

Draft Administrative Citation 30  
V.S.A. § 30(h)  
Issue Date: April 26, 2024  
Citation No. 1002

Certificate of Public Good held by: Hartford Jericho Solar, LLC

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Hartford Jericho Solar, LLC's ("CPG Holder") violation of the terms and conditions of its Certificate of Public ("CPG"), issued in Vermont Public Utility Commission ("Commission") Case No. 20-2578-NMP, dated May 27, 2021, pursuant to Section 248 and 8010 of Title 30 and Commission Rule 5.805.

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**Following review of Hartford Jericho Solar, LLC's filings made with the Vermont Public Utility Commission, the Vermont Department of Public Service determined that the CPG Holder did violate the following provisions of Vermont Statute, Rule, or Permit, as described herein:** CPG Case No. 20-2578-NMP issued on May 27, 2021, Condition 13 (Within 30 days following the full implementation of the final aesthetic mitigation plan, the CPG Holder shall submit . . . a certification that all work has been fully implemented in a manner consistent with the approved plan); Commission Rule 5.805(B).

Description

1. The Hartford Jericho Solar Project (the "Approved Project") is a 150 kW solar group net-metering system constructed at 1058 Jericho Road in White River Junction, Vermont. Hartford Jericho Solar, LLC is the current certificate of public good holder for the Approved Project.
2. On May 27, 2021, the Vermont Public Utility Commission (the "Commission") issued a final order and CPG, finding that the Approved Project does not raise a significant issue with respect to the applicable criteria of 30 V.S.A. §§ 248 and 8010, complies with the requirements of Commission Rule 5.100, and will promote the general good of the State of Vermont.
3. In that proceeding, the CPG Holder proposed mitigation plantings to screen potential views of the Approved Project in response to public comments received by the Town of Hartford Planning Commission. The mitigation plantings consist of eight eastern white pines on the eastern side of the Approved Project and are reflected in the revised Project

Site Plan, Exhibit HJS-MS-2 (revised). The Commission approved these plantings, as reflected in the revised site plan, as a final aesthetic mitigation plan.

4. Condition 12 of the CPG requires the CPG Holder to:
  - [F]ully implement the final aesthetic mitigation plan as soon as reasonably possible, and in no case more than 90 days following the completion of construction, unless such timing would require implementation between October 15 and April 15, in which case the plan shall be fully implemented within 30 days of the following April 15. CPG at 2 (Attachment #1).
5. Condition 13 of the CPG requires the CPG Holder to “submit to the Commission and all parties to this proceeding a certification that all work has been fully implemented in a manner consistent with the approved plan” within 30 days following the implementation of the final aesthetic mitigation plan. *Id.* at 3.
6. The requirements of CPG 20-2578-NMP Condition 13 are also provided within Commission Rule 5.805(B).
7. Condition 14 of the CPG requires the CPG Holder to submit annual certifications by one, two, and three years following the date of the initial certification of completion required by Condition 13 documenting annual inspection of the Approved Project “to determine the health, vigor, and continued effectiveness of the mitigation.” *Id.* at 3.
8. Construction of the Approved Project was completed on December 20, 2021 and the Approved Project was interconnected on December 21, 2021. Revised Affidavit of Daniel Kinney at ¶ 3 (Attachment #2).
9. The eight eastern white pine plantings required under the approved landscape mitigation plan were installed within 30 days after April 15, 2022, as required under CPG Condition 12. *Id.*
10. Approximately one year later, on April 5, 2023, the CPG Holder conducted an inspection of the installed plantings and documented their installation with photographs. The CPG Holder replaced one dead planting identified during its inspection. *Id.* at ¶ 5-6.
11. On May 5, 2023, the CPG Holder submitted an affidavit certifying implementation of the final aesthetic mitigation plan and conduct of its inspection completed on April 5, 2023. Following additional information requests from the Commission, the CPG Holder submitted a revised affidavit on August 10, 2023.
12. The CPG Holder did not file certification of the plantings’ installation within 30 days of fully implementing the aesthetic mitigation plan, as required under CPG Condition 13 and Commission Rule 5.805(B). *Id.* at ¶ 8.

