

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 11th day of February 2021.

CASE NO. 20-0845-E-SCS-PW

WILD HILL SOLAR, LLC,  
an indirect subsidiary of EDF Renewables, Inc.

Application for Solar Siting Certificate to Authorize the Construction and Operation of an Exempt Wholesale Electric Generating facility in Jefferson County, West Virginia, and Petition for Waiver of Transmission Facilities information.

**COMMISSION ORDER**

The Commission grants a Solar Siting Certificate subject to the terms and conditions set forth in this Order.

**BACKGROUND**

On November 6, 2020, Wild Hill Solar, LLC (Wild Hill) filed an application for a siting certificate (Application) to construct a solar exempt wholesale electric generating facility (EWG) in Jefferson County, West Virginia.<sup>1</sup> Wild Hill also requested a waiver of the requirement to file information related to the transmission facility.

Wild Hill proposes to construct a 92.5 megawatt (MW) solar generating facility in Jefferson County as an EWG. The project will be located on approximately 795 acres of agricultural land at a cost of approximately \$125 million. The site is rolling and gently sloped. The proposed project will consist of rows of photovoltaic (PV) modules in arrays dispersed throughout the project area. The arrays will be mounted on single-axis tracking racking systems which are installed on driven piles. Wild Hill stated that the project area will be enclosed by a fence for safety and security.

All of the transmission facilities will be located within the project footprint and will interconnect to an existing Potomac Edison (PE) 138 kV transmission line that crosses the project footprint. In light of this arrangement, Wild Hill requested a waiver of the information required by Rule 3.5 of the Rules Governing Siting Certificates for Solar Exempt Wholesale Generators, 150 C.S.R. 39 (Solar Siting Rules), which is the

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<sup>1</sup> On September 25, 2020, Wild Hill filed a Notice of Intent to file its application.

information required by Rule 9 of the Rules for the Government of Electric Utilities, 150 C.S.R. 3.

Wild Hill submitted the Application pursuant to W. Va. Code § 24-2-1o(n) and the Commission's Solar Siting Rules. The direct testimonies of Emily Dalager, Project Manager with EDF Renewables, the indirect parent of Wild Hill, and Tim Ferguson, Senior Scientist, Potesta & Associates, Inc. were filed with the Application. Additionally, all required elements of Rule 4 of the Solar Siting Rules were included with the Application. Wild Hill requested the Commission make a determination within fifteen days on the completeness of the application pursuant to Solar Siting Rule 3.7.

Commission Staff filed its Initial Joint Staff Memorandum on November 19, 2020. Staff requested that Wild Hill file more detailed drawings of the transmission support for the facility including any new structures that must be constructed to interconnect the facility to existing infrastructure.

On November 20, 2020, the Commission verified the completeness of the Application and granted the request to waive the requirements to provide information related to the transmission facility. The Commission found that Staff could address the issue of plan view drawings through discovery or discussions with Wild Hill.

On November 24, 2020, Wild Hill filed affidavits of publication offering proof of notice of the filing being published in The Charleston Gazette-Mail in Kanawha County, West Virginia and the Spirit of Jefferson Advocate in Jefferson County, West Virginia.

On November 30, 2020, Wild Hill filed a copy of the drawings requested by Staff on November 19, 2020.

On December 22, 2020, the Commission adopted a procedural schedule, required publication of a notice of public comment hearing and evidentiary hearing, and granted intervenor status to Jefferson County Vision, Inc. (JCV) and the West Virginia Building and Construction Trades Council, AFL-CIO (Building Trades).

Wild Hill filed Affidavits of Publication on January 14, 2021, offering proof of publication of the Notice of Public Comment and Evidentiary Hearings in The Charleston Gazette-Mail in Kanawha County, West Virginia and the Spirit of Jefferson Advocate in Jefferson County, West Virginia.

