

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NO. 17-5024-PET

PETITION OF CHELSEA SOLAR LLC, PURSUANT TO
30 V.S.A. SECTION 248, FOR A CERTIFICATE
OF PUBLIC GOOD AUTHORIZING THE INSTALLATION
AND OPERATION OF THE "CHELSEA SOLAR
PROJECT," A 2.0 MW SOLAR ELECTRIC
GENERATION FACILITY LOCATED OFF WILLOW
ROAD IN BENNINGTON, VERMONT --

March 2, 2018
1:30 p.m.

112 State Street
Montpelier, Vermont

Prehearing Conference held before the
Vermont Public Utility Commission, at the Susan M. Hudson
Conference Room, People's United Bank Building, 112 State
Street, Montpelier, Vermont, on March 2, 2018, beginning
at 1:30 p.m.

P R E S E N T

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ANNETTE SMITH

Vermonters for a Clean Environment

1 HEARING OFFICER TOUSLEY: Good
2 afternoon. I am Mike Tousley, and I have been
3 assigned to serve as the hearing officer for the
4 Public Utility Commission in this matter, which is
5 petition of Chelsea Solar, LLC pursuant to 30 V.S.A.
6 Section 248 for a Certificate of Public Good
7 authorizing the installation and operation of the
8 Chelsea Solar project, a two megawatt solar electric
9 generation facility on Willow Road in Bennington,
10 Vermont.

11 This petition has been assigned Case
12 Number 17-5024-PET. We are together today in
13 Montpelier to conduct a prehearing conference.

14 First, I would like to take
15 appearances, so if you could state your name and your
16 affiliation with this matter. Then I'll summarize
17 the off-the-record discussions we just concluded.

18 MS. LEIBOWITZ: Traci Leibowitz with
19 the Department of Public Service.

20 MR. EINHORN: Don Einhorn for the
21 Natural Resources Agency.

22 MR. MELONE: Michael Melone for the
23 Petitioner, Chelsea Solar, LLC, and with me today is
24 Kim Hayden.

25 HEARING OFFICER TOUSLEY: Ms. Bent?

1 MS. BENT: I'm sorry. Merrill Bent for
2 to the Town of Bennington.

3 MS. HARRIS: Libby Harris, intervener
4 for the new Chelsea Solar.

5 MS. SMITH: Annette Smith, Vermonters
6 for a Clean Environment.

7 HEARING OFFICER TOUSLEY: Thank you.
8 Before we went on the record we talked a little bit
9 about the things we are going to try to get done this
10 afternoon. The first is to note for the record that
11 Ms. Harris, Ms. Smith, and the town are on the
12 telephone.

13 The second thing to note for the record
14 is that previously the Department had filed a pro hac
15 vice motion for Ms. Leibowitz which is now mooted
16 because Ms. Leibowitz has joined the bar.

17 The third is the Harris motion to
18 intervene, which in its filings yesterday, Chelsea
19 indicated that it would stipulate to; is that
20 correct?

21 MR. MELONE: That's correct.

22 HEARING OFFICER TOUSLEY: Very well.
23 From the bench, Ms. Harris, your motion to intervene
24 is granted.

25 MS. HARRIS: Thank you.

1 HEARING OFFICER TOUSLEY: Now I think
2 we will move on to the meat of the matter here today.
3 Well there's two elements -- two remaining elements
4 that we talked about a little bit before we went on
5 the record.

6 The first were the differences between
7 the Chelsea and the state and town schedules and the
8 second is the scope. And maybe we will talk about
9 the scope first because that might yield greater
10 agreement about the second.

11 The primary concern with developing a
12 schedule, as I understand it from our off-the-record
13 discussion, is the commission's direction in an order
14 issued in Docket Number 8302 on October 12, 2017 at
15 page five, which suggests to Chelsea, then Chelsea,
16 that if it were to file a petition for a revised
17 project, that the commission would seek the
18 completion of that project and its commissioning and
19 the extension of the commissioning deadline for one
20 year from the date the complete petition is filed.
21 The complete petition -- the petition was deemed
22 complete on December 4th of 2017. The date that
23 would be applicable to -- that would be responsive to
24 this order would be December 3rd of 2018.

25 The commission has not yet issued an

1 order extending the standard offer contract as
2 requested by Chelsea. That is pending and could
3 still be modified if the parties or any of the
4 parties so requested. And it's my understanding that
5 the December 4 commissioning deadline is a fact
6 driving the schedule, and that there are a couple
7 ways to deal with this.

8 I think the first way -- first
9 potential option is for the parties to talk about the
10 schedule in light of a deadline that's not December 4
11 which is what the town and state proposed schedule
12 appears to do. And as I understand it from our
13 discussion, it is what it does. And see to what
14 degree the parties have issue with the schedule
15 presented by the town and the state, or the
16 Department, I should say. Or the state, because it's
17 the state agencies.

18 The second option is to attempt to
19 craft something different that merges the two, that
20 attempts to fit into the December 4th date, but it's
21 my understanding that that's not the -- in the
22 interest of the parties. Have I accurately
23 summarized where we are at and where we are going
24 based on our discussions before we went on the
25 record?

1 MR. MELONE: With respect to the
2 Petitioner, we would like to see a schedule that
3 reflects the December 3, 2018 commissioning date.

