

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]	Docket No. 17-5024-PET
Project,” a 2.0 MW solar electric]	
generation facility located off Willow]	
Road in Bennington, Vermont]	

**BRIEF OF THE APPELLANT
TOWN OF BENNINGTON**

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STATEMENT OF THE ISSUE

Does Chelsea have a vested right to review of its 2017 petition for a Certificate of Public Good under the Town Plan in effect when its initial petition was deemed complete in 2014?

INTRODUCTION

This interlocutory appeal presents the question of whether the vested rights doctrine entitles Petitioner Chelsea Solar LLC (“Chelsea” or “Petitioner”) to review of its present petition for a Certificate of Public Good (“CPG”) under municipal legal provisions in effect at the time of an earlier petition, filed in 2015 and denied in February 2016. Petitioner’s present petition was filed more than 18 months after this Commission denied its first petition for a CPG and following a multitude of other, post-decision motions. As set forth in detail below, the Hearing Officer erred in concluding that the vested rights doctrine entitles Petitioner to review of the present petition under the version of the Town Plan in effect in 2015.

FACTS AND PROCEDURAL HISTORY

A. Initial Petition

On June 19, 2015, Chelsea filed a petition requesting a Certificate of Public Good (“CPG”) to install and operate a 2.0 MW AC solar electric generating facility at 500 Apple Hill Road in Bennington, Vermont (“Initial Petition” and “Initial Project”). Following the review process, a technical hearing was held on July 16, 2015, at which Petitioner presented evidence in support of its petition.

The Initial Project, as proposed in Chelsea’s Initial Petition, was for installation of 2.8 MW (DC) of 72-cell, ground-mounted, polysilicon photovoltaic solar modules, installed upon an approximately 27-acre tract just north of the Welcome Center at the U.S. Route 7/VT Route 279 interchange in Bennington.

On October 2, 2015, following post-hearing briefing by Chelsea and intervenor Libby Harris (“Harris”), the Hearing Officer circulated a Proposal for Decision (“PFD”) recommending that the then- Public Service Board (referred to herein as the Public Utility Commission or “PUC”) approve the proposed Project and issue a CPG. The PUC issued an order denying the CPG on February 16, 2016, finding that the Town Plan had provisions that constituted a clear, written community standard, and that the Initial Project would interfere with orderly development in the region, and would have an undue adverse impact on aesthetics. *Petition of Chelsea Solar LLC for a Cert. of Pub. Good*, 8302, 2016 WL 722444, at *30 (Feb. 16, 2016) (“Final Order”).

Following the adverse decision of the PUC, Chelsea filed the following motions:

- On March 10, 2016, a request that the PUC take judicial notice of certain documents;
- On March 11, 2016, a motion to vacate the PUC’s order for failure to comply with 3 V.S.A. § 811;
- On March 21, 2016, a motion to alter and amend the Final Order, motion to reopen the record, motion for a supplementary hearing, and motion for new findings;
- On March 21, 2016, a motion to amend its petition for a CPG;
- On May 12, 2016, a motion to strike comments filed by the Vermont Department of Public Service and the Agency of Natural Resources; and
- On January 24, 2017, a motion for mediation pursuant to V.R.C.P. 16.3.

In the midst of all of these filings, the Town passed an amendment to its Town Plan on April 16, 2016. The Amendment included a new provision addressing the community and siting standards applicable to solar facilities. (Exhibit A).

All of Chelsea’s motions were denied on April 14, 2017 and (by amendment) April 17, 2017 (collectively, “Motions Order”). Importantly, this includes a denial of Chelsea’s motion to amend its petition for a CPG dated March 21, 2016. In its Order as to that

particular motion, the PUC stated that while it “appreciates Chelsea’s efforts to redesign its Project,” the “Motion to Amend the Petition was untimely under Rule 59(e) because it was offered after the February 16 Order.” The PUC declined to consider Chelsea’s request that it “reconsider its disapproval of the Project based on a proffer of new evidence in the form of a proposed amendment that could have been presented before the February 16 Order denying the petition.” (April 14, 2017 Order, at 21–22). The Board also held that an amendment would be inappropriate because amendments are “not intended to permit parties to simply relitigate issues or revise their tactical approach.” (Id. at 22).

On May 12, 2017, Chelsea filed a notice of appeal with the Vermont Supreme Court. On September 8, 2017, while the appeal was pending (Chelsea having requested multiple extensions of time to file its brief), Chelsea filed yet another brief with the PUC—this time a motion pursuant to V.R.C.P. 60(b), entitled “Motion Under Rule 60(b) and Amendment to Petition of Chelsea Solar LLC.” In this brief, Chelsea asked the PUC to vacate its Final Order and Motions Orders and to consider substantial changes to the Initial Project. Though the PUC had already made it clear that a motion to amend the Project was untimely, rather than pursue an appeal, Chelsea again attempted to re-litigate the issue.