The direct testimony of Steve White for the Building Trades and Daniel Egnatoff for Staff was filed on January 15, 2021. The direct testimony of Anastasya Tabb was filed by JCV on January 19, 2021. The Building Trades filed additional testimony for Steve White, consisting of a copy of a Memorandum of Understanding between the Building Trades and Wild Hill on January 21, 2021.

Wild Hill filed the rebuttal testimony of Emily Dalager on January 22, 2021, and filed her updated Exhibit ED-1 on January 26, 2021.

Wild Hill filed, on behalf of all parties, an agreed order of witnesses for the evidentiary hearing. January 26, 2021 filing.

Because of limitations for social distancing caused by the COVID-19 pandemic, the Commission conducted a public comment hearing by videoconference on January 28, 2021. The Honorable John Doyle, 67<sup>th</sup> Delegate District, expressed his concern that the Project should follow Senate Bill 583 (SB 583), codified at W. Va. Code §24-2-10, prohibiting an exempt wholesale solar generator such as Wild Hill from selling power directly to an electric utility. Eleven members of the public spoke against the Application and one member of the public spoke in favor of the application. The Commission received a transcript of the hearing on February 4, 2021. In addition to the public comment received at the hearing, members of the public filed twenty-one letters of protest and nineteen letters of support in this case. Of those protesting in writing or verbally objecting to the Project, most were concerned with the zoning ordinance process at the Jefferson County Commission, possible damage to structures, and view and noise concerns.

The Commission held the evidentiary hearing by videoconference on January 29, 2021. During the evidentiary hearing, Emily Dalager, Project Manager with EDF Renewables, the indirect parent of Wild Hill, and Tim Ferguson, Senior Scientist, Potesta & Associates, Inc. testified for Wild Hill, Anastaysa Tabb testified for Jefferson County Vision, and Daniel Egnatoff testified for Staff. Steve White, witness for the Building Trades, was excused from appearing by the Commission and agreement of the parties because no party had cross-examination questions for him.

### **DISCUSSION**

W.Va. Code §24-2-10(n) states:

Notwithstanding the provisions of §24-2-11c of this code, any person or entity: (1) who is not an electric utility; (2) who intends to purchase or construct and operate an electric generating facility as an exempt wholesale generator under federal law; (3) who will generate electricity solely through solar photovoltaic or other solar methods; and (4) who, if desired, intends to purchase or construct and operate energy storage for such electricity may file an application with the Public Service Commission under this section in such detail and with such publication requirements as the commission may prescribe; and the commission shall hold a hearing, unless waived, within 90 days of publication and issue a final order on a siting certificate or modification thereof within 150 days of the application filing date. No other provision of this section shall apply to these exempt wholesale generators.

By order dated August 4, 2020, the Commission adopted its Solar Siting Rules governing filings made under W. Va. Code § 24-2-10(n). Rule 8.1 of the Solar Siting Rules contains the standard of review the Commission applies in deciding whether to grant a siting certificate under W. Va. Code § 24-2-10(n), which is, that the Commission will grant the certificate if the construction of the facility is not contrary to the public interest.

Counsel for JCV argued that the proper standard of review to apply in this case was established by the Commission in Longview Power, LLC, Case Nos. 03-1860-E-CS and 05-1467-E-CN (Longview Power test) arising from W. Va. Code § 24-2-11c. We disagree. West Virginia Code § 24-2-10(n) clearly grants the authority to the Commission to prescribe requirements for the filing of applications for solar EWGs notwithstanding the provisions of W. Va. Code § 24-2-11c.

The West Virginia Legislature in SB 583 prioritized not only solar development, but specifically solar EWGs, and provided for a shortened application review process, different from all other EWG siting applications. The Commission developed appropriate requirements for solar siting applications in the Solar Siting Rules, including a standard of review specific to solar siting cases, in light of the Legislature's direction. During the development of the Solar Siting Rules, the Commission specifically stated its proposed standard of review. No suggestions for an alternate standard of review were filed. In the Matter of Adopting and Implementing Rules Governing Siting Certificates for Solar Exempt Wholesale Generators, G.O. No. 263, (May 28, 2020 Commission Order) and file generally.

