**STATE OF VERMONT**
**BEFORE THE**
**PUBLIC UTILITY COMMISSION**

| **Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. §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** | )<br>)<br>)<br>)<br>)<br>) | **Case No. 17-5024-PET** |
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## CHELSEA SOLAR LLC'S RESPONSE TO THE TOWN OF BENNINGTON'S OPPOSITION TO AMEND THE SCHEDULE

The Town's opposition (like other Town filings) seeks to litigate through *ad hominem* attacks and requests for delay. Chelsea Solar LLC ("Chelsea") asserts that the Town Plan amendments since the start of its development in 2013 do not apply. The Town's defense to that argument is that the Town Plan in effect in November 2017 applies. Regardless of how the Town prefers to characterize its opposition position, it is still opposition, and Chelsea is entitled to full discovery on the issue for the reasons in Chelsea's motion. The Town asked for an extended litigation schedule, which was granted, and there is more than enough time to accommodate the discovery Chelsea seeks in the early part of the procedural schedule.

As Chelsea has shown, there are multiple avenues to obtain vested rights or enforce zoning and equitable estoppel which require a deeper factual exploration. There really is no question that from a due process perspective and from the perspective of the Commission's rules and the Vermont Rules of Civil Procedure that Chelsea is entitled to the requested discovery.

Given the history of the Chelsea project, it is easy to understand why the Town would prefer to sweep its prior actions under the rug. The Town unreasonably acted on false information in docket 8302 in opposing the Chelsea project, which started the cascading events that followed. Making matters far worse, the Town failed to set the record straight on the now repudiated Town

Plan issue during the Chelsea rehearing and appellate process. The Town failed to speak up even though it knew the basis for the denial of the CPG in docket 8302 was simply not credible. The Town has refused to respond to a public records request seeking the information on the basis that the issue is subject to litigation—in this docket. The Town's position has been that Chelsea must seek the information through discovery here because it is relevant to an issue involved here. Now the Town says that the information request is irrelevant. The Town cannot have it both ways.

V.R.C.P. 26(b) gives Chelsea the right to obtain discovery regarding "the claim or defense of any other party." The Town's claim that the 2017 Town Plan applies fits squarely within V.R.C.P. 26.

The Town's proposed alternative schedule must also be rejected. There is more than sufficient time in the current schedule to accommodate the discovery. Chelsea is willing to serve the discovery now so that the Town has even more time to respond. Furthermore, the Town's assertion that "[t]he parties cannot prepare discovery on Petitioner without first knowing which version of the Town Plan applies," is simply absurd. The discovery on Petitioner involves the facts of the project. Those facts do not change based upon the Town Plan that applies. The Town's insistence that the Town Plan issue be resolved before the schedule commences is a transparent attempt to continue to delay, and must be rejected.

Respectfully submitted,
*/s/Michael Melone*
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