4 HEARING OFFICER TOUSLEY: Okay. And is
5 there a reason why the state and the other parties
6 find that unacceptable?

7 MS. LEIBOWITZ: Your Honor, sorry. Is
8 that how I'm supposed to address you or --

9 HEARING OFFICER TOUSLEY: That's okay.
10 Mr. Tousley works.

11 MS. LEIBOWITZ: Mr. Tousley, the
12 Department obviously supports the schedule that we
13 proposed. And I think that the problem -- I would
14 say that the problem with the schedule that the
15 Petitioner proposed is it doesn't allow enough time
16 for a thorough review of the project. We are looking
17 at this as a new project, not simply just looking at
18 amendments that were made to the project that were
19 submitted before.

20 So it's our position that we need to do
21 a full review, and that we need the full amount of
22 time to do that. And the time frame set forth in the
23 Petitioner's schedule doesn't allow for that type of
24 review. And we do have a couple interveners here,
25 and it's important for the Department to see that all

1 parties get a chance to meaningfully participate in
2 the proceedings here. And I don't think that the
3 expedited schedule proposed by the Petitioner would
4 really allow for that.

5 We intend to file testimony in this
6 case, so it's important to the Department to have two
7 rounds of discovery. And then I think as we get into
8 a little bit of the scope, we can point out more
9 specifically what may be taking up time. But that's
10 our position.

11 HEARING OFFICER TOUSLEY: Okay. Does
12 the agency have a separate position?

13 MR. EINHORN: No. I think ours is
14 pretty consistent with the Department's. I mean at
15 this point it's premature to say whether or not we
16 would be filing testimony. I think responses to
17 discovery would ultimately factor into that decision.

18 HEARING OFFICER TOUSLEY: Do you think
19 that there would need to be major changes in the
20 natural resources' criterion testimony between what
21 was filed in 8302 and what would be filed here?

22 MR. EINHORN: I have no idea. What I
23 have before me is what I view as a new petition. I
24 think it's way more efficient to just review the new
25 petition and to address that rather than to try to

1 review the new petition and however many months or
2 years of Chelsea information we have from the
3 original 8302 and parse out --

4 HEARING OFFICER TOUSLEY: What if that
5 parsing was done by the Petitioner? What if the
6 Petitioner said they want to rely upon -- I forget
7 who your natural resources' person was, but the
8 testimony --

9 MR. EINHORN: They are the same.

10 HEARING OFFICER TOUSLEY: -- related to
11 (B) (5), to the degree that they are the same, that
12 they could file the same testimony and make
13 modifications as they did to a degree in 8454.

14 MR. EINHORN: Based on my experience in
15 dealing with 248 experience, I still need to go back
16 to look at the original one to see if the new one
17 accurately states what the original one states and
18 what any differences to the original one may
19 accurately be.

20 And I find that that's not always the
21 case when dealing with something where testimony is
22 referred back to. That said, while the natural
23 resources' expert is the same, Dori Barton from
24 Arrowwood, we have a different engineer which, you
25 know, stormwater, tree clearing, et cetera, are

1 issues the agency deals with. It's -- to me it's
2 more work to try to review both than just the one.

3 HEARING OFFICER TOUSLEY: Let me just
4 ask another question. I guess what I would foresee
5 is in response to Chelsea's requirement to present
6 information that can be placed in evidence under the
7 (B) (5) criterion, they submit the pre-existing 8302
8 testimony with an update, so you would receive in
9 5024, two documents, you know, a copy maybe with some
10 line outs in it from 8302 that would be attached to
11 an update from whoever the Petitioner's natural
12 resources' expert was either adopting or not
13 adopting. And stating additional information if they
14 are not adopting, what was in the 8302 testimony. I
15 would think that would speed it up a little bit.

16 In terms -- you wouldn't be parsing it
17 out. They would be parsing it out and giving you
18 what they think is relevant with updates.

19 MR. EINHORN: So we have reviewed 8302,
20 two or three years ago, whenever that was. A lot of
21 time has passed.

22 THE COURT: Right.

23 MR. EINHORN: We are now in the process
24 and have reviewed a fair amount of this new petition.
25 And it doesn't make -- it's not efficient to now go

1 back and do a review of yet --

2 HEARING OFFICER TOUSLEY: Okay.

3 MR. EINHORN: -- some combined version.

4 And in any event, we would then need to embark on
5 discovery, and responses to discovery would then
6 inform our position, and if our position would be
7 that we need to put in testimony, then we need time
8 to do that. The schedule that was proposed doesn't
9 contemplate that proposed by the Petitioner. The
10 schedule that was proposed by the state parties does.

11 And I understand the Petitioner's --
12 they are in a tough spot -- and we are happy to
13 support any request they make to change the dynamics
14 of that situation.

15 HEARING OFFICER TOUSLEY: Okay. Mr.
16 Melone.

17 MR. MELONE: So --

18 MS. HARRIS: May I speak a moment?

19 HEARING OFFICER TOUSLEY: Just a
20 second, Ms. Harris. We will let Mr. Melone, and then
21 you can speak.

22 MS. HARRIS: Sure.

23 MR. MELONE: As far as going back and
24 trying to bring in 8302 testimony into this docket, I
25 don't think that's going to confuse the issues. We

1 filed essentially new testimony on all the criteria,
2 which I think we are happy to rely on that for this
3 case.

