

STATE OF VERMONT
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

PREFILED TESTIMONY OF LIBBY HARRIS

June 22, 2018

Exhibits:

Exhibit LH1. Harris Corrected Warranty Deed
Exhibit LH2. Maintenance Cost Splitting Agreement
Exhibit LH3. Orchard Lot Deed

Summary of Testimony:

Libby Harris is a resident of Apple Hill in Bennington and is an Intervenor in this case. In her testimony, she clarifies her position on the proposed location for planting trees for screening the solar project. She responds to statements made by Petitioner regarding the use of their property on Apple Hill for their commercial purposes. She addresses the way Petitioner has misconstrued her statements regarding the use of Apple Hill Road and Willow Road, and notes the failure of Petitioner to be a good neighbor regarding the sharing of the right of way maintenance expenses and maintenance of the orchard in Harris’ immediate view. She discusses the numerous other issues of concern with the project.

PREFILED TESTIMONY OF LIBBY HARRIS

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4 Q1. Please state your name, occupation and address.

5 A1. Libby Harris, retired teacher, 531 Apple Hill Road, Bennington, Vermont 05201

6

7 Q2. Please describe your professional experience.

8 A2. I was a high school English teacher in Brooklyn, NY for 35 years and then life
9 coached Bennington College students from 2005 through 2017.

10

11 Q3. Have you previously testified before the Public Utility Commission or in other
12 judicial or administrative proceedings?

13 A3. I have not testified before the Public Utility Commission before.

14

15 Q4. Is there a reason that you have not submitted testimony in the prior Chelsea Solar
16 case or the adjoining Apple Hill Solar case?

17 A4. I was granted limited intervenor status in Cases 8302 and 8454. I was only allowed
18 to submit expert witness testimony by other people but was not allowed to submit my
19 own testimony.

20

21 Q5. What is the purpose of your testimony?

22 A5. To refute claims made by Petitioner regarding my position on the proposed location
23 for planting trees for screening the solar project. I will respond to statements made by
24 Petitioner regarding the use of their property on Apple Hill for their commercial

1 purposes. I will address the way Petitioner has misconstrued my statements regarding the
2 use of Apple Hill Road and Willow Road. I will note the failure of Petitioner to be a
3 good neighbor regarding the sharing of the right of way maintenance expenses and
4 maintenance of the orchard in my immediate view. I will discuss the numerous other
5 issues of concern with the project.

6
7 Q6. What documents have you reviewed in preparation of your testimony?

8 A6. I have reviewed all of the documents that Chelsea has filed in the original Chelsea
9 Case 8302 and now the present petition 17-5024-PET.

10
11 Q7. How long have you lived on Apple Hill?

12 A7. Since June of 2004.

13
14 Q8. How long have you been a member of the Apple Hill Homeowners Association?

15 A8. Since June of 2004.

16
17 Q9. Have you participated in AHHA meetings with representatives of Chelsea Solar?

18 A9. Yes.

19
20 Q10. What issues have you discussed with Chelsea Solar's representative, Brad Wilson?

21 A10. When Mr. Wilson first approached my community in the original Chelsea
22 iteration, he was aggressive and informed the community that Chelsea would be built
23 through Apple Hill Road. He then came back and said that if the AHHA filed an MOU

1 with them that they would not build but would operate and maintain through Apple Hill
2 Road. I did not sign the MOU but became an intervenor. Most other dealings that I have
3 had have been with Michael and Thomas Melone.

4

5 Q11. Has Chelsea Solar satisfied your concerns regarding their proposed development?
6 If yes, please explain what issues have been addressed. If no, please explain what issues
7 remain unresolved?

8 A11. Chelsea Solar has not satisfied any of my concerns regarding their proposed
9 development, as I will detail below.

- 10 a. Chelsea Solar drew up a maintenance agreement for me to sign for shared costs of the
11 right of way, which is in my property deed. [Exhibit LH1]¹ They then predicated their
12 signing it only if I withdrew my intervenor status. [Exhibit LH2]²
- 13 b. They were told that our community has deed restrictions concerning commercial
14 projects being banned from the community and they are going ahead with their
15 commercial plans anyway. [Exhibit LH3]³ If they continue to pursue access to
16 Chelsea Solar through the parcel they own that is part of Apple Hill Homeowners

¹ Page 1 last paragraph states, "Included heron is a 20' right of way, in common with grantors, their heirs, successors and assigns, for all purposes of ingress and egress to the subject premises over an existing roadway running in a westerly direction from the westerly terminus of Apple Hill Road to the within conveyed premises. **Grantors and grantees shall share in the maintenance of said right of way except for snowplowing.**" *emphasis added*

² "3. In further consideration for this Agreement, Harris agrees to (i) withdraw the Motion to Intervene of Libby Harris dated as of March 19, 2015 in Docket No. 8302 in front of the State of Vermont Public Service Board (the "Board") (ii) not file a motion to intervene with respect to Apple Hill Solar, Board Docket No. 8454."

³ AHHA Warranty Deed recorded in Book 410 at page 36 June 23, 2004. Page 2 Number 1 states "The lands hereby conveyed **shall not be used for any manufacturing or commercial purposes** (other than gardens and horticultural enterprises), public playground, public athletic field, theater or school, nor for any other non-residential purpose whether or not enumerated herein except as heroine provided." *emphasis added*

1 Association, the only recourse the Association has is to sue them in Superior Court if
2 the PUC issues a CPG allowing the use of AHHA property for commercial purposes.

3 c. They have said that I have refused to discuss the screening materials that they have in
4 mind for the orchard parcel. They neglected to mention that they have said that they
5 would only discuss that with me if I withdrew my intervenor status.

