

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

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

**PETITIONER’S FIRST SET OF INFORMATION REQUESTS TO ADMIT ON
THE DEPARTMENT OF PUBLIC SERVICE**

In accordance with Vermont Public Utility Commission Rule 2.214 and V.R.C.P. 33 and 34, Chelsea Solar LLC (the “Chelsea” or “Petitioner”) hereby serves the following First Set of Information Requests upon the DEPARTMENT OF PUBLIC SERVICE (“DPS” or the “Department”) in this matter (Docket No. 17-5024). Petitioner requests that Respondent answer the requests in accordance with V.R.C.P 33 and 34 and deliver its answers and all requested documents and materials to Petitioner via email in electronic format, and to provide any spreadsheets in native, unlocked format, no later than July 20, 2018.

INSTRUCTIONS

1. Reproduce the request being responded to before the response per V.R.C.P. 33.
2. Responses to any and all Petitioner requests that are contained herein or that may be filed later should be supplied to the Petitioner as soon as they become available to Respondent. That is, Respondent should not hold answers to any requests for which they have responsive data, documents, etc. until responses to any or all other requests are compiled.
3. V.R.C.P. 33 requires the response to each request to be made under oath by a person competent to testify concerning the response and all documents and exhibits produced as part of the response. With respect to each request, please state (1) the name(s) and title(s) of the

person or persons responsible for preparing the response; and (2) the administrative unit which maintains the records being produced or maintains the data from which the answer was prepared; and (3) the date on which each question was answered.

4. Where information requested is not available in the precise form described in the question or is not available for all years (or other periods or classifications) indicated in a series of years (or other periods or classifications), please provide all information with respect to the subject matter of the question that can be identified in Respondent's workpapers and files or that is otherwise available.

5. These requests shall be deemed continuing and must be supplemented in accordance with V.R.C.P. 26(e). Respondent is directed to change, supplement and correct its answers to conform to all information as it becomes available to Respondent, including the substitution of actual data for estimated data. Responses to requests for information covering a period not entirely in the past (or for which complete actual data are not yet available) should include all actual data available at that time and supplementary data as it becomes available.

6. Wherever responses include estimated information, include an explanation (or reference to a previous explanation) of the methods and calculations used to derive the estimates.

7. Some of the Petitioner's requests may make particular reference to a portion of Respondent's filing(s). Notwithstanding this specific direction, these items should be understood to seek discovery of all information available to Respondent that is responsive to the questions stated.

8. The words "relate," "relating," "pertain," "pertaining," "reference," "referencing," "refer," "referring," and/or derivatives thereof, whether followed by a preposition or not, have the broadest meaning that may be accorded to them and include, but are not limited to, the

following: directly or indirectly mentioning, describing, referring to, pertaining to, being connected with, setting forth, discussing, commenting upon, analyzing, supporting, contradicting, proving, disproving, referring to, mentioning, quoting, incorporating, attaching, analyzing, constituting, concerning, and/or connected, or reflecting in any way upon the stated subject matter of a given request.

9. The term “concerning” means relating to, referring to, describing, evidencing, or constituting.

10. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

11. The use of the singular form of any word includes the plural and vice versa.

12. “Communication” includes any form of intended, attempted, or actual oral, written, graphic, electronic, or other representation or articulation from one or more persons to one more persons, including but not limited to emails, and text messages.

13. The terms “each” and “every” include the term “each and every.” “Any” shall include the term “any and all.” The terms “all” and “each” shall be construed as all and each.

14. The singular of words includes the plural and the plural includes the singular. Masculine, feminine, or neuter pronouns include the other gender(s).

15. The words “and” and “or” have either a disjunctive or conjunctive meaning so as to bring within the scope of these document requests all information that might otherwise be construed to be outside their scope by use of a more restrictive meaning.

16. “Document”, as used herein, shall be construed as broadly as possible to include any and all means and media by which information can be recorded, transmitted, stored,

retrieved or memorialized in any form, and shall also include all drafts, versions or copies which differ in any respect from the original. All spreadsheets provided must have all formulae intact and accessible.

17. “DPS” or the “Department” means the Vermont Department of Public Service and its agents, employees, select board members (present and past), planning commission members (present and past), solar siting committee members (present and past) and representatives, consultants, attorneys, lobbyists, experts, investigators, and all other persons or entities acting or purporting to act on it behalf with express, implied, or apparent authority to do so.

18. “Identify”, when used in connection with natural person(s) or legal entities, shall mean the full name and current business address of the person or entity.

19. “Landworks” means the business using the trade name LANDWORKS LANDSCAPE ARCHITECTURE, PLANNING & DESIGN d/b/a LANDWORKS, 228 Maple St., Middlebury, Vermont, and its agents, employees, select board members (present and past), planning commission members (present and past), solar siting committee members (present and past) and representatives, consultants, attorneys, lobbyists, experts, investigators, and all other persons or entities acting or purporting to act on it behalf with express, implied, or apparent authority to do so.

20. “Project”, as used herein, shall mean the Chelsea Solar project in this Case 17-5024.

21. “RCON” means the Town’s Rural Conservation District.

22. “REPORT” means Exhibit PSD-DR-2 to the Prefiled Testimony and Exhibits of David Raphael on behalf of the Department of Public Service, dated June 22, 2018.

23. “Solar Screening Ordinance” means “Article 29. Screening of Solar Facilities” adopted by the Town of Bennington on November 9, 2015.

24. “Town” means the Town of Bennington, and its agents, employees, select board members (present and past), planning commission members (present and past), solar siting committee members (present and past) and representatives, consultants, attorneys, lobbyists, experts, investigators, and all other persons or entities acting or purporting to act on its behalf with express, implied, or apparent authority to do so

25. “You” or “Your” shall mean and refer to the DPS.

26. With respect to each document produced by Respondent, identify the person who prepared the document and the date on which the document was prepared.