4 HEARING OFFICER TOUSLEY: Okay. So
5 you're not relying on 8302 testimony.

6 MR. MELONE: No.

7 HEARING OFFICER TOUSLEY: That was my
8 misconception then.

9 MR. MELONE: No. We are relying on the
10 new testimony that's been filed. We are also relying
11 on that October 2017 order from the PUC. I think
12 they put a year extension on the commissioning
13 deadline for a reason, for this to be an expedited
14 proceeding. And the PUC specifically said that this
15 review of this proceeding would be prompt, and I
16 think -- I understand completely that this is a new
17 petition. I understand that the DPS MOU is no longer
18 applicable, and the same thing with ANR, but I
19 realistically -- this is the same project and the
20 same parcel. It's just smaller. And I think to --
21 the schedule should reflect that.

22 And what I'm not hearing from any of
23 the parties; from DPS, from ANR, or from the town are
24 specific issues that they might have with the
25 project. And I think the purpose of this prehearing

1 conference is to simplify the schedule so if we could
2 better understand what specific issues there are, I
3 think that would go a long way into determining
4 whether or not the schedule we proposed is doable.

5 HEARING OFFICER TOUSLEY: Understood.
6 Ms. Harris?

7 MS. HARRIS: Yes. I want to point out
8 that the Apple Hill Association intends to intervene,
9 and they did not participate in the original Chelsea.
10 And there are new issues for the Apple Hill
11 Association than previously.

12 So I think we should consider that
13 also, because they will definitely be intervening and
14 bringing up the new issues that affect the entire
15 neighborhood.

16 HEARING OFFICER TOUSLEY: Okay. And as
17 you heard Mr. Melone say, should they move to
18 intervene, Apple has stipulated to accepting that as
19 an intervening party.

20 MR. MELONE: That's correct.

21 MS. HARRIS: Yes, that would be great.

22 HEARING OFFICER TOUSLEY: Okay. So
23 they need to get engaged and start playing too.

24 MS. HARRIS: Yes.

25 HEARING OFFICER TOUSLEY: Okay.

1 MS. HARRIS: And they intend to.

2 HEARING OFFICER TOUSLEY: Okay, great.
3 Does the town have comments?

4 MS. BENT: Yeah. I think from the
5 town's perspective, because there had been a final
6 order in the Chelsea docket previously, there are a
7 number of issues that would be restricted by basis of
8 collateral estoppel with regard to interpretation of
9 the Town Plan, although I don't know that those
10 issues are going to be really hotly disputed in this
11 docket. And then I think it was Mr. Melone who just
12 confirmed that, you know, he acknowledges that this
13 is a completely new proceeding. It's a new
14 application, and as such, there is a Town Plan
15 amendment that was adopted prior to the new petition
16 being filed which is applicable.

17 So that's really the only issue that
18 the town is going to intend to address. That said,
19 just by -- for the sake of making sure that we are
20 able to address all the issues in this proceeding
21 thoroughly and have time to do that, and have time to
22 do that, even have time to talk to each other to try
23 to keep things moving forward in an orderly fashion,
24 the town does support the more elongated schedule
25 that was submitted by the Department just by virtue

1 of the fact that we feel that the Petitioner's
2 proposed schedule, while we appreciate the reason for
3 the accelerated schedule, we feel that it's too
4 accelerated.

5 HEARING OFFICER TOUSLEY: Okay.

6 MS. LEIBOWITZ: And Mr. Tousley, if I
7 can --

8 HEARING OFFICER TOUSLEY: Please.

9 MS. LEIBOWITZ: -- just kind of
10 summarize what I view as new issues that need time
11 for focusing on in this.

12 HEARING OFFICER TOUSLEY: Please.

13 MS. LEIBOWITZ: In this go around as
14 opposed to the first round with Chelsea Solar, it
15 sounds like we have a number of new interveners.
16 Apple Hill Homeowners' Association. Town of
17 Bennington had limited involvement last time, and now
18 they are officially interveners and will be
19 participating throughout the entire process. And Ms.
20 Smith had stated earlier that potentially Vermonters
21 for a Clean Environment may be intervening, so we
22 have a minimum of two new interveners here.

23 Additionally, the Department will be
24 filing testimony this time. We did not last time, so
25 we will be doing that. And as I said before, would

1 require the two rounds of discovery to accomplish
2 that. And then just as Ms. Bent stated, with the new
3 -- the 2016 amendment to the Town Plan is a new issue
4 to be dealt with.

5 HEARING OFFICER TOUSLEY: Okay.

6 MS. SMITH: Annette Smith. May I
7 speak?

8 HEARING OFFICER TOUSLEY: Yes, ma'am.

9 MS. SMITH: Vermonters for a Clean
10 Environment is considering intervening primarily on
11 the natural resource issues. And my recollection, I
12 may be wrong, but my recollection is that in 8302
13 that the Agency of Natural Resources did not put in
14 any testimony. Entered in an MOU. I heard someone
15 say that both the ANR and DPS MOU are no longer in
16 effect, and I would like a clarification on that.
17 But that the fact that ANR entered into an MOU
18 outside the discussions with the other parties is
19 problematic, and that's why we are considering
20 intervening.

21 HEARING OFFICER TOUSLEY: I recall that
22 in 8302 there was an ANR MOU. That's correct.

23 MS. SMITH: There was an MOU. I don't
24 recall there was any testimony. And the MOUs were
25 done without discussion with any of the other

1 parties. And I don't think ANR's doing that anymore,
2 but that's what was the practice back then.