The PUC denied Chelsea’s motion, stating that it “cannot review a ***new petition*** for a project in approximately the same location as the [Initial Project] as long as the [Initial Project] is subject to appellate review.” *Petition of Chelsea Solar LLC for Cert. of Pub. Good*, 8302, 2017 WL 4685518 (Oct. 12, 2017) (emphasis added) (“October 12, 2017 Order”). The PUC specified that if Chelsea filed a complete new petition within six months of withdrawal of its appeal, “the Commission would be responsive to a request from Chelsea to further extend the commissioning deadline of its standard-offer contract for

one year from the date the complete petition is filed.” *Id.* at *5. The PUC did not find that Chelsea was entitled to amend its application—in fact, just the opposite: the PUC expressly rejected the request to amend the petition on jurisdictional grounds *and* on the basis that it had already been decided. *Id.* The October 12, 2017 Order also provided that, “in order for its new petition to be deemed complete, Chelsea must also include testimony and exhibits addressing any new potential impacts under all applicable criteria that may arise as a result of the reconfigured project.” *Id.*

Chelsea filed a motion with the Vermont Supreme Court requesting that the matter be remanded to the PUC, setting forth its reasoning in a 26-page brief. The Vermont Supreme Court denied the motion. (Motion and Order attached hereto as Exhibit B). On October 19, 2017—more than a year and a half after the Final Order issued and the Town had passed the Solar Siting Amendment—Chelsea dismissed its appeal in favor of filing a new petition.

The total number of post-Final Order, non-appellate pages in Docket 8302 exceeded 580. The Town of Bennington (“Town”) and multiple state agencies expended significant time and energy responding to a barrage of repetitive arguments seeking to reopen the Chelsea docket in 2017. Chelsea made the choice to spend over a year on post-decision briefing, and ultimately Chelsea chose to abandon its appeal. In spite of those choices, Chelsea asks the PUC to hold all other parties in suspension, rather than give consideration to the policy that the municipality developed and passed in good faith, as directed by the will of its voting residents, after Chelsea’s petition for a CPG was denied.

II. New Petition

On November 29, 2017, Chelsea filed a new petition to construct a 2.0 MW solar electric generation facility off of Willow Road in Bennington, creating this docket (New Petition”). The New Petition was deemed administratively complete on December 4, 2017.

The pre-filed testimony of Brad Wilson, submitted by Chelsea, describes the project. (This pre-filed testimony has not been admitted as evidence, subjected to cross-examination, nor viewed with the benefit of complete discovery in this proceeding). According to Mr. Wilson, the New Petition proposed installation of a 2.0-MW ground-mounted PV solar electricity facility located on the same 27.3-acre parcel of land in the Town of Bennington, in the approximate location of the project proposed in the Initial Petition (“New Project”). (Wilson Prefiled Testimony, at 3–4, Exhibit C hereto).

Mr. Wilson’s testimony states that the New Project “significantly reduces the Project’s footprint and clearing area compared to the original design in docket 8302,” resulting in “increased setbacks and substantial vegetation being retained. . . .” (Ex. C, at 2). “Portions of the [New] Project’s access road corridor (and associated clearing area) sits outside of the original clearing and Project footprint boundaries.” (Id. at 2–3). Mr. Wilson also states that the New Project plans “reduce the Project’s equipment profiles. . . .” (Id. at 3). To wit, changes have been made to the type and wattage of the modules, the tilt angle, the amount of space between the rows, and the height of the fence surrounding the modules. (Id.). A different method of clearing will also be used for the New Project. (Id.).

III. Vested Rights Issue

On March 9, 2018, Chelsea Solar LLC (“Chelsea”) filed a memorandum in support of its proposed schedule, in which it asserted a vested right to review of its petition for a CPG under the Bennington Town Plan (“Town Plan”) in effect in 2014. Chelsea asserted that the petition in this new docket should be treated as a reconsideration of the petition filed on June 19, 2014 in Docket 8302 (“Chelsea I”), in spite of the PUC’s Orders of April 14, 2017 and October 12, 2017 to the contrary. The Town and the Department of Public Service filed memoranda in opposition to Chelsea’s claim of vested rights. By Order dated May 17, 2018 (“Vested Rights Order”), the Hearing Officer ruled that Chelsea has a vested right to review of its new petition under the Town Plan in effect three years earlier when the Chelsea I Petition was filed. In reaching its conclusion, the Hearing Officer held that the October 12, 2017 Order “was clearly intended to allow Chelsea to refile its petition and have that petition treated as a continuation of the previous petition. . . .” (Vested Rights Order, at 5). The Hearing Officer also found that it would be “bad policy if vested rights were available only if a landowner refuses to make reasonable changes to a project to accommodate the concerns of others.” (Id.). For the reasons set forth below, this decision was in error, and the Town appeals.

ARGUMENT

I. THE VESTED RIGHTS DOCTRINE DOES NOT APPLY TO THE NEW PETITION

In finding that the vested rights doctrine applies to Chelsea’s New Petition, the Hearing Officer relied primarily on the Supreme Court’s decision in *In re Jolley Associates* (2006 VT 132, 181 Vt. 190, 915 A.2d 282). The decision in *Jolley* does not

provide developers with the unfettered right to review of successive applications under provisions of law in effect at the time of the developer's very first application. Applied to this case, the decision in *Jolley* would dictate that Chelsea's new submissions are not entitled to review under those provisions of law in effect in 2015.

Jolley involved an application for a proposed gas station and convenience store in Shelburne. Jolley filed its application five days prior to the effective date of a new zoning bylaw amendment prohibiting the proposed use. The Environmental Court held that the new amendment should apply to the application. The Vermont Supreme Court vacated that determination, but did not resolve the question of which version of the zoning ordinance should apply. *See In re Handy*, 171 Vt. 336, 350, 764 A.2d 1226, 1239 (2000). After a subsequent merits hearing, the Environmental Court denied the application on substantive grounds, but included in its order that the denial was "without prejudice to its being reopened upon motion filed within 45 days after any further decisions have issued from the Planning Commission and/or the ZBA on any further applications filed by this applicant for this project; in particular any application . . . for site plan approval and any application to the ZBA under § 210.6." *In re Jolley*, 2006 VT 132, ¶¶ 1–3.