27. If any interrogatory or request requires a response that Respondent believes to be privileged, please state the complete legal and factual basis for the claim of privilege, provide the information required by the 5/16/95 order in Docket No. 5771 and respond to the parts of the interrogatory or request as to which no privilege is asserted.

28. If any interrogatory or request is objected to in whole or in part, please describe the complete legal and factual basis for the objection, and respond to all parts of the interrogatory or request to the extent it is not objected to. If any objection is interposed as to any requested documents, please identify the document by author, title, date and recipient(s), and generally describe the nature and subject-matter of the document as well as the complete legal and factual basis for the objection.

29. For each document or portion thereof withheld under a claim of privilege, submit a sworn or certified statement from Your counsel or You identifying the withheld document by author, addressee, date, number of pages, subject matter, and document control number,

specifying the nature and basis of the claimed privilege and the paragraph of this Request to which the withheld material is responsive; and identifying each person to whom the withheld material was sent and each person to whom the withheld material or its contents, or any part thereof, was disclosed. Denote all attorneys identified with an asterisk.

30. To expedite the discovery process and the resolution of this docket, Respondent should contact the Petitioner as soon as possible, and prior to the above deadline for response, if it seeks clarification on any of these information requests.

31. The Petitioner reserves any right it may have to submit additional information requests to Respondent.

32. These Requests shall be deemed continuing as provided in the Vermont Rules of Civil Procedure, so as to require further and supplemental production if additional documents called for by this Request are obtained or created by the You between the time of the Request and the time of the evidentiary hearing

33. If any request to admit is denied in whole or in part, please explain with specificity what is denied and the basis for the denial and produce all Documents related to same..

INTERROGATORIES AND REQUESTS TO ADMIT

- 1) Identify and produce all reports, emails and other Documents related to the Chelsea Solar project in docket 8302, including without limitation all reports and communications prepared, sent or received by Jean Vissering.
- 2) Identify and produce all reports, emails and other Documents related to the Apple Hill Solar project in docket 8454, including without limitation all reports and communications prepared, sent or received by Jean Vissering.
- 3) Identify and list with specificity all judicial proceedings in which David Raphael testified as a witness.
- 4) Identify and list with specificity all judicial proceedings in which David Raphael has been deposed.

- 5) Identify and list with specificity all administrative proceedings in which David Raphael testified as a witness.
- 6) Identify and list with specificity all administrative proceedings in which David Raphael has been deposed.
- 7) Produce all testimony given or sponsored by David Raphael in all proceedings identified in the response to interrogatories 3 through 6.
- 8) Identify and Produce all drafts of reports prepared by David Raphael or Landworks with respect to the Project
- 9) Produce all EMAILS and other communications between Landworks and the Town.
- 10) Admit that the Project is sited within a "Preferred Area" for solar facilities, per the April 11, 2016 version of the Bennington Town Plan.
- 11) Admit in an email to Intervenor Libby Harris dated June 16, 2017, the Vice Chair of the Bennington Select Board, Don Campbell made the following statement regarding that Project site, see Exhibit CS-BW-17.

"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."

- 12) Admit that RAPHAEL did not review Don Campbell statement in the June 16, 2017, email referenced in the preceding interrogatory prior to finalizing RAPHAEL direct pre-filed testimony in Case 17-5024.
- 13) Admit that in the case the term "region" in orderly development of the region" under 30 V.S.A. §248(b)(1) is Bennington County not the Town.
- 14) Admit that the proposed area of clearing required at the site for the Project is a mere 0.0024% (i.e., 0.000024) of the approximately 370,000 acres in Bennington County.
- 15) Admit that LANDWORKS Report makes no analysis of the effects of proposed clearing for the Project on the region.
- 16) Explain how clearing of approximately 9.64 acres at the Project site would unduly interfere with orderly development of BENNINGTON COUNTY, and produce all Documents related to same.
- 17) Explain how clearing of approximately 9.64 acres at the Project site will cause direct impacts on the capacity of BEENINGTON COUNTY to develop, and produce all Documents related to same.
- 18) Admit that if 9.64 acres at the Project site were cleared but used for farming that there would be no adverse effect on the orderly development of Bennington County
- 19) Admit that if 9.64 acres at the Project site were cleared but used for farming that there would be no undue adverse effect on the orderly development of Bennington County
- 20) Reference the REPORT at page 2, last paragraph, which states: "no buffer will remain on the eastern boundary." Admit that statement is FALSE.
- 21) Admit that the groundwater in the vicinity of the Project site and the surrounding properties is contaminated with poly - and perfluoroalkyl substances ("PFOA")

- 22) Admit that the well water in the vicinity of the Project site and the surrounding properties is contaminated with PFOA.
- 23) Admit that because of the contamination of well water in the vicinity of the Project site and the surrounding properties, no new residential buildings will be constructed in those areas for at least 25 years.
- 24) Admit that because of the contamination of well water in the vicinity of the Project site and the surrounding properties, it would be uneconomical for any developer to build new residential buildings in those areas for at least 25 years.
- 25) Admit that the REPORT makes no analysis of the effects of the presence of PFOA in the well water in the vicinity of the Project site and the surrounding properties and orderly development of the region.
- 26) Admit that the REPORT makes no analysis of the effects of the presence of PFOA in the ground water in the vicinity of the Project site and the surrounding properties and orderly development of the region
- 27) Explain how the REPORT accounted for the contamination of the well water and ground water by PFOA in the vicinity of the Project site and the surrounding properties and its relationship to orderly development of BENNINGTON COUNTY in this Case, and produce all Documents related to same
- 28) Explain how the DPS accounted for the contamination of the well water and ground water by PFOA in the vicinity of the Project site and the surrounding properties and its relationship to orderly development of BENNINGTON COUNTY in this Case, and produce all Documents related to same
- 29) Reference the REPORT at page 5 and the statement the purpose of the RCON as “accommodating very low density residential development in a manner that avoids the need for public water supply.” Explain how development on the Project site and the vicinity is possible without being on public water supply in light of the PFOA contamination in the area, and produce all Documents related to same.
- 30) Reference the REPORT at page 5 and the statement the purpose of the RCON as “accommodating very low density residential development.” Explain what is meant by “very low residential development,” and produce all Documents related to same.
- 31) Reference the REPORT at page 6 and the statement: “note that a 1-2% grade is considered desirable, or level, in landscaping and construction.” Explain how that statement is relevant to the Project and the REPORT’s analysis, and produce all Documents related to same.
- 32) Reference the REPORT at page 6 and the statement: “note that a 1-2% grade is considered desirable, or level, in landscaping and construction.” Admit that the majority of development in the vicinity of the Project site exceeds a 1-2% grade.
- 33) Reference the REPORT at page 25, last paragraph and the statement: “the applicant’s aesthetic consultant agrees with the adverse determination.” Admit that statement is FALSE
- 34) Admit that the ER Bennington I Solar Project, Docket No. 16-0044-NMP (the “ER Project”) is located within a visual gateway area, per the December 2004 Bennington Scenic Resource Inventory.