3 HEARING OFFICER TOUSLEY: Okay. So
4 that's something different in this case that wasn't
5 there in the last case.

6 MS. SMITH: So far.

7 HEARING OFFICER TOUSLEY: Okay. Okay.
8 ANR, do you have comments as to differences for this
9 petition that make it different than the last one?

10 MR. EINHORN: Substantively?

11 HEARING OFFICER TOUSLEY: Yes.

12 MR. EINHORN: I'm looking at one thing
13 right now, talking about tree clearing with regard to
14 the one percent forest cover in the area. As it's
15 demarcated in the report it's just showing this
16 project and part of the access to this project. I
17 don't know if that needs to be looked at
18 acknowledging that there is also an Apple Hill
19 project on the parcel, and then there was
20 supplemental testimony filed not long ago about what
21 appears to be alternate access for O&M activities.

22 And it's unclear if -- what that would
23 even entail. Has that been assessed. How does that
24 factor into this one criteria let alone other
25 criterias. So there are issues.

1 HEARING OFFICER TOUSLEY: The projects
2 are different.

3 MR. EINHORN: They are different. They
4 are different. Acknowledging that, sure, there is
5 overlap as well. We have been through some of these
6 issues before in the context of the original Chelsea
7 I, but even issues that we have been through before
8 may be looked at through a slightly different lens
9 today given the state of environmental issues today,
10 the state of knowledge today, or the fact that there
11 is an Apple Hill project now that's gone or going
12 through the pipeline before Chelsea was first. So
13 there are differences.

14 HEARING OFFICER TOUSLEY: Understood.

15 MR. EINHORN: It's undeniable.

16 HEARING OFFICER TOUSLEY: Understood.

17 MS. LEIBOWITZ: I think that it is
18 important to note that the potential cumulative
19 effects of this project with Apple Hill, should we be
20 in the position where Apple Hill has been issued a
21 CPG, that would be something to consider.

22 HEARING OFFICER TOUSLEY: Understood.
23 Okay. Well these are things that were not considered
24 by the commission to my understanding at the time the
25 order in 8302 was written. I think the expectation,

1 as much as I understood it, was that there would be a
2 reliance on much of the testimony or at least some of
3 the testimony that would speed up the process for
4 this case. Given the fact that it wasn't -- it
5 wasn't the same location with many of the same
6 criteria, potentially impacts associated with it.

7 But what I'm hearing from the non-
8 Petitioner parties is that -- as well as from the
9 Petitioner, is that there isn't a reliance on that
10 8302 evidence that will be used in this case or
11 referred to in this case, which I think is at
12 variance from the conclusion or the assumption that
13 the commission made when setting the one year date.

14 Again, I can't speak with certainty for
15 the commission. I'm not a commissioner. They would
16 have to make this conclusion on their own. But
17 that's my memory of the basis behind which the one
18 year date was selected. I think having heard
19 concerns on the part of the non-Petitioner parties as
20 well as the Petitioner about the impact of that date
21 and the non reliance on the 8302 materials, is
22 something the commission needs to know and would
23 impact their pending decision regarding the extension
24 of standard offer contract date.

25 I'm just trying to think of the best

1 ways for the Petitioner and the parties to recommend,
2 if recommendation is an appropriate term, a change to
3 that one year date such that a contract or such that
4 a schedule can be achieved. And maybe the best way
5 is the way that Mr. Einhorn talked about during the
6 -- when we were off the record -- which is to talk
7 about a schedule, the schedule that the state and the
8 town proposed which does reflect generally a
9 litigation schedule that would normally be achieved
10 in any new Section 248 project of this size and
11 scale.

12 And maybe the way to get this to the
13 commission is to agree upon a schedule today, and the
14 Petitioner can -- I will issue an order that has this
15 schedule in it, has a schedule in it that's agreed
16 to, and then that would be presented to the
17 commission as part of its consideration of the
18 standard offer contract deadline which is upcoming
19 for them. Does that make sense?

20 MR. MELONE: This would be an agreed
21 upon schedule that would also contemplate all of the
22 parties agreeing to an extension of the commissioning
23 deadline in further-- beyond the December 2018?

24 HEARING OFFICER TOUSLEY: I don't know
25 that we will get there. But I think the fact that

1 the parties have agreed to the schedule that would
2 not allow for December 4 commissioning date would be
3 obvious to the commission.

4 MR. EINHORN: Well I'm looking at the
5 schedule that the state parties proposed. And that
6 has an evidentiary hearing of September 18.

7 HEARING OFFICER TOUSLEY: Right.

8 MR. EINHORN: If you factor in --
9 acknowledge that this is a Hearing Officer case,
10 there is going to be a Proposal for Decision, there
11 may be oral argument on a proposal for decision,
12 eventually there will be a commission decision.
13 Maybe by December 31, maybe not. I don't know.

14 HEARING OFFICER TOUSLEY: That's not an
15 unreasonable conclusion.

16 MR. EINHORN: Okay. If you pick that
17 date for a final order to shoot for, and you add say
18 at least six months to that, which six months is
19 consistent with the commissioning date extension in
20 the Apple Hill project, six months from the time of a
21 final order, it gets you to I guess July of 2019,
22 which is, you know, possibly doable, possibly not,
23 from a construction standpoint. I don't know. But
24 just kind of thinking it through.