When *Jolley* submitted its amended site plan, the Town rejected it on the basis that the proposed use was not permitted under the new zoning bylaw. The Environmental Court reversed, finding that Jolley had a vested right with respect to its conditional use application, but also concluded that the site plan "would not be reviewed under the old bylaws because Jolley had not filed the site plan application before the bylaws were amended." *Id.* at ¶ 5. In other words, the vested rights doctrine gave Jolley the right to consideration of its application where it would have none under the new bylaw, but that

the new laws would govern consideration of its site plan filed after the amendment. *In re Jolley*, 2006 VT 132, ¶ 17. Thus, while the vested rights doctrine might preserve the right to pursue a solar project where a new bylaw had otherwise extinguished that possibility (which is not the case here), under *Jolley*, the newer provision would nonetheless govern review of submissions made after the amendment.

In any event, *Jolley* is distinguishable from the present case. Not only was the language used by the Court in *Jolley* a clear invitation to continue the proceeding, the Environmental Court also expressly “concluded that . . . Jolley had a vested right to its proposed conditional use.” *Id.* at ¶ 5. The phrase “without prejudice to its being reopened” followed that conclusion, and “was in essence, if not technically, a remand.” *Id.* at ¶ 14. The Court held: “By this statement, the [Environmental Court] indicated that it did not intend to finally resolve the issue of site plan compliance. . . . We thus conclude that the issue of site plan compliance was not finally determined by the May 2002 decision.” *Id.* at ¶ 14.

Contrast this case: the PUC issued a Final Order on February 12, 2016. By that decision, the PUC intended to finally resolve the issue of whether the Initial Project should be granted a CPG pursuant to § 248. The PUC did not indicate that its Final Order was “without prejudice to being reopened” nor did it invited additional filings to amend the Initial Petition. The PUC then denied Chelsea’s multiple attempts to reopen the Docket and/or to amend its petition. The Supreme Court also denied Chelsea’s request to remand to the PUC for further consideration of the same petition. The October 12, 2017 Order again expressly rejected Chelsea’s request to amend its petition on both

jurisdictional grounds and “*because these are matters that we have already decided.*”

October 12, 2017 Order, at *3.

The October 12, 2017 Order. “encourage[d] Chelsea to withdraw its appeal with the Vermont Supreme Court and file a *new petition* reflecting the proposed Willow Road Project.” *Id.* at 5 (emphasis added). The PUC also stated that after Chelsea withdraws its appeal, Chelsea can “file a new petition.” *Id.* at 5. Finally, the PUC stated, in conclusion, that it would review “a new Chelsea petition.” *Id.* Thus, the October 12, 2017 Order evinces the opposite of the intent expressed by the Environmental Court’s order in *Jolley*.

Though the *Jolley* case did not involve a final determination, the Court nonetheless discussed the outcome in such a case: “Ordinarily, denial of a[n] . . . application requires that the applicant file a new application that substantially revises its proposal to ‘address[] all concerns that prevented approval of the prior application.’ ***The newly filed application is then subject to the bylaws in effect at the time of its filing.***” *Jolley* at ¶ 16 (citing *In re Armitage*, 2006 VT 113, 181 Vt. 241, 917 A.2d 437 (2006) and *Smith v Winhall Planning Commission*, 140 Vt. 178, 436 A.2d 760 (1981)). Insofar as Chelsea’s application follows an unappealed, final determination, the *Jolley* decision provides that the new application is subject to the provisions in effect at the time it was filed—November 2017.

The Hearing Officer found that in the PUC’s October 12, 2017 Order it “implicitly recognized that Chelsea had a vested right to the Town Plan that was in effect in 2014, when it filed the Chelsea I petition.” In reaching that conclusion, the Hearing Officer found that “the Commission explicitly offered to: (1) reconsider the project as proposed by Chelsea on September 8, 2017, if Chelsea filed a new petition in a timely fashion.”

However, the Order contained no such implication, much less an express offer to “reconsider the project.” In fact, as discussed *supra*, it expressly *rejected* Chelsea’s request to amend its petition.

Recognizing the value of Chelsea’s existing standard-offer contract, the October 12, 2017 Order provided that if a new petition was filed within six months of withdrawal of Chelsea’s appeal, the PUC did indicate that it “would be responsive to a request from Chelsea to further extend the commissioning deadline of its standard-offer contract”. (October 12, 2017 Order, at *5). The PUC’s offer to consider extending the deadline of Chelsea’s standard offer contract establishes that Chelsea was not automatically entitled to such relief. It also highlights the absence of any other offers not stated in the October 12, 2017 Order.

The October 12, 2017 also provided that it would permit Chelsea to reuse testimony and exhibits from the Initial Petition to the extent that they were relevant, but stated that “in order for a new petition to be deemed complete, Chelsea must also include testimony and exhibits addressing any new potential impacts under all applicable criteria. . . .” (October 12 2017 Order, at *5). This was clearly addressed to Chelsea’s concern about the need for prompt review of its new petition, and does not indicate that Chelsea was being permitted to amend its earlier petition. If Chelsea’s new petition was to be treated as a continuation of its prior petition, there would have been no need to specify that it could rely on relevant exhibits and testimony relating to the Initial Petition.