- 35) Admit that the ER Project is located on a parcel of land shown in a photograph on page 22 of the December 2004 Bennington Scenic Resource Inventory.
- 36) List the landscape mitigation required for the Project that would satisfy the Solar Screening Ordinance.
- 37) Admit that the ER Project satisfies the Solar Screening Ordinance.
- 38) Admit that 500 kW ER Paper Mill Village Solar, LLC Project, Docket No. 16-0049-NMP (the “Paper Mill Project”) satisfies the Solar Screening Ordinance.
- 39) Admit that the Project is not located within the Route 7A Corridor Overlay District.
- 40) Admit that the Project satisfies the Solar Screening Ordinance.
- 41) Admit that Landworks did NOT review all testimony filed by Petitioner in Case No. 17-5024 as filed through June 15, 2018.
- 42) Admit that DPS made no attempt to resolve issues raised in David Raphael’s report prior to filing it with the PUC.
- 43) Explain how the ER Project is sited and screened so that visual impacts are mitigated as viewed from public streets and thoroughfares, scenic viewpoints and/or adjacent properties and produce all Documents related to same.
- 44) Explain how the Paper Mill Solar Project is sited and screened so that visual impacts are mitigated as viewed from public streets and thoroughfares, scenic viewpoints and/or adjacent properties and produce all Documents related to same.
- 45) Admit that portions of the ER Project are currently visible from Route 7 directly to the west of the ER Project.
- 46) Admit that portions of the Paper Mill Solar Project are currently visible from Murphy Road directly to the south of the Paper Mill Solar Project.
- 47) Admit that the Project satisfies all requirements set forth in the Town Plan.
- 48) Admit that the Project satisfies all clear, written community standards set forth in the Town Plan.
- 49) Identify and describe with specificity each clear, written community standard set forth in the Town Plan that the RAPHAEL asserts the Project does not satisfy and produce all Documents related to same.

- 50) Identify and describe with specificity each clear, written community standard set forth in the Town Plan that the You assert the Project does not satisfy and produce all Documents related to same
- 51) Admit that the Project satisfies all requirements set forth in the Town's Land Use & Development Regulations.
- 52) Identify and describe with specificity each requirement in Town's Land Use & Development Regulations that the Project You assert does not satisfy and produce all Documents related to same.
- 53) Identify and describe with specificity each requirement in Town's Land Use & Development Regulations that the Project that RAPHAEL asserts does not satisfy and produce all Documents related to same.
- 54) Reference the REPORT at page 9, in which the following statement is made: "the highway and commercial areas are not visible or noticeable, giving the surroundings a more bucolic and pastoral feel." Explain how that statement is consistent with the statements made by Libby Harris and the Apple Hill Homeowners Association that they are currently subjected to loud continual traffic noise from the highway interchange, particularly from JAKE brakes, and produce all Documents related to same.
- 55) Reference the REPORT at 9, in which the following statement is made: "The change in character and the extensive loss of an existing forestland will potentially be offensive to those who live here and will experience this change daily."
- i. Identify and define with specificity the term "forestland."
 - ii. Identify and list who is included in the phrase "those who live here."
 - iii. Identify and define with specificity the term "offensive."
 - iv. Identify and list who is included in the phrase "those who will experience this change daily."
- 56) Reference the REPORT at 9, in which the following statement is made: "the Project will be low in height and not occupy a wide panorama view."
- i. Identify all locations that RAPHAEL asserts the SOLAR MODULES of the Project would be visible from to those persons identified in the response to interrogatory 55.ii.
 - ii. Identity and describe with specificity the changes that RAPHAEL asserts would occur from the locations identified in the response to interrogatory 56.i, and produce all Documents relating to same
 - iii. Identify all locations, if any, not identified in the response to interrogatory 56.i. from which RAPHAEL asserts the SOLAR MODULES of the Project would be visible.
 - iv. Identity and describe with specificity the changes that RAPHAEL asserts would occur from the locations identified in the response to interrogatory 56.iii, and produce all Documents relating to same