25 MS. HAYDEN: If I may just -- so this

1 is Kim Hayden. One of the things with the timing
2 that Mr. Einhorn just laid out, and I don't disagree
3 with the three months generally between a P for D, a
4 Proposal for Decision, and when you get the order.
5 But an order at the end of the year means you're
6 assuming construction starts during a winter
7 construction season. So that's not -- it wouldn't
8 really play out that way.

9 MR. EINHORN: Well excuse me though,
10 you do -- this project involves tree clearing. Tree
11 clearing is oftentimes done in winter.

12 MS. HAYDEN: It may be, but there still
13 is -- there is a lot of activity --

14 MR. EINHORN: Understood.

15 MS. HAYDEN: -- with project
16 construction. If we -- one thought I had is that we
17 go off the record and look at this schedule, the
18 Department's schedule, because it is very layered.
19 There is a lot of, you know, in other dockets that
20 I've worked on where we, you know, even with multiple
21 parties we -- for example, we don't have multiple
22 dates for different non-petitioning parties to file
23 discovery, for example. And here we have got what
24 look to be sequential series of dates, and that's
25 really blown out the discovery schedule.

1 We have another full month essentially
2 for intervention when the petition was filed last
3 November. I'm not sure that that makes sense, and we
4 can start discovery before intervention decisions are
5 made. There is a lot of, you know, assumption around
6 sequential dates in the -- following the direct
7 testimony of the non petitioners, the direct
8 testimony of the non petitioners. It follows almost
9 a month after Petitioners respond to the second round
10 of discovery in this schedule which is -- which is,
11 you know, excessive.

12 So I think there may be ways to make it
13 closer. And you know, I'm probably getting ahead of
14 where we need to go right now. But that's just an
15 observation that I don't want -- I guess I'm
16 responding to Mr. Einhorn.

17 HEARING OFFICER TOUSLEY: The down side
18 though is that your six months starts in September or
19 October. And then you have just the winter there to
20 attempt to complete, whereas a December date for a
21 CPG approval by the commission, not by P for D, and
22 not oral argument, and everything else, that final
23 approval in December would be -- you would have
24 January through March which you could accomplish the
25 site preparation.

1 And then you would order all your
2 materials. Six months was a period of time that was
3 agreed upon previously by -- in fact, I think it was
4 the second contract extension or the third contract
5 extension in Chelsea did call for six months after
6 the end of litigation that commissioning would occur.

7 So a similar date here would, I
8 understand what you're saying. I think there are
9 some points here that could be contracted, but I'm
10 not sure it serves the Petitioner necessarily to do
11 that. And I'm not sure it serves the other parties
12 either because it's a big case.

13 MR. MELONE: So before we get into the
14 details of a potential schedule, I think when we
15 prepared our proposed schedule, we really were
16 relying on that October order from the PUC.

17 HEARING OFFICER TOUSLEY: I understand.

18 MR. MELONE: And I've heard some
19 generalities regarding potential issues with our
20 smaller project. I think we keep getting away from
21 the fact that the impacts of this project are less
22 because it is smaller.

23 The one issue that I heard from the
24 town is the application of the recent amendment to
25 the Town Plan. That can easily be done, briefed, et

1 cetera, over the next three months in our schedule.
2 And I heard Mr. Einhorn from ANR talk about the
3 movement of the driveway from the original site plan
4 to the new site plan.

5 There aren't a lot of issues here, so I
6 think it's premature to go -- to try to work out a
7 more extended schedule that goes beyond what the PUC
8 intended which is December 3, 2018. And so I think
9 from our perspective we at least like to have the
10 opportunity to brief this issue before we make any
11 decisions regarding the schedule.

12 HEARING OFFICER TOUSLEY: Okay.

13 MS. HARRIS: This is Libby Harris. I
14 would like to say that in addition to what Michael
15 just said, we can't forget that there are new
16 interveners in this. And they will need to be
17 brought up to speed, and they will need to contribute
18 their information of what is on their mind. And so
19 by pulling the schedule in, it might prevent the new
20 interveners from having full -- a full hearing.

21 MR. MELONE: And just to respond to
22 Mrs. Harris's point, it's understandable, but we are
23 not operating in a bubble here. These are parties
24 that are very familiar with both Chelsea and Apple
25 Hill. I'm assuming she is referring to the Apple

1 Hill Homeowners Association.

2 They have already filed testimony in
3 Apple Hill. I assume their testimony, if they were
4 going to file any here, would be very similar. And
5 the same with Ms. Smith and VEC. She's known about
6 this project -- they have known about this project
7 since the beginning. So these aren't new parties.
8 They might be new to the extent that they are seeking
9 -- now seeking to intervene, but they are parties
10 that are intimately familiar with this project.

11 MS. HARRIS: But Michael, may I add
12 that the intervention of Apple Hill Association on
13 Apple Hill Solar, that there were new -- there are
14 new issues facing the community now that did not
15 exist then. And so they were hoping to get those
16 issues, including myself as a member of that
17 association, addressed by you.

18 MR. MELONE: And that's --

19 MS. HARRIS: So they may be familiar,
20 but there are new issues.

21 MR. MELONE: And I think those new
22 issues are reflected in the testimony that they
23 provided in Apple Hill; is that correct?

24 MS. HARRIS: No.

25 MR. MELONE: There is new issues since

1 then?