#### The Facility Is Not Contrary to the Public Interest.

Wild Hill plans to construct a 92.5 MW solar EWG facility in Jefferson County, West Virginia. The power generated from this facility will be sold into the PJM wholesale market.<sup>2</sup> The power, however, will benefit local and state interests because it will be used in the area. Transcript of Evidentiary Hearing, January 29, 2021 (Tr.) at 26. Additionally, West Virginia will have solar power which may encourage development by drawing companies to the state that want to develop in areas having renewable energy sources.

The Project is expected to have at least a thirty-year life expectancy. Tr. at 33-34. Ms. Dalager testified that the Project would benefit the local economy. Tr. at 27. Anastasya Tabb, President of JCV, acknowledged during cross-examination that the Project would create jobs during its construction phase. Tr. at 98. Steve White, Director of the Affiliated Construction Trades, a division of the Building Trades, testified that, based on a similar project proposed for Raleigh County, West Virginia, approximately

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<sup>2</sup> PJM is the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of thirteen states and the District of Columbia. West Virginia is entirely within the PJM system.

193,000 craft workers' hours will be needed for the construction of the Project. Mr. White estimated that the construction phase would result in a substantial positive impact on the local economy as well as the state economy. Building Trades Exh. SW-D at 2-3. Wild Hill and the Building Trades entered into a Memorandum Agreement to hire local labor during construction of the Project. Building Trades Exh. SW-D at Exhibit 1.

Although not evidence of economic impact in this case, the Commission is aware through its adjudication of previous electric wholesale generation siting certificate cases that these projects typically benefit the local area through mechanisms such as taxes collected, payment in lieu of tax agreements, or charitable giving by the EWG. Areas where these projects are built also typically experience increased retail spending during the construction phase.

Ms. Tabb expressed concern that swimming pools, wells, and home foundations in the vicinity may be damaged if blasting occurs during construction of the Project. If the homes were damaged, their property value could decrease. JCV Exhibit 1 at 2; Tr. at 93. Emily Dalager, the Project Manager, testified that dynamite will not be used in the construction of the Project and the pile drivers used during construction will not present structural indications "within a couple of feet of the pneumatic press" and vibrations will not be felt fifty feet from where the device is in operation. Tr. at 19-20. Nearby houses, therefore, should not be affected by the construction. On cross-examination, Ms. Tabb agreed that if there is no blasting, then there should be no damage to swimming pools, wells, and home foundations. Tr. at 93. Ms. Tabb also agreed that if there is no damage to these homes, then property values will not decrease. Id.

The Project will be set at least 200 feet from the property line and in many instances, more than 200 feet. Tr. at 24. Ms. Dalager also testified that Wild Hill has worked with the United States Fish and Wildlife Division to identify karst land at the Project site and has provided a buffer between the Project and any karst topography to ensure that the Project does not interfere with that topography. Tr. at 20. Additionally, trees on the perimeter of the Project will remain and Wild Hill plans to buffer any views of the Project from nearby homes. Tr. at 20-21. When the Project is decommissioned, the Project owner will remove all steel piles from the ground. Tr. at 42-43.

Wild Hill does not anticipate using security cameras or lighting at the site with the exception of a light at the Project entrance which is on the opposite side of the Project from the closest subdivision. Tr. at 22-23. There should be no discernable noise heard outside of the Project site and only a low hum heard within the Project site while it is producing power. Tr. at 27. Finally, Wild Hill does not anticipate any negative impact on wildlife in the area. Tr. at 23.

The evidence presented by the parties in this case indicates that the Project will benefit the local and state economies, and will not negatively impact property values or use of property for neighboring home owners. Thus, the Project is not contrary to the public interest.

Counsel for JCV argued that the Commission should not approve this Application in the absence of a local ordinance allowing the Project to be built at the proposed site. This Commission proceeding is separate and apart from any other local, state, or federal permission that Wild Hill must obtain. Historically, the Commission has granted siting certificates conditioned on the requirement to obtain all necessary approvals.