- 57) Admit that the Paper Mill Solar Project is located in the RCON and produce all Documents related to same.
- 58) Admit that the Kobelia Bennington GLC Solar Project, Docket No. NMP-6523 (“Kobelia Project”) is located in the RCON.
- 59) Reference the REPORT at page 11, section 2.1.D, in which the following statement is made: “Open space can be defined as any piece of land that is undeveloped (has no buildings or other structures) and is accessible to the public or contributes to open space views accessible to the public.” With reference to that statement,
- i. Identify and define the term “public.”
 - ii. Admit that the Project site is private property;
 - iii. Admit that the parcel adjacent to the Project site on the east is private property;
 - iv. Admit that the three residences identified at page 14 and 15 of the REPORT are private property;
 - v. Admit that the roadway off of Apple Hill Road that provides access to Harris’ residence is a private road not accessible to the public
 - vi. Admit that the roadway off of Apple Hill Road that provides access to parcel to the east of the Project site is a private road not accessible to the public
 - vii. Admit that the Project site is not accessible to the public;
 - viii. Admit that the parcel adjacent to the Project site is not accessible to the public;
 - ix. Admit that the three residences identified at page 14 and 15 of the REPORT are private not accessible to the public.
 - x. Admit that the proposed area to be cleared for the Project does not contribute “to open space views accessible to the public.”
 - xi. Identify all locations with specificity, if any, from which RAPHAEL asserts the proposed area to be cleared for the Project contributes “to open space views accessible to the public,” and produce all Documents related to same.
 - xii. Identity and describe with specificity the changes that RAPHAEL asserts would occur from the locations identified in the response to interrogatory 59.xi, and produce all Documents relating to same.
- 60) Reference the REPORT at page 11, section 2.1.D, in which the following statement is made: “the Project is located within an identified scenic viewshed.” With reference to that statement:
- i. Admit that statement is FALSE.
 - ii. Identify the viewshed in which RAPHAEL asserts the solar array for the Project is located.
- 61) Section (B)(1) of the Solar Screening Ordinance states that the screening requirements of solar facilities “are consistent with the screening requirements applied or adapted to commercial development in all zoning districts as set forth in the Town of Bennington Land Use and Development Regulations.” Admit that

- i. LANDWORKS did not review whether screening requirements of solar facilities “are consistent with the screening requirements applied or adapted to commercial development in all zoning districts as set forth in the Town.
 - ii. DPS did not review whether screening requirements of solar facilities “are consistent with the screening requirements applied or adapted to commercial development in all zoning districts as set forth in the Town
- 62) What measures, if any, DID DPS ASK BE TAKEN to ensure THE FOLLOWING PROJECTS would not create an undue adverse effects on aesthetics or an adverse effect on orderly development of the region and produce all Documents related to same:
- a. ER Bennington I Solar Project (Docket No. 16-0044-NMP)
 - b. Paper Mill Solar Project (Docket No. 16-0049-NMP)
 - c. Kobelia Bennington GLC Solar Project (Docket No. NMP-6523)
- 63) Admit that no portion of the solar modules for the Project will be visible from
- i. Vermont Welcome Center within the Route 7/279 interchange;
 - ii. The portion of Route 7 located directly west of the Project site;
 - iii. Residences in the Apple Hill Homeowner’s Association neighborhood;
 - iv. the Bennington Battle Monument;
 - v. Southern Vermont College;
 - vi. Any “gateway” to Bennington;
 - vii. Libby Harris’s property; or
 - viii. Mt. Anthony Country Club;
- 64) Admit that NONE of the solar modules of the Project are located in a “gateway to Bennington.”
- 65) Admit that the SOLAR MODULES OF THE PROJECT will not be visible to vehicles traveling along Route 7 west of the Project site.
- 66) Admit that the Public Utility Commission’s order in Docket 8302, dated February 16, 2016, contains the following language beginning on page 59: “The “visual gateway” language is not an example of a clear, written community standard.”
- 67) Admit that the Public Utility Commission’s order in Docket 8302, dated February 16, 2016, contains the following language beginning on page 59: “The “visual gateway” language, while specific to the Project site, simply makes the areas adjacent to the Project site “important” and “special,” but does not set a specific standard that the Project would violate.”

68) Reference the REPORT at page 30, in which the following statement appears: “this review acknowledges and incorporates the information and perspectives provided by representatives of the Town.” With reference to that statement:

- i. Identify all “representatives” of the Town that provided information, and the dates provided, and identify and produce all such information;
- ii. Identify all “representatives” of the Town that provided perspectives, and the dates provided, and identify and produce all Documents related to same.
- iii. With respect to all information identified in the response to interrogatory 68.i, state with specificity how the REPORT “acknowledges and incorporates the information,” and produce all Documents related to same.
- iv. With respect to all perspectives identified in the response to interrogatory 68.ii, state with specificity how the REPORT “acknowledges and incorporates the ... perspectives,” and produce all Documents related to same

69) Admit that the scenic views from the Welcome Center are in the opposite direction from the Project, and pointed away from the Project site.

70) Admit that the Project will not be in direct line of sight from the Welcome Center.

71) Admit that approval from the Selectboard is not required for proposed screening with respect to forms of development other than solar projects.

72) Did Raphael review Jean Vissering’s Documents from 8302?

73) Admit that Mark Kane’s aesthetics report (Exhibit CS-MK-2) states that the equipment skid will be “maximally twelve feet in height” and does not state that “the equipment cabinet on the skid will be about 12 feet in height.”

74) Admit that Willow Road is a public road.

75) Admit that the owner of the Project site has the right to safe and reliable access to the Project site via Willow Road regardless of the type of use being proposed there.

76) Admit that Mark Kane discusses the appearance of the GMP line extension in detail on pages 13 through 15 of his report (CS-MK-2) as well as pages CS-07, CS-08, and CS-08 of Exhibit CS-MK-3.

77) Admit that removal of the 14 white pine plantings currently shown in the Route 7 right of way, just south of the Project site, would not result in any perceptible reduction of the screening of the Project.

- 78) Admit that ground-mounted solar arrays are not an uncommon sight in rural areas in the state of Vermont.
- 79) Admit that the Bennington Town Plan and associated other documents do not define the term, “hillside.”
- 80) Admit that the Project site is not a hillside.
- 81) Admit that the Welcome Center is designed to highlight views towards the Bennington Battle Monument, in the opposite direction from the Project site.
- 82) Admit that views of the Project site from the Welcome Center contain a foreground of a large paved parking lot, lighting poles, and a 4-lane highway interchange.
- 83) Admit that the Project site is not located in a gateway area.
- 84) Admit that the Project site is not located within any gateway area shown on the last page of Exhibit CS-BW-24.
- 85) If 83 and/or 84 is denied, produce a map detailing the boundaries of all gateway areas in Bennington.
- 86) Admit that the Project site is not identified as a “bright line” or “barrier” or “buffer” or “land use boundary” in the Bennington Town Plan or any other Document.
- 87) Admit that the Project site is not identified for conservation as a “bright line” or “barrier” or “buffer” or “land use boundary” in the Bennington Town Plan or any other Document.
- 88) Admit that the Project site is not part of the Apple Hill neighborhood.
- 89) Admit that the Project area is not visible from any public road within the Apple Hill neighborhood.
- 90) Admit that if the Project is not built, the owner of the Project site has the right to remove any or all vegetation on the site.
- 91) Admit that if the Project is built, a substantial amount of the existing vegetation on the site will be retained.
- 92) Admit that the Town of Bennington has published a Park and Open Space Plan.

