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	))))))	**Docket No. 17-5024-PET**

CHELSEA SOLAR LLC'S RESPONSE TO INTERVENTION MOTIONS

Roberta Caslin ("Caslin") filed a motion to intervene in the above-captioned proceedings on April 19, 2018 (the "Calsin Motion"). David Griffin & Maru Leon (the "Country Club") filed a motion to intervene in the above-captioned proceedings on April 20, 2018 (the "Country Club Motion"). Caroline McEver filed a motion to intervene in the above-captioned proceedings on April 24, 2018 (the "McEver Motion" and collectively with the Caslin Motion and the Country Club Motion, the "Intervention Motions"). The Petitioner hereby opposes these attempts at intervention in this docket as follows.

The Caslin Motion

Caslin claims four interests in this case: (1) possible wetlands impacts on Hewitt Drive, (2) noise, traffic and air quality, (3) wildlife impacts and (4) economic development in the Town of Bennington (the "Town").[1]

(i) Hewitt Drive

[1] Although Caslin lists 6 items in her motion, the first (i.e. "lack of knowledge") is not an interest that will be adversely affected by the outcome of this case and items 3 and 4 each relate to perceived risks of increased traffic on Willow Road during construction.

Caslin is not an adjoining landowner, she lives nearly a half mile away from the Project site. Caslin is a homeowner on Willow Road concerned with the use of Willow Road and Hewitt Drive in connection with the Project. With respect to Hewitt Drive, she is concerned that the use of the road during Project construction may somehow impact the wetlands nearby. First, potential impacts to wetlands on the sides of public roads that may or may not be used to get to a project site are well outside the scope of these proceedings. If they were, the Public Utility Commission (the "PUC") would be required to examine every road within the State of Vermont that a petitioner may use in traveling to a project site to determine the potential impacts to adjacent wetlands along the roadside. Second, the potential impacts to the wetlands along Hewitt Drive from public traffic and construction have already been analyzed in connection with the construction of the Green Mountain Power line extension and the evidence shows there will be no undue adverse effect. Lastly, Caslin fails to explain why her concerns regarding the wetlands are not adequately protected by the Vermont Agency of Natural Resources ("ANR").

(ii) <u>Construction Impacts</u>

Caslin expresses concern with the dangers of noise, traffic and air quality in her neighborhood from construction. Caslin fails to explain why her concerns regarding construction are not adequately protected by the Department of Public Service (the "Department"). Second, as demonstrated by PUC precedent, such a generalized concern with respect to a very limited duration of construction traffic does not rise to the level of a "substantial interest" required under PUC Rule 2.209(B). In Docket 7508, non-adjoining landowners, the Parisis, filed a motion to intervene alleging that the proposed project could increase the likelihood of car accidents on nearby roads. The PUC denied the Parisis intervenor status with respect to the increased likelihood of car

accidents on nearby roads[2] and the same holding must be applied to Caslin here with respect to their vague and unsupported assertions regarding the potential for accidents from construction traffic.

With respect to noise and air quality impacts during construction, intervenors Harris and the AHHA have raised these issues on multiple occasions in this docket, docket 8454 and docket 8302 and, as such, Caslin's interests on these topics (which are not any different than those expressed by the AHHA) are sufficiently protected by Harris and the AHHA.

(iii) Wildlife

With respect to wildlife, Caslin has not articulated a particularized interest. The statement: "This is just another blow to the wildlife remaining." is vague, argumentative and offers no insight or argument in support of her theory. Nor is her comparison of the solar facility to the construction of a nearby multibillion dollar highway in any way informative or relevant to these proceedings. Nor does Caslin explain why her concerns regarding wildlife are not adequately protected by the ANR or the other intervening parties in this Docket. Moreover, the AHHA and Libby Harris have provided testimony with respect to wildlife in Docket 8454 and have expressed that it remains an issue for them in this docket.

(iv) Economic Benefit to Bennington

Caslin also states that the Project will "not encourage any new interest in working/living here." Besides this statement being patently untrue, encouraging economic development within the applicable municipality is not an applicable 248 criteria that this Project needs to satisfy. As a solar facility under the Standard Offer program with a plant capacity of 2.0 MW, the Project is

[2] The Parisis were granted intervenor status for other reasons not relevant here. *Petition of Georgia Mountain Community Wind, LLC*, Docket 7598, Order entered 7/2/09.

waived from evaluation under 30 V.S.A. § 248(b)(4) per Public Utility Commission Section 13 8007(b) order, dated August 31, 2010.

<u>The Country Club Motion</u>

The Country Club Motion lists four interests in this case: (1) orderly development/Town Plan, (2) Aesthetics, (3) Economics/Tourism and (4) Natural Resources.

(i) <u>Orderly Development</u>

The Country Club Motion states that they are seeking to protect the "visual enjoyment" of their players. Putting aside the question of what exactly that means, there is no evidence that the Project will be visible from the Country Club. Moreover, the "visual enjoyment" of country club golfers is wholly unrelated to the development of the Bennington region and is, therefore, irrelevant to a 248(b)(1) analysis. Pursuant to the Vermont Supreme Court's directive in *In re Petition of Rutland Renewable Energy, LLC*, 2016 VT 50 ("*Rutland*"), the focus of the § 248(b)(1) analysis is the orderly development of the Bennington region, not the Town. *See, id.*, ¶9 ("Under § 248(b)(1), a CPG may be issued for a facility if the Board finds that the facility 'will not unduly interfere with the orderly development of the region . . .' We emphasize that the statutory requirement relates to the orderly development of the region, not to a particular municipality within the region."). There are seventeen towns within the Bennington Region and this Project is located in only one of them. Furthermore, there is no allegation from any actual golfer that the golfer would golf less if the Project were built. The interest alleged by the owners of the Country Club is purely an economic interest, i.e., that somehow the Project would affect the enjoyment of the

golfers and hence the income that the Country Club earns. The Commission has held on numerous occasions that commercial interests are not substantial interests for purposes of intervention.[3]

Simply put, with respect to orderly development, the Country Club Motion fails to provide a description of the specific and particularized interest that they are seeking to protect. Simply listing one of the several 248 criteria that they have heard Harris and the AHHA talk to them about without an explanation of why it matters to them does not rise to the level of a "substantial interest".