The Hearing Officer’s conclusion that the PUC was implicitly permitting Chelsea to amend its application is entirely inconsistent with the PUC’s multiple, explicit denials of

previous requests to amend, the Supreme Court’s denial of Chelsea’s request to remand, and with the actual language of the October 12, 2017 Order.

II. THE NEW PROJECT IS A SUBSTANTIAL REVISION FROM THE INITIAL PROJECT

Jolley also indicates that substantial revisions to a project also result in the loss of vested rights. The revision required in *Jolley*—“removal of the canopy” above a proposed gas station—was not so substantial as to result in a loss of vested rights. *Jolley*, at ¶ 16. The changes made in this application are substantial. As set forth in the Factual and Procedural History, the New Project differs from the Initial Project in a number of important ways. These changes are not akin to “removal of the canopy,” as in *Jolley*. There are differences in mass and scale of the project; the type, size, tilt, and spacing of the modules being used; the method and amount of clearing; the equipment being used; the project setbacks; the location of a roadway and gate (which removes the New Project from within the boundaries of the Initial Project).

These are significant changes, as to which Petitioner filed new pre-filed testimony and siting exhibits. The parties are engaging in new discovery, as well—in fact, Chelsea has noticed the depositions of at least a dozen people in this proceeding, and has served over 30 pages of discovery requests on multiple parties—more than in many complex litigation cases.¹ Based on the discovery sought by Chelsea alone, the record in this proceeding is going to expand significantly—something that would not be necessary for just a minor revision to a project.

¹ For example, Chelsea served 113 discovery requests—some with multiple subparts—on the Town of Bennington. (Exhibit D, attached hereto).

III. THE APPLICATION OF THE VESTED RIGHTS DOCTRINE UNDER THE CIRCUMSTANCES IS CONTRARY TO PUBLIC POLICY.

Vermont jurisprudence does not support the notion that once an application is filed, a developer is entitled to file successive applications *ad infinitum* under the Town Plan that exists at the time of the first. In all of the cases, application of the vested rights doctrine hinges on whether the developer is pursuing its project in good faith—rather than trying to get around the rules by, for example, demanding to address perceived errors by reopening of a docket for new evidence rather than through the designated appeals process.

Permitting such a rule would greatly diminish the ability of Vermont municipalities to control development within their jurisdictions, in response to the public will. This would place municipalities at the mercy of litigious developers with large coffers to file endless motions following an adverse decision with the knowledge that no interim changes in municipal planning will impact them. This would encourage developers to take the most aggressive approach at the outset of a project, knowing that if their efforts to wear down opposition through expense or otherwise push the envelope fail, they will nonetheless retain the benefit of the laws in effect at the time of their first application. This does not encourage good faith conduct by developers, and the vested rights doctrine should not be extended to that length.

CONCLUSION

For the foregoing reasons, the May 17, 2017 Order concerning vested rights should be reversed, and the provisions of the Town Plan and Town Bylaws in effect at the time of Chelsea's New Petition should be applied to the present proceeding.

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EXHIBIT A

Amendment to Town Plan

Approved by Select Board on 4/11/16

Solar Electricity Generation and Transmission Siting

The term “solar facility” shall have the following meaning: a solar electricity generation and transmission facility with a 150kW(AC) or greater capacity, including all on-site and off-site improvements necessary for the development and operation, and on-going maintenance of the facility.

The Town of Bennington has developed community standards and siting standards for the development of solar facilities for reference and use by facility developers and local property owners and for consideration in Section 248 proceedings (30 VSA §248). These standards are set forth below. In addition, The Bennington Planning Commission, in consultation with the Bennington County Regional Commission, will identify and map those areas of Bennington that are most suitable for solar facility development based on facility siting requirements and municipal energy, conservation and development policies and objectives set forth in the Bennington Town Plan, the Bennington Screening of Solar Facilities Ordinance, and the Bennington Land Use and Development Regulations.

Pursuant to 30 VSA Sec. 248, prior to the construction of a solar facility, the VT Public Service Board (PSB) must issue a Certificate of Public Good. A Section 248 review addresses environmental, economic, and social impacts associated with a particular project, similar to Act 250. In making its determination, the PSB must give due consideration to the recommendations of municipal planning commissions and their respective plan(s). Accordingly, it is appropriate that Bennington’s Town Plan address these land uses and provide guidance to town officials, regulators, and facility developers.

The Town of Bennington may participate in the Public Service Board's review of new and expanded generation facilities to ensure that local energy, resource conservation and development objectives are identified and considered in proposed utility development. This may include joint participation and collaboration with other affected municipalities and the Bennington County Regional Commission for projects that may have significant regional

impact. H.40, passed in 2015 guarantees the host municipality automatic party status in the PSB's permitting process. It is acknowledged that the PSB's prime focus is on administering state public policy and regulating actions that are directed at ensuring that utility services promote the general good of the state.

The Planning Commission, in consultation with the Bennington Select Board, should develop guidelines to direct local participation in Section 248 proceedings for the review of solar facilities located in Bennington or in neighboring communities which may affect the town. The guidelines should reflect levels of participation or formal intervention in relation to the type, location, scale, operation, and magnitude of a proposed project, and its potential benefits, detriments to, and impacts on the community.

Community Standards

The following community standards are to be considered in undertaking municipal solar electricity projects and programs, in updating Bennington's Land Use and Development Regulations to address solar facilities subject to local regulation, and in the review of new or upgraded solar facilities by the Town of Bennington and the Public Service Board (Section 248 review).