- 93) Admit that page 11 of the Parks and Open Space Plan specifically identifies which parcels that the Town considers Open Space, including Conserved Open Space.
- 94) Admit that the Parks and Open Space Plan does not identify the Project Site as Open Space.
- 95) Admit that the Parks and Open Space Plan does not identify the Project site for Open Space conservation.
- 96) Explain how the approximately 9.64 acres proposed to be cleared for the Project is “integral to the open space character of the Apple Hill neighborhood.”
- 97) Explain how the approximately 9.64 acres proposed to be cleared for the Project is “integral to the open space character of the Apple Hill neighborhood” if the 9.64 acres for the Project site cannot currently be seen except from all but the three residences identified on pages 14 and 15 of the REPORT and nowhere from any public road within the neighborhood?
- 98) Reference page 14 of the REPORT, and explain how the Project will be “directly visible” from any residence within the Apple Hill neighborhood, and explain what is meant by the phrase “directly visible.”
- 99) Identify all residences from which the Project will be “directly visible,” and with specificity the location at such residence where RAPHAEL asserts the Project will be “directly visible” from, and produce all Documents related to same.
- 100) Reference page 15 of the REPORT and identify where the Bennington Town Plan and all other associated documents discuss “overall perception,” “sense of place,” and/or “quality of life.”
- 101) Admit that the ER Bennington I Solar Project is orders of magnitude more visible and prominent from Route 7 than the Project would be from Route 7.
- 102) Admit that the site of ER Bennington I Solar Project is shown on Page 22 of the Bennington Scenic Resource Inventory in the photo with the caption, “The Town should seek opportunities to enhance the southern gateway to Bennington.”
- 103) Admit that the ER Bennington I Solar Project is located in a gateway area.
- 104) Reference page 25 of the REPORT which describes the Project site as a “prominent hillside” while earlier on page 21 the REPORT states that prominence is not defined in the Town Plan and that the Town Plan does not define the site as a prominent

hillside. Identify and explain the basis with specificity for the REPORT's description of the Project site as a "prominent hillside," and produce all Documents related to same.

- 105) Admit that RAPHAEL had not reviewed the prefiled testimony and exhibits of Ryan Haac prior to June 22, 2018.
- 106) Admit that RAPHAEL had not reviewed the prefiled testimony and exhibits of Scott Reynolds prior to June 22, 2018.
- 107) Admit RAPHAEL is not an expert on acoustics and highway traffic noise.
- 108) Admit RAPHAEL is not an expert on wind patterns and computational fluid dynamics.
- 109) Did RAPHAEL arrive late to the public site visit for the Project on April 17, 2018 and join the group after it had already walked and examined a significant portion of the Project site?
- 110) Please explain why the REPORT asserts that retention of the apple orchard to the north of the Project property is necessary.
- 111) Admit that "intent," "actions," and "sentiment" of a Town or neighbors do not equate to a clearly written community standard.
- 112) Explain what is meant when the REPORT states the Project "just barely" clears the thresholds of the Quechee analysis?
- 113) Identify and describe with specificity the different levels of clearing the thresholds that RAPHAEL asserts exist under the Quechee analysis?
- 114) Explain why "current Town sentiment and efforts in changing the Town Plan" should have any place in an evaluation of the Project under the Town regulations in place when the original petition for the Project was filed.
- 115) Identify and list each of the 30 V.S.A. §248 criteria with respect to which DPS asserts the Petitioner has failed to meet its initial burden of proof, and produce all Documents relating to same.
- 116) With respect to each criteria listed in the response to #115, identify and explain with specificity the basis for Your assertion, and produce all Documents relating to same.
- 117) Identify all evidence that You will sponsor that supports the bases listed in the response to #116, and produce all Documents relating to same.

118) Admit that there exist other factors affecting the general good of the State that individually and cumulatively outweigh the application of the Town's scenic and other goals in its Town Plan to prevent the Project from being built.

119) Admit that the Project satisfies the following 30 V.S.A. §248 criteria:

- i. 30 V.S.A. §248(b)(1)(Orderly Development of the Region);
- ii. 30 V.S.A. §248(b)(2)(Need for the Project);
- iii. 30 V.S.A. §248(b)(3)(System Stability and Reliability);
- iv. 30 V.S.A. §248(b)(4)(Economic Benefit to the State);
- v. 30 V.S.A. §248(b)(5)(Aesthetics);
- vi. 30 V.S.A. §248(b)(5)(Noise);
- vii. 30 V.S.A. §248(b)(5)(Historic Sites);
- viii. 30 V.S.A. §248(b)(5)(Air Purity);
- ix. 30 V.S.A. §248(b)(5)(Water Purity);
- x. 30 V.S.A. §248(b)(5)(Natural Environment);
- xi. 30 V.S.A. §248(b)(5)(Natural Resources);
- xii. 30 V.S.A. §248(b)(5)(Public Health and Safety);
- xiii. 30 V.S.A. §248(b)(5)(Outstanding Resource Waters)
- xiv. 30 V.S.A. §248(b)(5)(Primary Agricultural Soils)
- xv. 30 V.S.A. §248(b)(5)(Outstanding Resource Waters)
- xvi. 30 V.S.A. §248(b)(5)(Greenhouse Gas Impacts)
- xvii. 30 V.S.A. §248(b)(5)(Headwaters)
- xviii. 30 V.S.A. §248(b)(5)(Ground Water)
- xix. 30 V.S.A. §248(b)(5)(Water Conservation)
- xx. 30 V.S.A. §248(b)(5)(Floodways)
- xxi. 30 V.S.A. §248(b)(5)(Streams)
- xxii. 30 V.S.A. §248(b)(5)(Shorelines)
- xxiii. 30 V.S.A. §248(b)(5)(Wetlands)
- xxiv. 30 V.S.A. §248(b)(5)(Water Use)
- xxv. 30 V.S.A. §248(b)(5)(Water Supply)
- xxvi. 30 V.S.A. §248(b)(5)(Soil Erosion)
- xxvii. 30 V.S.A. §248(b)(5)(Traffic Impacts)
- xxviii. 30 V.S.A. §248(b)(5)(Municipal and Education Services)
- xxix. 30 V.S.A. §248(b)(5)(Rare and Irreplaceable Natural Areas)
- xxx. 30 V.S.A. §248(b)(5)(Necessary Habitat)
- xxxi. 30 V.S.A. §248(b)(5)(Endangered Species)
- xxxii. 30 V.S.A. §248(b)(5)(Public Investments)
- xxxiii. 30 V.S.A. §248(b)(6)(Integrated Resource Planning)
- xxxiv. 30 V.S.A. §248(b)(7)(Comprehensive Energy Plan)
- xxxv. 30 V.S.A. §248(b)(8)(Outstanding Resource Waters)
- xxxvi. 30 V.S.A. §248(b)(10)(Transmission Facilities)

To the extent You deny any of the above, explain in detail why denied and the basis for the denial and produce all documents relating to your response.

- 120) Admit that if the Project is not built, the owner of the Project site has the right to remove any or all vegetation on the site.
- 121) Admit that permissible development on the apple orchard parcel owned by PLH LLC adjacent to the Project site would include a large-scale commercial greenhouse operation.
- 122) Have the residents of the State of Vermont voiced concerns over climate change at public meetings or otherwise?
- 123) Have the residents of the State of Vermont voiced any concerns at public meetings or otherwise that Vermont may not meet its greenhouse gas reduction goals if more in-state renewable energy projects are not built?
- 124) Admit that global warming caused by carbon emissions from the electric generation sector has been identified as a significant cause of increased CO2 emissions that has been linked to extreme weather events in this country and around the world.
- 125) Admit that the Chelsea Solar Project will have a lower carbon footprint than fossil fuel based electric generation.
- 126) Identify and list with specificity exactly from which locations You assert the MODULES FOR THE SOLAR ARRAY of the Project would be visible, and produce all Documents relating to same.
- 127) Identify and describe with specificity the changes in view that would occur from the locations identified in response 126, and produce all Documents relating to same.
- 128) Identify and describe with specificity the overall societal benefits of the Department's opposition to the Project and produce all Documents relating to same
- 129) Identify and describe with specificity how the general good of the State of Vermont is benefitted by the Department's opposition to the Project and produce all Documents relating to same.
- 130) Identify and describe with specificity how the Department's opposition to the Project and RAPHAEL's testimony and report are consistent with the each of the following goals contained in the Bennington Town Plan and produce all Documents related to each:
- i. "Support efforts to develop renewable energy facilities." P.3.
 - ii. "[E]fforts must be made to establish reliable local energy from renewable sources." P. 7.
 - iii. "The economic sectors and needs identified earlier in this chapter will remain important to the community, but will need to be adapted over time to take advantage of opportunities offered by things such as local renewable energy resources." P. 12.
 - iv. "Produce as much of the community's energy demand as possible using local resources." P.12.

- v. “support [] local foods and renewable energy.” P.14.
- vi. “Incentives for investment in conservation and renewable energy systems should be supported.” P.55.
- vii. “Future electricity supply constraints are a concern because of expiring contracts with Vermont Yankee and Hydro Quebec as well as possible fuel shortages at regional fossil-fuel based generating plants. Resolving these problems will require implementation of a “smart grid” where supply can be more closely matched with demand as well as through development of a large number of small renewable-energy-based generating facilities distributed throughout the region.” P. 83.
- viii. “[T]he great majority of fuel used for transportation and heating and cooling homes and businesses is derived from nonrenewable fossil fuels. In addition to the negative environmental impacts associated with burning oil, gas, and similar fuels, the available supply of those fuels is strictly limited and within a relatively short period of time, production will not be able to keep pace with demand (for further details, see Bennington Regional Energy Plan, 2009). The result will be escalating prices and physical shortages of energy products that will begin to cause severe problems if we have not reduced our reliance on those fuels.” P.92.
- ix. “The town [] should support [] development of renewable energy resources.” P.94.
- x. “Generation of energy from renewable energy resources supports conservation of non-renewable energy resources while helping to maintain a clean environment.” P. 94.
- xi. “Potential renewable energy resources in Bennington include: *** Solar energy to heat buildings, water, and to power photovoltaic cells. Pp. 94-95.
- xii. “It is likely that the smart grid will rely on many distributed small generators located closer to the points where the electricity is used; consequently, the town should support economically and environmentally sound development of local electricity generating capacity.” P. 95.
- xiii. “Actively promote the energy-related benefits of town policies that:*** Support development of renewable energy resources.” Pp. 95-96.
- xiv. “Create and support programs and facilities that provide stable, affordable, and clean renewable sources of energy, including wood (and other biomass), wind, water (hydroelectric), solar, and geothermal. Give strong consideration to the energy needs of the community when evaluating the environmental and economic affects of such programs and facilities.” P. 96.
- xv. “The town should continue to pursue [] renewable energy projects.” P.96.

