

Orr&Reno

October 7, 2020

William L. Chapman
George W. Roussos
James E. Morris
John A. Malmberg
Douglas L. Patch
Steven L. Winer
Peter F. Burger
Lisa Snow Wade
Susan S. Geiger
Jennifer A. Eber
Jeffrey C. Spear
Connie Boyles Lane
Judith A. Fairclough
Maureen D. Smith
James F. Laboe
Robert S. Carey
Margaret R. Kerouac
Jonathan M. Eck
Jeremy D. Eggleton
Julie R. Morse
Antony K. Sayess
Erin Vanden Borre
Nicole M. T. Paul
John M. Zaremba
Heidi S. Cole
Petar M. Leonard
Bradford W. Melson
Lindsay E. Nadeau
Laura Jean Hartz
Kelley L. Stonebraker
Meredith R. Farrell

Via Electronic Mail Only

Dianne Martin, Chair and Presiding Officer
New Hampshire Site Evaluation Committee
c/o New Hampshire Public Utilities Commission
21 South Fruit St., Suite 10
Concord, NH 03301-2429

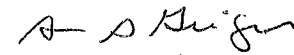
Re: SEC Docket No. 2019-02, Application of Chinook Solar, LLC for a Certificate of Site and Facility for the Construction and Operation of a 30MW Solar Generating Facility in Fitzwilliam, New Hampshire –Applicant’s Memorandum Regarding Responses to Subcommittee’s Subdivision Questions

Dear Ms. Martin:

Attached for filing in the above captioned matter please find Applicant’s Memorandum Regarding Responses to Subcommittee’s Subdivision Questions.

Please contact me if there are any questions about this filing. Thank you for your assistance.

Very truly yours,


Susan S. Geiger

Neil F. Castaldo
(Of Counsel)

Attachment

cc: Service List in SEC Docket 2019-02 (via electronic mail only)

2912193_1

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2019-02

APPLICATION OF CHINOOK SOLAR, LLC FOR A CERTIFICATE OF SITE AND
FACILITY FOR THE CHINOOK SOLAR PROJECT IN FITZWILLIAM, NEW
HAMPSHIRE

Applicant's Memorandum Regarding Responses to
Subcommittee's Subdivision Questions

NOW COMES Chinook Solar, LLC ("Chinook" or "the Applicant"), by and through its attorneys, and respectfully submits this Memorandum in response to three questions identified by the New Hampshire Site Evaluation Committee ("NH SEC") Subcommittee ("the Subcommittee") at the September 22, 2020 hearing in the above-captioned docket and in the Procedural Order and Notice of Deliberations Hearings issued October 2, 2020 by stating as follows:

I. Background

1. As stated in its Application for a Certificate of Site and Facility, the Chinook Solar Project ("the Project") will need to subdivide the land on which the Project's Substation (which includes the switchyard and the Project's collection substation) will be located to complete the Project's interconnection to the transmission grid. *Chinook Solar, LLC Application for a Certificate of Site and Facility ("Application")* (Oct. 14, 2019), p. 32. This land is depicted in Figure G.1. on page 29 of the Application.

2. The above-described subdivision is necessary to accomplish the transfer of the Project's switchyard and the property on which it is located to National Grid. *Application*, p. 32.

In addition, the land under which the Project's collection substation is located must be transferred to a third party ("MAP"). *Id.* The remaining portion of the Project's lands that are not transferred will be retained by Chinook for use by the Project. *Id.* As stated in the Application, "Chinook Solar will be working with National Grid and others, including local and county officials as required, to determine the necessary steps to accomplish these transfers. Chinook will keep the SEC updated as it works its way through this aspect of the Project." *Application*, pp. 32-33.

3. In response to a request from the Subcommittee at the September 15, 2020 hearing in the above-captioned matter, the Applicant submitted a letter dated September 17, 2020 providing written comments regarding the issue of the subdivision of land necessary to transfer property rights so that the Chinook Solar Project can be interconnected to the electric transmission grid. APP EX 089. This letter also contained suggested wording to include in a Decision and Order should the Subcommittee decide to issue a Certificate of Site and Facility for the Project.

4. At the September 22, 2020 hearing in this docket, the Subcommittee asked the Applicant to submit a memorandum addressing the subdivision issue. This request was followed by a Procedural Order and Notice of Deliberation Hearings issued October 2, 2020 in which the Subcommittee directed the parties to file legal memoranda addressing the following questions:

- a. Outline the procedure that each party expects will occur after issuing a Certificate should the Subcommittee adopt the Applicant's proposed language.
- b. Explain the legal reasons no other action from the Subcommittee or other local land use board would be necessary.
- c. The authority of the Town to sign a subdivision plat without following the formal procedures required by statute.