6 d. When I commented on the Standard Offer contract extension regarding the plan to
7 build both Chelsea and Apple Hill Solar from Willow Road, since the Vermont
8 Supreme Court ruled that they had to have two separate roads, the petitioner
9 misconstrued my question by saying repeatedly that I objected to the building of both
10 projects through Willow Road and therefore, they were going back to the notion of
11 building through Apple Hill Road. I raised a legal question about whether they could
12 access two contiguous projects via the same road, and now Brad Wilson is saying in
13 his supplemental prefiled testimony that I am making them use Apple Hill Road.

14 I strenuously oppose the use of Apple Hill Road for any commercial purposes, as
15 that violates the Association's deed restrictions.

16

17 Q12. Did you receive a "Request to Permit Entry on Land" from petitioners on June 18,
18 2018?

19 A12. Yes

20

21 Q13. What is your response to being served the Request to Permit Entry on Land?

22 A13. My response is that at this stage of the process, after four years of litigation, I
23 consider the request to be an intrusion into my personal space. The ostensible purpose is

1 to take photographs in order to do photographic simulations. Actual photographs from
2 my home are in the public record in Apple Hill Solar Case No. 8454 which petitioner has
3 access to. Had Mark Kane contacted me earlier in this process I would have found the
4 request to be reasonable. Over the years, however, petitioner has developed a pattern of
5 portraying me in ways that are not true, and I am tired of their trying to put lies about me
6 said as truth, and consider it abusive behavior. I am a reasonable person who is entitled
7 to being treated with respect, which petitioner has proven to be unable to do. I object to
8 the request by petitioner to enter my home and premises to photograph, video and audio
9 record.

10

11 Q14. Are there other issues that have not been addressed?

12 A14. The petitioners have refused to acknowledge that the taking down of nearly 10 acres
13 of trees will unduly adversely increase the wind velocity hitting our homes. This is
14 already an issue since the wind direction often comes from the south west with wind
15 velocities of over 50 miles an hour. The additional taking down of many acres of trees
16 will be devastating to our community.

17

18 Q15. Any other issues?

19 A15. Since the second half of the bypass has been finished and used, our community has
20 had a serious increase in noise from cars and trucks using the bypass. There is a steep
21 incline coming up from the Welcome Center area and the trucks use their Jake brakes to
22 help them to make the incline. These brakes are loud and grating. By removing up to 10

1 acres of tress, which absorb noise, the consequences to our community will be even
2 worse.

3

4 Q16. Any further issues?

5 A16. Additionally, another consequence of the taking down of many acres of trees will be
6 increased air pollution from traffic since trees absorb air pollution.

7

8 Q17. You mentioned the screening they are proposing on the orchard parcel owned by
9 PLH LLC that adjoins your property immediately to the south. Do you support or oppose
10 the proposed screening, and please explain why.

11 A17. The proposed screening is part of a commercial project, and therefore violates the
12 deed restrictions contained in all properties that are part of the Apple Hill Homeowners
13 Association. [Exhibit LH3] The orchard property is part of AHHA. The solar project(s)
14 parcel is not part of AHHA.

15 In addition, the proposed screening in front of the orchard parcel will not help to
16 screen anything for a long period of time, since the trees would have to be massive to
17 screen my view, since my house is on a knoll above the orchard parcel. If they truly want
18 to use screening materials, the place where they would be effective would be on the
19 eastern border of the Chelsea project to help screen the solar panels from view. All
20 plantings must be on non-AHHA property, not the orchard parcel which is part of AHHA
21 and therefore is deed restricted against commercial activity.

22

1 Q18. Please discuss the wildlife that you experience, what has occurred pre-bypass and
2 since the by-pass was constructed, and what you think might happen with the wildlife if
3 the forest is cut for Chelsea Solar.

4 A18. When the bypass was constructed, one of the consequences was denuding the
5 natural habitat of many animals, including large numbers of red fox who then appeared in
6 the Apple Hill neighborhood. After calling Vermont Wildlife Agency I was informed
7 that it was not their job to take the fox to safer grounds for habitat.

8 If Chelsea is built then there will be a tragic consequence to large numbers of deer
9 and smaller wildlife who now happily inhabit the Chelsea woods. Additionally, there is a
10 stream that runs through the property that the wildlife rely on. It seems to me that this
11 stream will be altered or disappear entirely due to the massive change to the land by
12 regrading it and placing on it hundreds of solar panels encased in a large black box.

13

14 Q19. How will the views and experience from your home and property change if the
15 forest is cut as proposed by petitioner?

16 A19. The clearcutting will result in my property and home having increased visibility of
17 the highway, Welcome Center lighting at night, and the commercial part of the town of
18 Bennington.

19

20 Q20. Since PLH LLC has owned the orchard parcel immediately south of your property,
21 what have you observed regarding their maintenance of the property?

22 A20. There has been no effort of the owner to keep the orchard parcel in good order, even
23 though our Warranty Deeds state that "No noxious or offensive activity shall be carried

1 on upon the premises, nor shall anything be done thereon which may or may become an
2 annoyance or nuisance to the neighborhood.” [Exhibit LH3] The owners have not
3 maintained the hundreds of trees in the orchard nor mowed the 5.67 acres so the property
4 which I view every day has become overgrown and unsightly and I consider it to be a
5 nuisance.

6

7 Q21. Is there anything else you think the Public Utility Commission should know?

8 A21. Since the first meeting with these developers and every interaction since, they have
9 tried to threaten and bully us into submission. Their treatment of simple people just
10 trying to enjoy their land and lives has been abominable and inhumane.

11

12 Q22. Does this conclude your testimony?

13 A22. Yes.