131) Identify and describe with specificity how the Department's opposition to the Project and RAPHAEL's testimony and report are consistent with the each of the following goals contained in the Bennington Town Energy Plan and produce all Document related to each:

- i. "Alternative energy sources such as solar, [] and biomass-based fuels can provide significant amounts of clean energy well into the future. Developing these resources is extremely important." P.2.
- ii. "Commercial Renewable Energy Opportunities in Bennington *** The amount of money spent on energy in Bennington—as pointed out in previous sections—suggests that real economic benefits can be realized if some significant portion of that energy is generated from local sources." P.38.
- iii. "renewable energy must focus on local resources." P.38.
- iv. "Available resources that potentially can provide for some of the area's energy needs include: biomass (wood and field crops), [] and direct solar radiation. [] Developing those resources now also will help provide energy security for the community, assuring availability of the energy needed to sustain economic prosperity well into the future." P. 38.
- v. "Biomass Energy Potential *** Any discussion of renewable energy in Bennington County must include wood, which together with direct solar energy, is the most obvious and ubiquitous source of locally available energy. The Bennington Regional Energy Plan estimates that forests, just within Bennington County, could sustainably provide over 150,000 cords of wood per year for fuel (in addition to timber harvested for sawlogs, veneer wood, and pulpwood). That quantity of wood could easily satisfy all of the residential space heating needs for the region, with a significant volume of biomass remaining for use in commercial/industrial applications and for electricity generation. Forest resources in nearby areas of New York and Massachusetts provide additional resources that could be available for local energy utilization (Biomass Energy Resource Center data)." P.38.
- vi. "Although widely available, a significant increase in the utilization of local wood products for commercial energy production poses some serious challenges. Much of the forested land in Bennington County is not currently available for harvesting because it is located in federally designated wilderness or other protected areas." P.38.
- vii. "Despite the hurdles that must be overcome to make wood a significant, and perhaps primary, local source of heat energy, its abundance, reliability, and the fact that reliance on this fuel provides jobs and recycles money in the local economy suggest that planning for greater utilization of the resource should be

pursued. The reduced net carbon and sulfur dioxide emissions realized through combustion of biomass rather than coal, oil, or gas provides an additional reason to pursue greater use of this renewable resource.” P.38.

- viii. Space heating in homes and small businesses can be accomplished with wood or wood-pellet burning stoves or furnaces. Cord wood is readily available from local suppliers and requires little preparation beyond splitting and drying.” P.38.
- ix. “Solar energy technologies are proven and [] have a relatively minor environmental impact.” P.43
- x. “there are compelling reasons to attempt to implement solar technologies wherever possible.” P.43.
- xi. The town energy committee should “advocate for [] renewable energy projects. P. 45
- xii. “All developments should be planned to take maximum advantage of opportunities for utilization of solar energy.” P.45.
- xiii. “The town should support efforts to develop appropriate cost-effective biomass energy resources.” P.47.

132) Identify and describe with specificity how the Department’s opposition to the Project and RAPHAEL’s testimony and report are consistent with the each of the following goals contained in the Bennington Regional Energy plan and produce all Documents related to each:

- i. “Alternative energy in the form of ‘renewable’ sources such as solar [] can provide significant amounts of clean energy well into the future. Developing those resources is extremely important.” P. i.
- ii. “To maintain a good quality of life, vibrant communities, and prospering economies, we will have to [use] energy obtained from clean renewable sources.” P. i.
- iii. “Decrease our reliance on non-local energy sources through [] development and use of local renewable energy sources.” P.i.
- iv. “Renewable energy will become increasingly important in the coming decades, and the most efficient and valuable energy sources will be the ones that are closest to the end users.” P.ii.
- v. “it will be important to supplement any out-of-region generating capacity (nuclear, hydro, and other sources) with locally generated electricity.” P. ii.

- vi. “A ‘smart grid’ that relies on many smaller scale distributed sources of electricity will need to be developed.” P.ii.
- vii. “By taking a lead in efforts to [] develop local renewable energy sources [] Bennington County can become a uniquely vibrant and successful region.” P.ii.
- viii. “The impacts on climate, the so-called ‘global warming’ that has resulted from the rapid release of billions of tons of carbon dioxide that had been locked in solid and liquid fossil fuels, has been well-documented. The disruption of natural ecosystems, human settlements, and economic activity, together with the other adverse environmental impacts of fossil fuel combustion (e.g., smog, acid rain) further compel us to seek and use alternative sources of energy.” P.6.
- ix. “Transportation is an energy-intensive and complex process, whether the commodity being transported is food in a truck or electricity over a transmission line. Because we need to conserve energy in every way possible, local production of energy for use in our region will become increasingly important. We must find ways to []use the renewable energy resources available locally for [] electricity generation.” P. 6.
- x. “[N]ew large-scale generating sources will need to be found and supplemented with locally generated electricity from renewable resources.” P. 7.
- xi. “Decrease our reliance on non-local energy sources through [] development and use of local renewable energy sources.” P.8.
- xii. “Give full consideration to use of locally available renewable energy resources for [] and electricity.” P.24.
- xiii. “Seek additional electric generating capacity from local renewable resources to provide energy for electric vehicles.” P.30.
- xiv. “Such present day objectives as watershed protection, [] will need to be partially retracted to make way for the compelling future demand for energy.” P.32.
- xv. “Support development of local and regional industries that produce energy through conservation and renewable sources of energy.” P.32.
- xvi. “We must transition from nonrenewable to renewable energy sources, and because of net energy constraints resulting from acquisition, processing, and transportation of energy, much of that renewable energy will need to be derived from local sources.” P.34.
- xvii. “Energy from renewable sources can help address space and water heating needs, provide fuel for transportation, and generate electricity (that can, in turn, be used for heating, transportation, and many other functions). Space and water heating can be accomplished using solar energy, wood (cordwood, pellets, or chips).” P.34.

