STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Chelsea Solar LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the installation and operation of a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	)))))))	**Docket No. 17-5024-PET**

CHELSEA SOLAR LLC'S OPPOSITION TO MOTION TO QUASH

Petitioner Chelsea Solar LLC ("Chelsea" or "Petitioner") submits this opposition to the motion filed on June 18, 2018, by Libby Harris, David Griffin, Caroline McEver, and Roberta Caslin, to quash notices of deposition served on Harris, Griffin, McEver and Caslin via e-PUC by Petitioner on June 14, 2018 (the "Quash Motion").

The Quash Motion must be denied as it was filed in violation of the Rules of Civil Procedure. Under VRCP 26(h) Harris, Griffin, McEver and Caslin have the obligation to confer with the Petitioner prior to filing a motion. Harris, Griffin, McEver and Caslin failed to do so and for that reason the motion to quash is improper, and must be denied. Rule 26(h) also requires that Harris, Griffin, McEver and Caslin submit an affidavit, as part of their motion papers, subject to the obligations of Rule 11 certifying that they have conferred or have attempted to confer with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the tribunal, and have been unable to reach such an agreement. Harris, Griffin, McEver and Caslin failed to do that as well.

On three separate occasions, June 19, 21 and 23, the undersigned counsel advised Harris, Griffin, McEver and Caslin of their obligations under VRCP 26(h) and asked them to please

withdraw the motion, and advise their availability for a discovery conference. Petitioner informed Harris, Griffin, McEver and Caslin that Petitioner would make a good faith effort to resolve the discovery dispute.

Petitioner also informed Harris, Griffin, McEver and Caslin that, if after a good faith conference there remain discovery issues, then they would be able to file a motion addressing those issues. Petitioner also advised Harris, Griffin, McEver and Caslin that Petitioner reserved its right to seek monetary and other sanctions if they failed to withdraw the motion and comply with the rules.

None of Harris, Griffin, McEver and Caslin responded to Petitioner's request to withdraw the motion or to schedule a good faith discovery conference.

While the Quash Motion must be denied for the reasons stated above, Harris, Griffin, McEver and Caslin make other statements in the motion that must be addressed.

Harris' claim that PRC 4.4 has been violated is utterly frivolous for at least several reasons. *First*, Harris has throughout the Chelsea proceedings and those in docket 8454 had a ghost writer. Those ghost writers may have included Annette Smith, Brooke Dingledine, Peter Lawrence or someone else. *Second*, Petitioner exercising its lawful discovery rights is not "bullying." Commission rule 2.214 expressly provides that Petitioner is entitled to all means of discovery provided by the Vermont Rules of Civil Procedure. *Third*, there is a substantial purpose to the depositions to explore the claims made by each Harris, Griffin, McEver and Caslin. *Fourth*, PRC 4.4 covers completely different situations, which the following examples illustrate.

For example, *in In the Matter of Burns*, 657 N.E.2d 738 (Ind. 1995), the conduct for which the attorney was sanctioned under PRC 4.4 consisted of threatening behavior and remarks

made to a party to the litigation during the recess of a pre-trial hearing. More specifically, the attorney said, *inter alia*,

> Let me . . . let me warn you about something … the next time you write my client a letter, I'm not going to file anything with the Court; I'm going to come over to your house and I'm going to hit you in the head with a baseball bat. Now, you may not be practicing law, but you know better than that. If I ever find out you wrote my client a letter again or sent him anything, you've got me to deal with. Do you understand: You better understand it right now, because I'm not going to tell you a second time. Now, that's my promise to you, right here on the record. I'm going to come over to your house and beat you half to death with a baseball bat.

657 N.E.2d at 739. Later, the attorney added:

> You'll either follow the rules or you'll have to deal with me. Do you understand? And if I have to tell you that again, you're going to go out of here in a hospital van. Don't press your luck, . . . Don't press your luck. Because you're not going to like me if I'm angry. You won't walk away from it, I guarantee you. Don't look grave to me, because if you do, you're a . . . (obscenity). swear to God.

Id. The court concluded that the respondent violated Rule 4.4, reasoning: his threatening behavior had no purpose other than to embarrass, delay, or burden such person.