Plan Conformance: New solar facilities and proposed system upgrades should be consistent with the Vermont Comprehensive Energy Plan, the Vermont Long-Range Transmission Plan, and utilities Integrated Resource Planning (IRP).

Benefits: A demonstrated statewide public need that outweighs adverse impacts to local residents and resources must be documented for municipal support of new solar facilities located within or which may otherwise affect Bennington. Facility development must benefit Town of Bennington and State residents, businesses, and property owners in direct proportion to the impacts of the proposed development.

Impacts: New solar facilities must be evaluated for consistency with community and regional development objectives and shall avoid undue adverse impacts to significant cultural, natural, and scenic resources and aesthetic values identified by the community in the Bennington Town Plan and the Scenic Resources Inventory. When evaluating impacts of a proposed solar facility under the criteria set forth in this Town

Plan, the cumulative impact of existing solar facilities, approved pending solar facilities and the proposed solar facility shall be considered. It is explicitly understood that a proposed solar facility which by itself may not have an adverse impact may be deemed to have an adverse impact when considered in light of the cumulative impacts of the proposed solar facility and existing solar facilities and pending already approved solar facilities.

Decommissioning: All facility certificates shall specify conditions for system abandonment and decommissioning, including required sureties (bonds) for facility removal and site restoration to a safe, useful, and environmentally stable condition. All hazardous materials and structures, including foundations, pads and accessory structures, must be removed from the site and safely disposed of in accordance with regulations and best practices current at the time of decommissioning

Solar Facility Siting

Bennington supports responsibly sited and developed solar facilities within its boundaries. It recognizes that financial considerations require projects to be located in close proximity to electric power lines capable of transmitting the load proposed to be generated and easy access from major transportation networks for construction. However, the town desires to maintain the open landscape and scenic views important to Bennington's sense of place, tourism economy and rural cultural aesthetic. Not all solar facilities proposed can meet this standard. Projects must meet the following criteria in order to be supported by this Town Plan:

Siting Requirements: New solar facilities shall be sited in locations that do not adversely impact the community's traditional and planned patterns of growth, of compact (downtown/village) centers surrounded by a rural countryside, including working farms and forest land. Solar facilities shall, therefore, not be sited in locations that adversely impact scenic views, roads or other areas identified in the Scenic Resources Inventory, nor shall solar facilities be sited in locations that adversely impact any of the following scenic attributes identified in the Scenic Resource Inventory: views across open fields, especially when those fields form an important foreground; prominent ridgelines or hillsides that can be seen from many public vantage points and thus form a natural backdrop for many landscapes; historic buildings and districts and gateways to historic districts; and, scenes

that include important contrasting elements such as water. The impact on prime and statewide agricultural soils currently in production shall be minimized during project design.

Preferred Areas: The following areas are specifically identified as preferred areas for solar facilities, as they are most likely to meet the siting requirements:

- Roof-mounted systems;
- Systems located in close proximity to existing large scale, commercial or industrial buildings;
- Proximity to existing hedgerows or other topographical features that naturally screen the entire proposed array;
- Reuse of former brownfields;
- Facilities that are sited in disturbed areas, such as gravel pits, closed landfills, or former quarries;
- Areas specifically identified as suitable for solar facilities on a map approved by the Select Board.

Prohibited (Exclusion) Areas: In addition to those areas that do not meet the siting requirements set forth above, solar facilities shall be excluded from (prohibited within), and shall not be supported by the town, in the following locations:

- Floodways shown on Flood Insurance Rate Maps (FIRMs);
- Fluvial erosion hazard areas as shown in the Town of Bennington Land Use and Development Regulations;
- Class I, II and III wetlands;
- A location that requires fragmentation of Bennington's working landscape, including undeveloped forestland and primary agricultural soils (as defined in Act 250 and as mapped by the U.S. Natural Resource Conservation Service);
- Rare, threatened, or endangered species habitat or communities as mapped or identified through site investigation, and core habitat areas, migratory routes and travel corridors;
- Ridgelines: Mount Anthony, Whipstock Hill, Bald Mountain (Green Mountains);
- Steep slopes (>25%)
- Surface waters and riparian buffer areas (except for stream crossings);

- Areas specifically identified as unsuitable for solar facilities on a map approved by the Select Board.
- Topography that causes a facility to be visible against the skyline from common vantage points from public and private vantage points such as roads, homes and neighborhoods;
- A site in proximity to and interfering with a significant viewshed identified in the Scenic Resource Inventory;
- A location where a site cannot be screened from the view of neighbors and thus prohibits them from exercising the peaceful enjoyment of their property;
- A site on which a solar facility project can not comply with Bennington's prescribed siting and screening standards, including the screening requirements set forth in Bennington's Screening of Solar Facilities Ordinance;
- A site that causes adverse impacts to historical or cultural resources, including state or federal designated historic districts, sites and structures, and locally significant cultural resources identified in the municipal plan. Prohibited impacts to historical and cultural resources include:
 - removal or demolition;
 - physical or structural damage, significant visual intrusion, or threat to the use;
 - significant intrusion in a rural historic district or historic landscape with a high degree of integrity;
 - significant visual intrusion into a hillside that serves as a backdrop to a historic site or structure;
 - creating a focal point that would disrupt or distract from elements of a historic landscape;
 - a significant intrusion in a rural historic district or historic landscape that has a high degree of integrity;
 - impairing a vista or viewshed from a historic resource that is a significant component of its historic character and history of use;
 - visually overwhelming a historic setting, such as by being dramatically out of scale;
 - isolating a historic resource from its historic setting, or introducing incongruous or incompatible uses, or new visual, audible or atmospheric elements.

