping herein is limited to retaining copies of the CPCNs for the life of the Projects. See Keydet comments on the Hearing Examiner's Report at 2.

(5) The Company and Skipjack shall forthwith work with Staff to file electronic maps of the Project for certification. The electronic maps shall include the boundaries of the Solar Generating Facility; the utility point of interconnection; county designations; geographic identifiers (road names, waterways, etc.); and the Global Positioning System coordinates of the Solar Generating Facility. The electronic maps shall be submitted to Michael Cizenski, Deputy Director, Division of Public Utility Regulation, by email at mike.cizenski@scc.virginia.gov.

(6) This matter is dismissed.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.