Similarly in *In the Matter of Mezzacca*, 67 N.J. 387, 340 A.2d 658 (N.J. 1975) the attorney was sanctioned (a reprimand) under Rule 4.4 for conduct before an administrative review board conducting departmental hearings in connection with misconduct charges brought against the attorney's client. 340 A.2d at 658. The court summarized the attorney's offending conduct, as follows:

> When respondent appeared before the review board he challenged its right to hear the matter on the ground it was in no way legally constituted. He claimed the sheriff was biased against his client and was just looking for the opportunity to get rid of him. He asserted that the proceeding was a conspiracy to violate his client's civil rights and demanded that the hearing "stop right now." During the course of the hearing respondent referred to the board as a "Kangaroo Court." He said the hearing was "a waste of county money, perpetrated by a demented sheriff that thinks he is a King or a God." He characterized the members of the board as "Nazis, that's what you are." He told one of the members of the board that "You may have to answer to a higher tribunal than this before this is over,

> including the Grand Jury." He made numerous accusations as to lying and threatened several times to go to the prosecutor and have the person indicted. At one point respondent said: "If you want Mr. Jones to be indicted put him on the stand. Because I will see to it that he will be indicted. Believe me, he will be indicted."

Id. at 658-59.

In *In the Matter of Vincenti*, 114 N.J. 275, 554 A.2d 470 (N. J. 1989), the misconduct under PRC 4.4 consisted of engaging in a course of harassment and intimidation against his adversary and his witness by challenging opposing counsel and his witness to a fight on several occasions, using loud, abusive, and profane language against his adversary and opposing witness, and, on at least one occasion, employing racial innuendo. 554 A.2d at 473. "This conduct was pervasive and recurrent, continuing from the time of the trial call until after the filing of a motion for a new trial. It indisputably was, or had the clear capacity to be, disruptive, distracting, and unsettling to persons having significant responsibilities and important roles in the handling of the litigation." *Id.*

Finally, in *In the Matter of McAlevy*, 69 N.J. 349, 354 A.2d 289 (N. J. 1976), the attorney was sanctioned, a reprimand, for misconduct during a criminal trial. At a bench conference, the attorney responded to the request by the Deputy Attorney General to keep his voice down with a threat of physical violence. Subsequently, during a chambers conference, in the course of an argument concerning the scope of a sequestration order, the attorney, reacting to remarks of the Deputy Attorney General, flew into a rage, "sprang from his chair screaming, grabbed opposing counsel by the throat and began to choke him" and a melee between the two men thereafter ensued until broken up with the assistance of the judge, his law clerk and others.

Petitioner has always treated the Harris and the other parties with respect. Harris simply equates "bullying" with Petitioner trying to respond to her claims, and pursue Petitioner's rights

under the section 248 process. The most recent example is Harris' refusal to allow Petitioner on to her property to do a visual assessment. Harris complains that her view would be adversely affected, but then refuses access to Petitioner to evaluate and address her claims.

The continuous *ad hominem* attacks on Petitioner by Libby Harris are a repetition of false statements repeatedly made by Harris and certain nearby residents designed to place the Chelsea Solar project and its developer in a false light. As Commissioners Cheney and Hofmann experienced first-hand at the public meeting for the developer's Otter Creek Rutland projects, the stories of ill-treatment by this developer does not ring true. In the Rutland case, the strident opponent of the RRE project (which is adjacent to the Otter Creek projects) that made its way to the Vermont Supreme Court, took the time to come to the public meeting and express his support for the project and his thanks for the changes made to the projects by the developer to accommodate the issues raised by the neighborhood.

Here the Petitioner has gone to great lengths to make sure that the Project has no visual or other adverse impact on the neighboring properties, or from public vantage points. The Project is also well-sited, which was re-iterated to Harris in an email from the Vice Chair of the Bennington Select Board, Don Campbell on June 16, 2017:

> In this case, the lot is small, there is no river or lake to protect, the forest is in terrible condition (basal area is so low it barely qualifies as forest in many places and it is rife with invasives), it does not connect to other conserved lands, it is not part of an animal corridor, it does not provide significant public access, it is not high quality farm land nor is it suitable for low-income housing, and is not tribal or cultural heritage land.

After Harris' received that email from Don Campbell, she took a conciliatory approach, asking if she could receive the apple orchard land as part of a settlement of the case. But abruptly Harris cancelled the scheduled meeting with Petitioner and Don Campbell. Evidently

Annette Smith pulled her back from the brink and put her back on the path to fight "at all costs" a nearly invisible renewable energy project.[1]

For the reasons stated above, the Quash Motion must be denied and Harris, Griffin, McEver and Caslin directed to schedule and participate in a discovery conference promptly.

Respectfully submitted,

Dated: June 24, 2018

/s/Thomas Melone
Thomas Melone
Allco Renewable Energy Limited
1740 Broadway, 15th Floor
New York, New York 10019
(212) 681-1120
Thomas.Melone@allcous.com

Attorneys for Chelsea Solar LLC

[1] Harris also argued that VCRP 45(c)(3)(A) prevents her being required to attend a deposition more than 50 miles away. Rule 45 does not apply to depositions of a party, which Harris is. Harris' statements regarding costs are also incorrect.