13. Because the CPG Holder did not satisfy the deadline required under CPG Condition 13, the CPG Holder is also delayed in meeting its first-year annual certification requirement of CPG Condition 14.

### Assessed Penalty

Factors for consideration:

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 other interests of utility customers.* The CPG Holder certifies it did timely install the aesthetic mitigation measures consistent with the approved plan, thus presenting no actual harm to any relevant Section 248(b) criteria. However, the CPG Holder's failure to meet the certification deadline for implementation of its aesthetic mitigation plan constitutes harm to the Commission's regulatory process. Timely reporting required under the CPG and Commission Rule 5.805 ensures the Commission and the Department maintain informed, regulatory oversight of the Approved Project's consistency with the plans and evidence that form the basis for the Commission's determination that the Approved Project is in the public good. The CPG Holder's compliance with applicable CPG conditions, including certification and notice requirement such as CPG Conditions 13 and 14, require due care. The CPG Holder's harm to the regulatory process here weighs in favor of assessing a civil penalty.
2. *Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional.* The CPG Holder had reason to know that a violation of the CPG and Rule 5.805 existed. CPG Condition 13 and Commission Rule 5.805(B) expressly require certification of the CPG Holder's implementation of the aesthetic mitigation plan within 30 days. Additionally, CPG Condition 14's ongoing, annual certification deadlines are notably linked to satisfaction of CPG Condition 13. However, the Department does not find that this violation was intentional and was the result of an oversight.
3. *The economic benefit, if any, that could have been anticipated from an intentional or knowing violation.* The CPG Holder's violation, at least initially, spared the CPG Holder of the costs of compiling and filing its compliance reporting required under its CPG. However, these marginal benefits have no impact on the recommended penalty and remediation.
4. *The length of time that the violation existed.* The required plantings were installed within 30 days of April 15, 2022, consistent with CPG Condition 12, thus requiring certification of implementation of the aesthetic mitigation plan by approximately June 2022. The CPG Holder did not submit its initial certification until May 2023. The length of the violation was approximately 11 months and therefore weighs in favor of assessing a civil penalty.

5. *The deterrent effect of the penalty.* The Department concludes that a moderate civil penalty in this instance provides sufficient deterrence.
6. *The economic resources of the respondent.* The net-metering rate afforded to the facility, comprised of a blended rate which received renewable energy credit transfer and siting adjustors, as provided in conditions 5 and 6, on pages 1 and 2 of the CPG and Commission Rules 5.126 and 5.127, allows the CPG Holder sufficient economic resources to afford the Departments recommended penalty.
7. *The Respondent's record of compliance.* The Department is unaware of prior violations associated with the Approved Project or the companies involved.
8. *Any other aggravating or mitigation circumstances.* The Department has not identified any aggravating or mitigation circumstances for consideration in assessing a civil penalty.

For these reasons, the Department concludes that a **penalty of \$250.00** for the identified violations is appropriate.

#### Remedial Action

Remedial Action, consistent with the Commission's August 28, 2023 *Order Regarding Aesthetics Certificate*, **is appropriate**. The CPG Holder should submit its annual filings required under CPG Condition 14 with its first annual certification required by August 9, 2024, its second annual certification by August 11, 2025, and its third annual certification by August 10, 2026. Such action is consistent with Commission Rule 5.805(D) and CPG Condition 14. The Department does not recommend any further remedial action at this time.

Pursuant to 30 V.S.A. § 30(h)(3), within 30 days of its receipt of this Final Administrative Citation, the CPG Holder must take one of the actions described in that subsection.

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**The public has an opportunity to make public comments on this draft citation for 30 days from the issuance of this draft citation, in accordance with 30 V.S.A. § 30(h)(2). The period for public comments will end on Monday, May 27, 2024. Public comments may be submitted to the undersigned via email or postal mail:**

Dated at Montpelier, Vermont this 23<sup>rd</sup> day of April 2024.

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