Mass and Scale

Except for solar facilities located in preferred areas, solar facilities larger than 10 acres, individually or cumulatively, cannot be adequately screened or mitigated to blend into the municipality's landscape and are, therefore, explicitly prohibited.

EXHIBIT B

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-195

SEPTEMBER TERM, 2017

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SEP 22 2017

In re Petition of Chelsea Solar LLC
(Allco Renewable Energy Limited*)

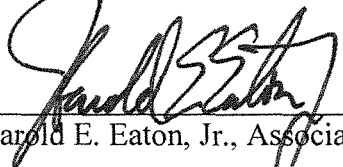
} APPEALED FROM:
}
}
} Public Utility Commission
}
} DOCKET NO. 8302

In the above-entitled cause, the Clerk will enter:

Appellant moves to remand this case to the Public Utility Commission for the taking of additional evidence. The request is denied.

Appellant's motion for an extension of time is granted. Appellant's brief and printed case shall be filed 30 days from entry of this order, or sanctions may be imposed and the appeal dismissed without further notice.

FOR THE COURT:



Harold E. Eaton, Jr., Associate Justice

**IN THE SUPREME COURT
OF THE
STATE OF VERMONT**

Docket No. 2017-195

In Re: Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a Certificate of Public Good authorizing the installation and operation of a 2.0 MW solar electric generation facility to be located at 500 Apple Hill Road in Bennington, Vermont

Appeal From:

Public Service Board
DOCKET NO. 8302

MOTION OF APPELLANT
ALLCO RENEWABLE ENERGY LIMITED
FOR REMAND OF THE CASE
TO THE VERMONT PUBLIC UTILITY COMMISSION

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<i>People v. Acme Markets, Inc.</i> 37 N.Y.2d 326, 334 N.E.2d 555 (N.Y. 1975)	17
<i>State ex rel. Gunstone v. Washington State Highway Comm’n</i> , 72 Wash. 2d 673, 434 P.2d 734 (1967)	11
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STATUTES

3 V.S.A. §809(e)	21-23
3 V.S.A. §811	20-23
3 V.S.A. §815(b)	1, 10, 17, 18
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30 V.S.A. §248(b)(1)	4, 5, 18, 201, 21
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MOTION FOR REMAND TO THE VERMONT PUC

Appellant Chelsea Solar LLC (“Chelsea”) moves this Court to remand this case to the Public Utility Commission (the “PUC”) for the taking of additional evidence pursuant to 3 V.S.A. §815(b) and pursuant to this Court’s common sense approach to remand in the interests of justice.

This is not the first time this Court has been called on to resolve a dispute involving these two solar projects on land in the Town of Bennington—the Chelsea Solar project (the “Project”) and the Apple Hill Solar project—which were submitted in 2013 in response to Vermont’s standard offer solicitation. Originally the PUC refused to issue an agreement for the Apple Hill project based upon the PUC’s claim that the Chelsea and Apple Hill projects were not separate projects. This Court reversed the PUC’s decision. *See, In re: Programmatic Changes to the Standard-Offer Program*, 2014 VT 29 (2014).

This Court has stated that it would not allow parties to bide their “time for months during complex, lengthy, and expensive proceedings, and then attempt an ambush when those proceedings draw to a close.” *In Re Lakatos*, 2007 VT 114 (2007) at P9 quoting *In Re Burlington Elec. Dep’t*, 141 Vt. 540, 547 (1982). Chelsea was doubly ambushed. First by intervenor Libby Harris and then by the PUC. But now that the Town of Bennington (the “Town”) has agreed that similar revised plans for the Apple Hill solar project (which the PUC has agreed to consider) are consistent with the standards of the Bennington Town Plan (the “Town Plan”), and Chelsea has submitted a rule 60(b) motion to the PUC, the common sense approach is to remand this case to the PUC for the taking of additional evidence.¹ Remand under

¹ The rule 60(b) motion is included in the appendix to this motion. The appendix will be referenced by page numbers beginning with “A.” On September 7, 2017, the undersigned

these circumstances is even more warranted in light of the fact that every day scientists urge immediate action to avoid devastating consequences to the planet from climate change, and Vermont's Climate Change Commission was told last month that Vermont is nowhere near on a path to meet its climate goals.

BACKGROUND

After more than two years, hundreds of thousands of dollars of Project costs, and a lengthy section 248 process, a technical hearing was held by a hearing officer on Chelsea's section 248 application. No party at the hearing (or at any time prior to the hearing) raised the issue of whether putting a commercial ground-mounted utility-scale solar project in the Bennington rural conservation ("RCON") district was contrary to the Town Plan. And there was no reason why they would have raised it. The PUC had already approved commercial utility-scale solar projects in the Bennington RCON district (and indeed has approved such a project *even after* it denied Chelsea a certificate of public good ("CPG")). Moreover, the Town had received and reviewed the plans for the Chelsea Project more than 1 year before the hearing, and made no objection or comment. Further, the Bennington by-laws permit solar as well as various other commercial uses in the RCON zone. In addition, all outstanding issues concerning the Chelsea Project's compliance with the section 248 criteria among Chelsea, the Vermont Agency of Natural Resources ("ANR") and the Vermont Department of Public Service (the "Department") were resolved pursuant to the memorandums of understandings. Chelsea also entered into a memorandum of understanding with the local Apple Hill Homeowner's Association to address many of their concerns. The hearing was held and the hearing officer issued a proposed decision approving the issuance of a CPG for the Chelsea Project.

emailed all Appellees asking for their position on this motion. As of the time this motion was packaged for fedex pickup, no Appellee had responded with its position.