2 MS. HARRIS: Yes.

3 HEARING OFFICER TOUSLEY: Okay.

4 MS. LEIBOWITZ: So Mr. Tousley, I think
5 just getting back to how to take these two proposed
6 schedules and then potentially get this information
7 in front of the Commissioner who was to make the
8 decision about the extension of the deadline for the
9 SPEED contract, which is already pending, I guess my
10 proposal perhaps would be -- I mean piggybacking on
11 what you had said -- of maybe we approve one today,
12 and then allow -- submit that sort of for
13 consideration in the contract case. That seems to be
14 the right track. I think that we would get this
15 information before the commissioner who was to review
16 that deadline, and then once we get information about
17 what's going to happen with that deadline, it should
18 be easy to come up with a schedule, easier to come up
19 with a schedule in this case once we have some more
20 concrete information about what's happening with that
21 deadline.

22 HEARING OFFICER TOUSLEY: I would
23 speculate that what the commissioners will want to
24 see is something from the non parties as well as the
25 Petitioner to indicate that in their review of 2 --

1 5024 they are not relying upon 8302 because it's a
2 new project, and hence, a complete and unabbreviated
3 schedule is inappropriate.

4 I'll guess that's what they would want
5 to see, some kind of statement like that inasmuch as
6 people agree to that. One way of achieving that is
7 by preparing a schedule that doesn't allow for a
8 December 4 commissioning date. But I can see why the
9 Petitioner might not want that. Because then he's
10 stuck.

11 MS. LEIBOWITZ: I can see that too.

12 HEARING OFFICER TOUSLEY: So I think
13 that what I would like the parties to do, and tell me
14 if this is a bad idea, is to brief their schedules
15 and why they are important. Because then that
16 information would be available to place in front of
17 the commissioners as part of their decision making on
18 the standard offer contract date.

19 So if the state and the town think this
20 is a good schedule, you would submit a brief that
21 supports the schedule, it doesn't have to be long,
22 that just says why you believe -- because you gave a
23 cover letter, but there was just a schedule. I
24 understand that's what we usually do. Why this
25 schedule is appropriate given -- bearing in mind the

1 one year date that's in this order. And why you
2 think the one year date in this order is
3 inappropriate and will not achieve the right -- will
4 not -- will not allow for a full exercise of the
5 rights of the parties.

6 MS. LEIBOWITZ: Right.

7 HEARING OFFICER TOUSLEY: Or something
8 like that.

9 MS. LEIBOWITZ: Sure. I understand
10 what you're getting at.

11 HEARING OFFICER TOUSLEY: And the same
12 for the Petitioner. That to brief why you submitted
13 this, that you're aware of this, the other one, and
14 what your position is with regard to -- and you could
15 state your position with regard to the other one too.

16 You could state that, you know, on
17 March 1, you know, the Petitioner submitted a
18 proposed petition. On March 2, the Department or the
19 state and the town submitted a proposed petition.
20 The town could argue why it likes its, why they think
21 it's important, all those things I just said before,
22 and why you think that the Petitioner's proposed
23 schedule is insufficient.

24 MS. LEIBOWITZ: Sure.

25 HEARING OFFICER TOUSLEY: Recognizing,

1 you know, and recognizing -- and state that you're
2 aware of the schedule, or aware of the 10/12/17 order
3 and what it states. And ask for -- and just brief
4 the schedule and why. And similarly the Petitioner
5 could do something like that where -- and you could
6 even offer a third schedule if you thought that you
7 wanted to that did some of the compression that
8 you're talking about. My only concern with
9 compression is to ensure that the interveners, the
10 new interveners, have an opportunity to fully
11 participate. And the town and state schedule does
12 allow for that in a way that compression might not.
13 I'll just say that starting off. So I don't know
14 that I'm suggesting you should do that, but if you
15 think there are things here that can be compressed,
16 offer that, you know, an alternative to town/state
17 schedule. But to brief why you submitted this
18 schedule and why you do or don't like the state's
19 schedule. Does that make sense?

20 MS. LEIBOWITZ: That makes sense.

21 HEARING OFFICER TOUSLEY: Okay. How
22 much time do you need to do that?

23 MS. LEIBOWITZ: I guess the longer we
24 take, the more everything is getting pushed out,
25 right?

1 HEARING OFFICER TOUSLEY: I'm thinking
2 like a week to 10 days.

3 MS. HAYDEN: A week.

4 MS. LEIBOWITZ: I think 10 days is
5 fine.

6 HEARING OFFICER TOUSLEY: Okay. That
7 means I don't need my pretty calendar as much as I
8 thought I would.

9 MS. HAYDEN: Could I also suggest in
10 addition to briefing schedule that the parties should
11 be required to identify the issues and scope?
12 Because that is generally part of a prehearing
13 conference, or it certainly is in the rule, rule
14 2.112.

15 One of the first things that the
16 prehearing conference is supposed to accomplish is
17 simplification of issues. And so --

18 HEARING OFFICER TOUSLEY: Well I think
19 we have achieved some of that. I'm not going to
20 order the parties to do that. If as part of their
21 explanation as to why the Petitioner's schedule is
22 inadequate they want to expound upon those things,
23 that would be a good idea, because that would help
24 the commissioners understand why the schedule is just
25 too short. That -- why the two cases are different.

1 And that would be helpful to the commissioners.

2 So I'm not going to tell you they have
3 got to do that. Because we talked about them in
4 generalities here, and I think the Petitioner's on
5 notice of some of what those are now. But I think
6 the degree to which the statutory parties as well as
7 any other parties want to say that the Petitioner's
8 schedule isn't a good idea and why the other schedule
9 is, they should talk about the need to address the
10 issues that they mentioned here today.