- xviii. “[C]ommercial generation of electricity using [] large scale arrays of pv panels, [] can offset coal, natural gas, and nuclear fuel use, adding valuable years to the generating capacity of those energy sources.” p.36.
- xix. “Any discussion of renewable energy in Bennington County must include wood, which together with direct solar energy, is the most obvious and ubiquitous source of locally available energy. The 1982 Regional Energy Plan estimated that forests, just within Bennington County, could provide over 150,000 cords of wood per year for fuel (in addition to timber harvested for sawlogs, veneer wood, and pulpwood). That quantity of wood could easily satisfy all of the residential space heating needs for the region, with a significant volume of biomass remaining for use in commercial/industrial applications and for electricity generation.” P.36.
- xx. “Despite the hurdles that must be overcome to make wood a significant, and perhaps primary, local energy source, its abundance, reliability, and the fact that reliance on this fuel provides jobs and recycles money in the regional economy suggest that planning for greater utilization of the resource should be pursued.” P.38.
- xxi. “Obtaining energy from wood is a relatively simple process using simple and time-tested technologies. Many homes can be heated with a single wood or pellet burning stove or furnace. Cord wood used in stoves or furnaces is readily available from many local suppliers and requires little preparation beyond splitting and drying.” P.38.
- xxii. “In addition to a concerted effort at conservation in all energy sectors, the most feasible future sources of electricity for the region come from smaller renewable resource based generating facilities distributed throughout the area.” P.47.
- xxiii. “The value of energy conservation and development of renewable energy resources should be given significant weight when evaluating new projects and programs.” p.51.
- xxiv. “Recognize and support economically and environmentally sound development of the region’s renewable energy resources.” P. 52.

133) Identify and describe with specificity how the Department’s opposition to the Project and RAPHAEL’s testimony and report are consistent with each of the following goals contained in the Bennington Regional Plan, and produce all Documents related to each:

- i. “Energy planning should emphasize the use of diverse and reliable supplies of energy resources in an efficient and environmentally sound manner.” P.6.
- ii. “Particular attention should be given to the development of renewable energy resources in the area.” P.6.
- iii. “Land use, transportation, economic development, and housing policies and strategies should support the efficient use of energy resources.” P.6.

- iv. “Reduce the flow of energy dollars leaving the Bennington region by decreasing our reliance on non-local energy sources.” P.65.
 - v. “Encourage the development of renewable energy resources.” P.65.
- 134) Identify and produce all EMAILS on or after JANUARY 1, 2014, and OTHER documents relating, pertaining, referencing, referring to, any of, in whole or in part any of the following terms:
- i. Chelsea solar;
 - ii. Apple Hill solar;
 - iii. Melone;
 - iv. Brad Wilson;
 - v. Ecos Energy;
 - vi. Allco;
 - vii. Libby Harris;
 - viii. Annette Smith;
 - ix. Paper Mill solar;
 - x. Landworks;
 - xi. David Raphael;
 - xii. ER Project;
 - xiii. Paper Mill Project;
 - xiv. Kobelia;
 - xv. Encore Renewable;
- 135) Admit that the DPS has known for decades that carbon dioxide (“CO2”) pollution from burning fossil fuels was causing global warming and dangerous climate change.
- 136) Admit that the DPS has known and currently knows that continuing to burn fossil fuels and purchase electricity from fossil fuel energy sources would destabilize the climate system on which present and future generations of our nation depend for their well-being and survival, and the economy depends.
- 137) Admit that the DPS knows of the unusually dangerous risks of harm to human life, liberty, and property that would be caused by continued fossil fuel burning.
- 138) Admit that the overarching public trust resource is our country’s life-sustaining and property sustaining climate system, which encompasses our atmosphere waters, oceans, and biosphere.
- 139) Admit that the DPS must exercise their governmental power consistent with protecting those trust resources.
- 140) Admit that as a sovereign trustee, the DPS has a duty to refrain from actions which further impair these essential natural resources.
- 141) Admit that the affirmative aggregate acts of the DPS in opposing the Project contribute to higher levels of fossil fuel electricity production than would otherwise occur.
- 142) Admit that as a sovereign trustee, the affirmative aggregate acts of the DPS

- opposing the Project are unconstitutional.
- 143) Admit that as a sovereign trustee, the affirmative aggregate acts of the DPS opposing the Project are in contravention of their duty to hold the atmosphere and other public trust resources in trust.
- 144) Admit that the Project site is not located in a gateway area in the Town.
- 145) Admit that the Project site is not located within any gateway area shown on the last page of Exhibit CS-BW-24. (Scenic Resource Inventory).
- 146) Produce a map detailing the boundaries of all gateway areas in the Town.
- 147) Please produce all documents you expect to offer as exhibits at the technical hearing of these proceedings.
- 148) Reference the REPORT at page 36 in which it states: “a 10-acre solar project is clearly prohibited” in the RCON district. With reference to that statement,
- i. Identify and explain with specificity in what Document it is stated that the Project is “clearly prohibited,” and produce all Documents related to same.
 - ii. Identify and explain with specificity the bases that support such a statement, and produce all Documents related to same.
- 149) Reference the REPORT at page 36 in which refers to goals articulated by town officials. With reference to that statement,
- i. Identify each town official who articulated goals and the dates such goals were articulated and to whom those goals were articulated, and produce all Documents related to same;
 - ii. Identify what goals were articulated by town officials identified in the response to interrogatory 149.i, and produce all Documents related to same.
- 150) Reference the REPORT at page 36 in which refers to goals articulated by residents. With reference to that statement,
- i. Identify each resident who articulated goals and the dates such goals were articulated and to whom those goals were articulated, and produce all Documents related to same;
 - ii. Identify what goals were articulated by residents officials identified in the response to interrogatory 149.i, and produce all Documents related to same.
- 151) Reference the REPORT at page 36 in which refers to having to “significantly alter the site.” Identify with specificity what alterations the REPORT refers to and produce all Documents related to same.

- iii. Identify each town official who articulated goals and the dates such goals were articulated and to whom those goals were articulated, and produce all Documents related to same;
- iv. Identify what goals were articulated by town officials identified in the response to interrogatory 149.i, and produce all Documents related to same.
- v. .

Dated June 29, 2018

CHELSEA SOLAR LLC

/s/Michael Melone

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