Then, on August 13, 2015, in a hastily called public Select Board meeting (of which the Chelsea received no notice) the Town Select Board voted to oppose the Chelsea and Apple Hill solar projects based upon false visual information provided by the neighbors.² The Select Board followed up that meeting with a letter to the PUC expressing its opposition to the projects. By the time the false information could be corrected, the train had left the station in the fervor of the times of municipal revolt against what was perceived as the PUC's insensitivity to local concerns.

In her October 13, 2015, comments on the Chelsea proposed decision, Libby Harris, a neighbor and intervenor in these proceedings ("Harris") claimed for the first time (copying comments the Town made with respect to the Apple Hill project) that the project violated a clear, written community standard allegedly set forth in the Town Plan—thus allegedly not satisfying the requirements of 30 V.S.A. §248(b)(5). Harris' objections, however, were different than the basis used by the PUC to deny the CPG. Harris claimed that the Project was subject to specific design standards applicable in the RCON zone, which is true, but she never argued that commercial solar facilities were prohibited in the RCON zone. A316-320. Rather, Harris based her aesthetics complaint on her incorrect allegations that the "record [was] devoid of actual [color] photographic simulations, arguing that it was 'impossible to understand the visual impact of the final project based upon the evidence in the record.'" See, A318, Harris October 13, 2015,

² The Select Board was shown a color large-scale visual simulation of the combined Chelsea and Apple Hill solar projects from the vantage point of the Vermont Welcome Center. The shown simulation was devoid of any vegetation, thus the projects were clearly in view. That simulation was prepared during discovery at the request of the Department because the Department had requested a simulation without vegetation to verify the location of the solar panels in the computerized model. The actual color visual simulations of the Chelsea project from the Vermont Welcome Center, which were not shown during the meeting, show that the Chelsea Project could not be seen, a conclusion with which the PUC agreed in the Motions Order. See, A227, Motions Order at 15.

comments at 5. Of course, that was simply not true as color visual simulations were in the record showing the Project was hardly visible, and the testimony of Chelsea's aesthetics expert was also in the record explaining that minimal impact on the view.

On January 6, 2016, the PUC issued an order requesting comments on the Town Plan issue raised by Harris. Chelsea filed comments including an excerpt from the Bennington by-laws governing development in the RCON zone, which by-laws permit solar, but the PUC refused to consider the by-laws and any other evidence sought to be presented by Chelsea in those comments. *See*, A263, Denial Order at 51, fns. 25, 27.

At the time the PUC was considering the hearing officer's recommended decision to issue the CPG, there was a backlash against the PUC for what was perceived in various corners as trampling on municipalities with respect to siting solar projects. This Court has stated that the atmosphere at the time created a "backlash that persuaded the Legislature to amend § 248 to give towns greater control over solar generation facilities." *In re Petition of Rutland Renewable Energy, LLC*, at P10. *See also, id.* at P42 (Robinson, J. concurring) (referring to the situation as a "political maelstrom" noting "frustrated municipalities all around the state that feel 'ignored' and 'steamrolled' by the PUC.")

The Denial Order

On February 16, 2016, the PUC issued the Denial Order rejecting certain of the hearing officer's proposed findings regarding aesthetics and orderly development.³ The basis for the

³ In the Denial Order (A261-274), the PUC adopted all the findings recommended by the hearing officer except for Findings 30 and 32 related to the orderly development of the region criteria under 30 V.S.A. §248(b)(1). The PUC also held that construction of the Chelsea Project would violate a clear, written community standard, applicable to the Project site under the first prong of the second part of the *Quechee* test, and thus held that there would be an undue adverse effect on aesthetics. The PUC did not state which Finding(s) regarding aesthetics in particular the PUC

denial was the issue raised by Harris in her post-proposed decision comments—i.e., that project violated a clear, written community standard and as such would have an undue, adverse impact on aesthetics. But as argued above, the PUC’s basis was much different than Harris’ claims. Harris never made an argument based upon the facts in the record but rather on her incorrect assertion of the absence of testimony, analysis and color visual simulations. The PUC nevertheless rejected the uncontested testimony of Chelsea’s expert that it did consider, ignored the supplemental testimony of Chelsea’s expert (and the actual screening plan), ignored its own prior precedent approving solar and other utility scale projects in the RCON zone, and relied on factors not raised by Harris.

The PUC’s rationale was that the Project violated the following three criteria in the Bennington Town Plan related to development in the Bennington RCON zone, which is where the Project site sits. *First*, the PUC found *sua sponte* that development in the RCON zone was limited to “limited residential development” and thus a commercial ground-mount solar project was prohibited in the RCON zone. *Second*, the PUC found *sua sponte* that the Project violated the Town Plan criterion that prohibits development “in prominently visible locations on hillsides and ridgelines” in the RCON zone. *Third*, the PUC found that the Project violated the Town Plan criteria that “any development must minimize the clearing of natural vegetation.” The PUC, however, did not explain what “minimize clearing” meant, or how the Project violated it. The PUC also *sua sponte* rejected proposed findings 30 and 32 concluding that the Project would unduly interfere with the orderly development of the region and thus not satisfy 30 V.S.A. §248(b)(1) (even though no party ever raised that issue) again based upon the PUC’s legal conclusion of the Town Plan’s provisions relating to development in the RCON zone.

did not adopt, but presumably that it would be at least the second sentence of Finding 112 and the first part of Finding 104.

