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In re Chelsea Solar LLC

Supreme Court of Vermont - April 16, 2021 - A.3d - 2021 WL 1439754 - 2021 VT 27

Developer appealed Public Utility Commission decision denying developer's petition for a certificate of public good (CPG) to construct and operate a solar electric generation facility, and intervenors cross-appealed.

The Supreme Court held that:

- Facility and sister facility together were a single 4.0 megawatt plant which exceeded generation cap, and
- Intervenors articulated potential aesthetic injuries sufficient to allow intervention.

Solar energy developer, which sought to construct solar energy facilities to take advantage of standard-offer program's set price for energy, failed to show that it preserved argument that program's statutory definition of "plant," including its reference to "newly constructed facilities," was unconstitutionally vague and standardless, and Supreme Court therefore would decline to address that argument when reviewing the Public Utilities Commission's denial of developer's petition seeking a certificate of public good.

Developer's proposed 2.0-megawatt solar electricity generation facility and nearby sister facility constituted a single 4.0 megawatt plant which exceeded generation cap imposed on Vermont's Sustainably Priced Energy Enterprise Development (SPEED) Program participants seeking guaranteed set price for renewable energy, where proposed facilities were commonly owned, physically contiguous, and designed to "fit together," facilities were pursued and developed as part of a common scheme, and their interconnection to the grid required developer to construct a mile-long line extension at its own expense, the use of which would be shared by the facilities.

Supreme Court, which affirmed Public Utilities Commission's decision that two proposed solar electricity generator facilities constituted a single plant for purposes of generation cap imposed on Vermont's Sustainably Priced Energy Enterprise Development (SPEED) Program participants seeking guaranteed set price for renewable energy, would decline intervenors' request that Court nonetheless address their arguments regarding the certificate of public good factors for one of the proposed facilities, as certificate of public good application was essentially invalid because it related to a theoretical smaller facility that was not in fact the "plant" found to exist by the Commission.

Homeowners association and country club intervenors, who sought to intervene in Public Utilities Commission proceeding regarding developer's application for certificate of public good to construct and operate a 2.0-megawatt solar electric generation facility, articulated potential aesthetic injuries that fell within the scope of the interests protected by statute and that were uniquely felt by them, and thus Commission appropriately exercised its discretion in allowing them to intervene; homeowners association's issues included the aesthetic impact of the project resulting from increased noise and wind and the effect on its views, while country club expressed concern about the effect of the project on the views from the public golf course and expressed interest.