11 MS. SMITH: This is Annette Smith. May
12 I speak?

13 HEARING OFFICER TOUSLEY: Yes. Please.

14 MS. SMITH: I would like to share the
15 observation that I think that is a highly unusual
16 situation. I'm not aware of any CPG that has ever
17 been denied and then come back for a second bite at
18 the apple. And similarly -- so a lot of the
19 discussions that we have been having have been from
20 the Petitioner's perspective of getting a CPG and
21 when the commissioning happens.

22 But given that this was denied once, it
23 could be denied again, and it is also possible that
24 there may be reasons other than whatever the parties
25 may agree to, that the PUC may deny the extension of

1 the standard offer contract. And it sounds like the
2 Petitioner might say well then we can't do it at all.
3 So these are all -- it just troubles me to hear this
4 discussion all --

5 HEARING OFFICER TOUSLEY: I understand,
6 Ms. Smith, and I appreciate your caution in that
7 regard. I think --

8 MS. SMITH: Okay. Thank you.

9 HEARING OFFICER TOUSLEY: When we
10 generally prepare a schedule, it's with the notion of
11 -- I mean it doesn't say "CPG approved" on it. I
12 think that still --

13 MS. SMITH: The timing --

14 HEARING OFFICER TOUSLEY: But the goal
15 is in fact the CPG is approved to ensure that the
16 Petitioner has the opportunity to build it consistent
17 with the standard offer contract.

18 MS. SMITH: So the other option is or
19 the other possibility is totally apart from anything
20 that we are discussing today, there may be reason to
21 not extend the standard offer contract and that
22 really hasn't been considered, but I think it should
23 be considered as part of -- I would like to see the
24 schedule work for this case. And whatever happens
25 with the standard offer contract is tangential, but

1 shouldn't dictate the schedule here.

2 MR. EINHORN: If I may offer, Don
3 Einhorn with ANR. We have been having a nice
4 discussion about the unique circumstance that we are
5 in in this case. That said, I think from ANR's
6 perspective it is never a good idea to set a schedule
7 in a 248 proceeding based on when the project needs
8 to be commissioned, whether it's the Petitioner
9 contracts with somebody to sell them power, whether
10 it's the Petitioner's arrangement with their
11 financer, or whether it's a deadline set by the
12 commission. Because what it does is it has the -- it
13 could have what we are having here is the effect of
14 truncating the 248 process which is a process that
15 you need to go through, and there is a reason that
16 you go through the process. And everybody should be
17 afforded an opportunity to fully participate in the
18 process including the Petitioner; responding to
19 discovery, you know, there is back and forth. And it
20 is what it is.

21 And I just think as a general matter,
22 it's never a good idea to set a schedule by picking
23 an end date and then working back from there.

24 MS. LEIBOWITZ: To add on to that,
25 should we be -- I know -- is this going to have the

1 effect of holding up the order on the request to
2 extend the standard offer contract?

3 HEARING OFFICER TOUSLEY: Yes.

4 MS. LEIBOWITZ: I assume they would
5 wait to see this and read this.

6 HEARING OFFICER TOUSLEY: I can tell
7 you that, yes, right now.

8 MS. LEIBOWITZ: Okay. And should --
9 perhaps should the Petitioner be proposing what they
10 would like to see for a new extension time period?

11 HEARING OFFICER TOUSLEY: Yes. I mean
12 standard offer contracts always have a commissioning
13 deadline. Usually it's two years after the date that
14 it's approved or two years after the date that the
15 petition is filed. I forget. It's one of those two
16 things. But there is a deadline.

17 So the one year deadline is not an
18 uncommon thing. Although we have done the litigation
19 plus six months option, and the commission was
20 amenable to that. And that may be something like --
21 that may be more appropriate here. But so for what
22 that's worth, I appreciate your comments, and I would
23 suggest that you write them down and put them in your
24 briefs so the commissioners can see them.

25 Ms. Harris, do you have anything else

1 you want to say?

2 MS. HARRIS: I wanted to say something
3 about the site visit. And I know it's a bit off of
4 everything that we have talked about, but I think
5 it's essential that when the site visit date is set
6 that it is a date hopefully very unlike today where
7 people could actually visit the site instead of it
8 being the sort of useless exercise or doing a drive
9 by, which was useless in the past to try to do.
10 There was no education that was able to be given by
11 driving by rather than actually being able to walk
12 the site and become intelligent as to what it means
13 to be there on the ground.

14 HEARING OFFICER TOUSLEY: I agree. We
15 will ask ANR staff meteorologist to give us a proper
16 date when the weather will be perfect.

17 MS. HARRIS: Thank you.

18 HEARING OFFICER TOUSLEY: But we will
19 do our best. March 12 -- the week of March 12 it
20 could be beautiful. And --

21 MS. HARRIS: Yes.

22 HEARING OFFICER TOUSLEY: And I know
23 I've walked the site twice as the Hearing Officer,
24 both for Apple Hill and for Chelsea. Actually a
25 third time with the commissioners. So -- and the

1 weather was good enough to walk the site each of
2 those times. And so I'm sure we will find something
3 where the weather is good. If the weather is like
4 today, we will cancel that site visit.