Lastly, the Country Club Motion fails to explain why their concerns regarding orderly development (whatever those concerns may be) are not adequately protected by the Department, Harris or the AHHA.

(ii) **Aesthetics**

Without explanation, the Country Club Motion implies that the "visual enjoyment" of their members will be somehow impacted by the Project. As described above, no evidence suggests that the Project (as opposed to the Project site) will be visible from the Country Club. Notwithstanding that fact, the Country Club's unsubstantiated assertion that the Project will somehow impair the visual enjoyment of their golfers is a matter of individual property value or property right that is not properly before the PUC. See *Vermont Electric Power Company, Inc. v. Bandel*, 135 Vt. 141, 145 (1977) ("This Court considers it settled law that proceedings under 30 V.S.A. § 248 relate only to the issue of public good, not the interests of private landowners who are or may be involved."). Furthermore, as argued above, there is no allegation from any actual golfer that the golfer would golf less if the Project were built. The interest alleged by the owners

[3] *See,* Dockets 8562, 8654, 8580, 8637, 8682 denying Allco Renewable Energy Limited's petitions to intervene.

of the Country Club is purely an economic interest, i.e., that somehow the Project would affect the enjoyment of the golfers and hence the income that the Country Club earns. As noted above, the Commission has held on numerous occasions that commercial interests are not substantial interests for purposes of intervention. As such, the Country Club's private interests concerning their golfers' visual enjoyment are not properly before the PUC and they have failed to demonstrate a substantial interest which may be affected by the outcome of the proceeding. Lastly, the Country Club Motion fails to explain why their concerns regarding aesthetics (whatever those concerns may be) are not adequately protected by the Department, Harris or the AHHA.

(iii) Economics/Tourism

The Country Club Motion also references "Economics/Tourism" as an interest. Besides not providing any explanation as to what is meant by this, economics/tourism is not an applicable 248 criteria that this Project needs to satisfy. As a solar facility under the Standard Offer program with a plant capacity of 2.0 MW, the Project is waived from evaluation under 30 V.S.A. § 248(b)(4) per Public Utility Commission Section 13 8007(b) order, dated August 31, 2010.

(iv) Natural Resources

The Country Club Motion also references "Natural Resources/Cleared Forest Remediation, Hydroseeding and Maintenance" as an interest. Again, simply parroting buzz words heard from Harris/AHHA does not rise to the level of a "substantial interest". With respect to natural resources, the Country Club has not articulated a particularized interest. It is completely unclear what interest the Country Club has with respect to the ground cover the Petitioner will use at a site over 1 mile away, nor does the Country Club Motion explain why their concerns regarding natural resources (whatever those might be) are not adequately protected by the Vermont Agency of Natural Resources, Harris or AHHA.

The McEver Motion

McEver's interest in these proceedings is limited to the following statement: "The project will destroy the beautiful view from my property".

McEver's unsubstantiated assertion that the Project will somehow ruin her view from her property, is a matter of individual property value or property right that is not properly before the PUC. *Id.* ("This Court considers it settled law that proceedings under 30 V.S.A. § 248 relate only to the issue of public good, not the interests of private landowners who are or may be involved."). As such, McEver's private interests concerning her property are not properly before the PUC and she failed to demonstrate a substantial interest which may be affected by the outcome of the proceeding.

Furthermore, McEver has failed to demonstrate the location of her property in relation to the proposed Project. The address listed on the McEver Motion (i.e. 132 Monument Ave., Old Bennington, VT 05201) is 2.5 miles from the Project site. **Exhibit A** hereto is a screenshot of Google streetview from outside that address looking in the direction of the Project site. If this address is in fact the address of the property that McEver is concerned about, it is difficult to imagine how the view from this property can be in any way impacted by the Project 2.5 miles away.[4]

For the forgoing reasons, the Intervention Motions should be denied. In the alternative, if some or all of the Intervention Motions are to be granted, Petitioner requests that pursuant to PUC Rule 2.209(C), the PUC group Caslin, the Country Club and McEver together with Harris and the AHHA and limit their respective interventions to only those interests set forth in their individual

4 Petitioner also notes that the Bennington Grand List lists the mailing address of McEver as 34 East Street, Stockbridge, MA 01262.

motions and which are relevant to these Section 248 proceedings. Grouping Caslin, the Country Club and McEver together with Harris and the AHHA will result in increased communication among parties with similar interests, which will result in a more effective and efficient proceeding.

In coordinating their efforts, Caslin, the Country Club and McEver shall work with Ms. Harris and the AHHA to: 1) develop a single set of discovery requests for these criteria for the discovery they serve pursuant to the schedule; 2) present no more than two witnesses on each of the above criteria, absent permission for good cause shown; 3) select a single representative for cross-examination of each witness at the technical hearing; and 4) submit a single brief and reply brief.

Respectfully submitted,

/s/Michael Melone

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Exhibit A - Google Street View looking North from 123 Monument Avenue, Bennington, VT