II. Responses

A. Outline of Expected Subdivision Procedure

5. In order to avoid protracted litigation before the Subcommittee on the issue of whether it has authority to grant subdivision approval, and without conceding that the NH SEC lacks such authority, the Applicant intends to seek subdivision approval from the Fitzwilliam Planning Board. In view of the foregoing, the Decision and Order language proposed on the last page of APP EX 089 is hereby withdrawn.

6. The expected process before the Fitzwilliam Planning Board is set forth in the Code of The Town of Fitzwilliam, Subdivision of Land, Chapter 221 (“Subdivision Regulations”). *See Attachment 1*. These Subdivision Regulations were adopted in accordance with RSA 674:35-42. *Id.*, p. 3.

7. An outline of the Town’s subdivision process is as follows: The process begins with an applicant appearing at a regular meeting of the Planning Board to discuss the subdivision proposal in conceptual form and general terms. *Id.*, pp. 7-8. A completed application must be submitted to the Planning Board at least 15 days prior to a regular Planning Board meeting and must include a list of abutters along with their mailing addresses. *Id.*, p. 8. The Planning Board is required to notify abutters of the filing of a completed application by certified mail, mailed at least 10 days prior to the date of the submission of the completed application to the Board at a regular meeting. *Id.*, p. 10. The notice shall give the date, time and place of the Board meeting at which the completed application and preliminary layout shall be formally submitted to the Board and shall include a general description of the proposal, and identify the subdivider and location of the proposed subdivision. *Id.* The Planning Board must consider the completed application within 30 days of its submission and must act to approve or disapprove the

completed application within 65 days after acceptance. *Id.* Approval of the final subdivision plat shall be certified by written endorsement on the final plat and signed by the Chairman and Secretary of the Planning Board. *Id.*

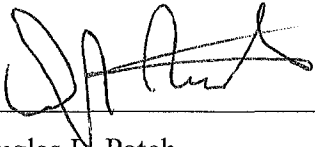
B. Explanation of Legal Reasons Why No Other Action Is Needed From The Subcommittee or Other Local Land Use Board

8. The Subcommittee need not take any action to approve the required subdivision as the Applicant intends to seek subdivision approval for the Substation property from the local land use board, *i.e.*, the Fitzwilliam Planning Board. As explained in APP EX 089, subdivision approval by the Fitzwilliam Planning Board is needed so that the subdivision plan can be recorded with the Cheshire County Register of Deeds.

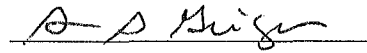
C. Town's Authority To Sign a Subdivision Plat Without Following the Formal Procedures Required By Statute

9. Chinook expects that the Fitzwilliam Planning Board will go through the process outlined above and in the Town of Fitzwilliam's Subdivision Regulations which were adopted pursuant to RSA 674:35-42. As authorized by RSA 674:36, II (n), Fitzwilliam has adopted subdivision regulations that include a provision allowing for the waiver of any portion of the regulations. Section 221-6 of the Subdivision Regulations provides "[w]here strict conformity to the subdivision regulations would cause undue hardship or injustice to the owner of the land, a subdivision substantially in conformity with the subdivision regulations may be approved by the Board, provided that the spirit of the subdivision regulations and public convenience and welfare will not be adversely affected." *Attachment 1*, p. 4. As could be the case with any other applicant before the Planning Board, Chinook may need to request a waiver of some of the Subdivision Regulations that could create undue hardship or injustice. As of this time, Chinook has not determined whether or to what extent such a waiver may be needed.

Respectfully submitted,
Chinook Solar, LLC
By Its Attorneys
ORR & RENO, P.A.



Douglas L. Patch
45 South Main Street
PO Box 3550
Concord, NH 03302
(603) 223-9161
dpatch@orr-reno.com

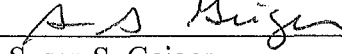


Susan S. Geiger
45 South Main Street
PO Box 3550
Concord, NH 03302
(603) 223-9154
sgeiger@orr-reno.com

Dated: October 7, 2020

Certificate of Service

I hereby certify that on the date set forth above I caused a copy of the foregoing Memorandum to be sent by electronic mail to the service list in SEC Docket No. 2019-02.

By: 
Susan S. Geiger

2895232_1