Admission of Wild Hill Exhibit 1, Appendix F.

During the hearing, JCV objected to the admission of Appendix F of Wild Hill Exhibit 1, the Application. Appendix F is the economic impact study prepared by Dr. Tom Witt, Chief Economist and Managing Director at Witt Economics, LLC. JCV objected to the admission of Appendix F into evidence because Mr. Witt was not offered for cross-examination. The Commission will admit Appendix F for the purpose of including a complete Application in the record, but will not admit the study for the truth of the matters asserted in the study. If Wild Hill desired to use the economic impact study in support of its argument that this Project is not contrary to the public interest, it should have provided the expert witness for cross-examination.

**FINDINGS OF FACT**

1. On November 6, 2020, Wild Hill filed an application pursuant to W. Va. Code § 24-2-1o(n) for a siting certificate to construct a 92.5 MW solar EWG facility in Jefferson County, West Virginia. Application.
2. Construction of the Project is estimated to cost \$125 million. Id.
3. All of the transmission facilities will be located within the Project footprint and will interconnect to an existing PE 138 kV transmission line that crosses the Project. Id.
4. The power generated from this facility will be sold into the PJM wholesale market. Id.
5. Wild Hill complied with the notice required by this Commission. Solar Siting Rule 3.4; Affidavits of Publication filed November 24, 2020 and January 14, 2021.
6. There will be economic gain to the local economy and local employment during the construction of the Project. Building Trades Exh. SW-D.

**CONCLUSIONS OF LAW**

1. The construction of the Project is not contrary to the public interest.

2. Based on the entire record, all filings in the case, and the analysis contained in this Order, the Commission should issue Wild Hill a Siting Certificate for this Project, subject to the conditions of this Order.

### **ORDER**

IT IS THEREFORE ORDERED that Wild Hill Solar, LLC is granted a Siting Certificate pursuant to W. Va. Code § 24-2-1o(n), for the construction and operation of a 92.5 MW solar generating facility to be located in Jefferson County, West Virginia, subject to the following conditions:

- a. Wild Hill receiving all permits and approvals from other local, state, and federal agencies required to construct the project and filing those with the Commission as closed entries, as they are received.
- b. Wild Hill, or its assigns, commencing continuous construction of the project within five years of the date of this order granting a solar EWG siting certificate to Wild Hill, and completing construction within ten years.
- c. Wild Hill entering into a decommissioning agreement with the Jefferson County Commission with security to be determined by the parties to that agreement.
- d. Wild Hill complying with Solar Siting Rules 7.1 and 9.1, as applicable, as the Project develops.

IT IS FURTHER ORDERED that Wild Hill Solar, LLC, file a copy of the executed decommissioning agreement as a closed entry in this case within thirty days of execution of that document by Wild Hill and the Jefferson County Commission.

IT IS FURTHER ORDERED that Appendix F of Wild Hill Exhibit 1 is admitted into evidence in the evidentiary hearing only for the purpose of providing proof of a complete Application, and not for the truth of the information asserted therein.

IT IS FURTHER ORDERED that the Memorandum Agreement dated January 14, 2021, between Wild Hill Solar, LLC, the North Central West Virginia Building and Construction Trades Council, AFL-CIO, and the West Virginia State Building and Construction Trades Council, AFL-CIO is approved in relation to the Project. The Commission anticipates that all representations and commitments made by the parties therein will be kept by the parties. Approval of the Memorandum Agreement by the Commission does not mean the Commission is the proper forum to resolve any disputes which may arise from operating under the Agreement.

IT IS FURTHER ORDERED that pursuant to Rule 9.1 of the Rules Governing Siting Certificates for Solar Exempt Wholesale Generators, 150 C.S.R. 39, all of the terms and conditions of this Order apply to any subsequent owners or operators of the Project.

IT IS FURTHER ORDERED that upon entry of this Order, this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Connie Graley".

Connie Graley, Executive Secretary

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