5 MS. HARRIS: Okay. Thank you very
6 much.

7 HEARING OFFICER TOUSLEY: Sure.

8 MR. EINHORN: So that said, it seems
9 like we are a little ways off from having an actual
10 schedule for this proceeding.

11 HEARING OFFICER TOUSLEY: Well the
12 question that got us -- was how much time do you need
13 to brief your proposed schedules.

14 MR. EINHORN: Right.

15 HEARING OFFICER TOUSLEY: And I would
16 say 10 days, or a week to 10 days.

17 MR. EINHORN: Right. So that's already
18 March 12.

19 HEARING OFFICER TOUSLEY: Right.

20 MR. EINHORN: Recognizing that
21 eventually we are going to have a schedule for this
22 matter, and recognizing that we have everybody in the
23 room or on the phone right now, should we consider
24 just picking a date for the site visit now rather
25 than trying to sort that out two weeks from now which

1 potentially pushes that out further?

2 MS. HAYDEN: I mean a site visit can
3 happen at any time. The PUC has held that in prior
4 cases. It doesn't have to be the first event. So --

5 MR. EINHORN: It's often been official
6 though for the purpose of propounding discovery. Not
7 always. But depending on what issues are. You know,
8 but --

9 HEARING OFFICER TOUSLEY: The other
10 advantage of -- usually do the site visit and a
11 public hearing and the information session the same
12 day. Generally the schedule for the proceeding is
13 available for those periods so that potential
14 interveners can know what's going on and whether or
15 not they want to participate in that schedule. It's
16 not required. Doesn't always happen. But it's a
17 desired end is to have a schedule at the time the
18 public hearing and information session occur.

19 MS. HAYDEN: So are you suggesting,
20 Don, just picking a site visit date and running with
21 that? And then fixing the rest of the schedule?

22 MR. EINHORN: I'm just offering it out
23 there while we are all here.

24 HEARING OFFICER TOUSLEY: I would be
25 hesitant to do that because I like to have an agenda

1 or a proposed schedule when I do the public hearing
2 so that I can provide that to the public so they have
3 a sense as to what's going on.

4 MR. EINHORN: That's fine.

5 HEARING OFFICER TOUSLEY: Okay. As
6 long as it's not on March 23rd. That's my mother's
7 85th birthday, and I will be in Cleveland. That's
8 like in stone.

9 MR. MELONE: My only request is rather
10 than 10 days, can we do 7?

11 HEARING OFFICER TOUSLEY: I think March
12 12th is a good day. Did you want the 9th?

13 MR. MELONE: That would be great. A
14 week from today.

15 HEARING OFFICER TOUSLEY: We haven't
16 heard from you, Ms. Bent. Do you have any comments?

17 MS. BENT: No. I mean I'm just
18 listening because I think what it sounds like is we
19 are going to work together to get the scheduling
20 briefed. So we are happy to do that as well.

21 HEARING OFFICER TOUSLEY: Okay. All
22 right. March 9. Does that work for people?

23 MS. LEIBOWITZ: Next Friday?

24 MR. EINHORN: A week from --

25 MS. LEIBOWITZ: That works.

1 MR. EINHORN: Yes.

2 HEARING OFFICER TOUSLEY: Ms. Bent, are
3 you okay with that?

4 MS. BENT: Yes, that's fine with me.

5 HEARING OFFICER TOUSLEY: Ms. Harris?

6 MS. HARRIS: Since I'm not a lawyer, I
7 need to -- I'm a bit ingenuous here. Do I file a
8 brief as well?

9 HEARING OFFICER TOUSLEY: If you have a
10 position on the schedules provided by the town and
11 the state as well as the Petitioner, you can brief
12 why you think they are good or not.

13 MS. HARRIS: Okay.

14 HEARING OFFICER TOUSLEY: And that
15 would be by next Friday.

16 MS. HARRIS: Well hopefully I can
17 achieve that.

18 HEARING OFFICER TOUSLEY: Okay. Well
19 then we have achieved something today, and that is to
20 set a deadline for the parties to file briefs as to
21 schedule in this proceeding by next Friday, March 9.

22 And we also dealt with a couple other
23 little things to start with.

24 Are there other matters that we need to
25 address while we are on the record?

1 MR. EINHORN: No.

2 MS. LEIBOWITZ: No.

3 MS. BENT: I don't think so.

4 MR. MELONE: No.

5 HEARING OFFICER TOUSLEY: Very well.

6 This hearing is adjourned. Thank you folks, and
7 drive safely.

8 (Whereupon, the proceeding was
9 adjourned at 2:42 p.m.)

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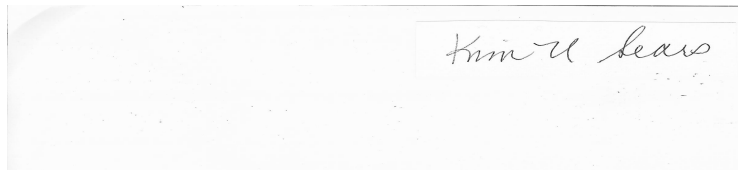
C E R T I F I C A T E

I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Prehearing Conference re: CASE NO. 17-5024-PET, at the Susan M. Hudson Hearing Room, People's United Bank Building, 112 State Street, Montpelier, Vermont, on March 2, 2018, beginning at 1:30 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 41 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Williston, Vermont, this 5th day of March, 2018.

A rectangular box containing a handwritten signature in cursive script that reads "Kim U. Sears".

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