Contemporaneously with the issuance of the Denial Order the PUC took the highly unusual step of issuing a press release touting its denial of the CPG. The PUC also posted the press release on its web site's home page. The PUC did not issue a revised proposed decision adverse to Chelsea prior to issuing the Denial Order. Nor did the PUC ever claim that a majority of the PUC commissioners read the record of the case prior to issuing the Denial Order.⁴

The neighboring Apple Hill solar project was on a parallel but slightly delayed track in the section 248 process. As of February 2016, the technical hearing had been held and post-hearing submissions made. No proposed decision, however, had yet been issued for the Apple Hill project.

In March 2016, both Chelsea and Apple Hill solar filed several motions with the PUC, and each also filed an amendment to its CPG application. The amendments for each project revised the plans so as to comply with the criticisms (justified or not) of the earlier plans. The net result was a substantially smaller footprint for each project, substantially less clearing (and less clearing than other RCON zone permitted uses), and projects that would be completely screened from the public and the neighbors. The revised projects were specifically designed to have no adverse effect on aesthetics, thus eliminating the reasons (justified or not) for the PUC's denial of the CPG for the Chelsea project.

The Motions Order

On April 14, 2017, the PUC denied Chelsea's motions (the "Motions Order") to re-open the record or reconsider the Denial Order. The PUC also refused to accept the amendment to the Chelsea site plans. The Commission also provided further commentary regarding two criteria in the Town Plan which it believed the Project violated.

⁴ It is undisputed that a majority of the PUC commissioners did not hear the case.

With respect to the primary basis for denial of the CPG—that commercial ground-mounted solar facilities are not permitted in the RCON zone (*a position the Town acknowledged on August 14, 2017, is not credible*), see A157 and discussion *infra*—the PUC discounted the fact that the Town of Bennington had previously supported, and the PUC had approved, commercial ground-mounted solar facilities and other electric facilities in the RCON zone. The PUC also failed to acknowledge the issuance of a CPG to another commercial ground-mounted solar facility in the RCON zone since the issuance of the Denial Order.

With respect to the second Town Plan criteria allegedly violated by the Project—*i.e.*, being sited in a prominently visible location on a hillside or ridgeline—the PUC acknowledged that the Project was not visible from the Vermont Welcome Center. Nevertheless the PUC stated that because the Project would be visible *from somewhere*, it still failed the Town Plan’s criteria prohibiting the siting of structures “in prominently visible locations on hillsides and ridgelines.” To support that conclusion, the PUC quoted Finding 110 of the Denial Order, which referenced Chelsea’s expert, Mark Kane’s initial pre-filed testimony at 4: “‘while the extent of the visibility is not large’ the Project would ‘create an adverse impact with respect to the visual resources of the area. That is, the Project would be visible.’”⁵ The PUC’s reliance on that slim reed is manifestly erroneous for two reasons. *First*, it ignores Kane’s supplemental testimony (as was made clear in Kane’s affirmation dated March 21, 2016, submitted with Chelsea’s motions and amendment). A28, ¶11, A212, ¶12. The language cited by the PUC was from Kane’s original pre-filed testimony (Kane pf.) where he stated that there would be some transient low visibility as cars drove around the Project site in the highway interchange. The PUC, however, simply failed to account for the supplemental testimony and supplemental mitigation plan, the purpose

⁵ See, A289-290, Motions Order at 14-15.

of which was to screen the Project from direct and unfiltered views from the vantage point referenced by Kane in his original pre-filed testimony—i.e., motorists travelling at high speed through the highway interchange. A212, ¶12, A28, ¶11. With the successful implementation of that mitigation Kane stated that the Project would have little impact on the surrounding visual resource. *Id.* He also stated that the Project would not likely be noticeable to motorists travelling around the western edge of the Project site unless one was intentionally looking for the Project. *Id.* The PUC’s use of superseded testimony is clear error and simply reinforces Chelsea’s claim that a majority of the PUC commissioners did not record the record.

Second, the PUC’s reliance on mere “visibility” ignores the language of the Town Plan allegedly violated, which refers to *prominently visible* locations on hillsides or ridgelines, not merely visible locations. As Mark Kane explains, A212, ¶12, A28, ¶11, Finding 110 in which the PUC relied does not account for his supplemental testimony. Had the PUC accounted for that supplemental testimony, as Kane explains, there is “no reasonable basis to conclude that the Project even as originally proposed was sited in a prominently visible location on a hillside or ridgeline as it would be barely visible.” *See*, A28, ¶13.

Although the PUC refused to re-visit its conclusions in the Denial Order or accept the amendment with respect to the Chelsea Project, the Commission took the opposite approach with respect to the Apple Hill project and re-opened the Apple Hill proceeding and agreed to accept the amendment and review the revised site plans. *See*, A201.

The PUC’s based its different treatment of Chelsea (vs Apple Hill) on the notion that the PUC’s January 2016 request for comments on the Town Plan issue was sufficient due process for Chelsea because Chelsea had the opportunity to introduce evidence through its response to that request. But there are two manifest errors with that theory. *First*, Chelsea *did* provide further

evidence in its response such as additional references to the Town Plan, regional plan and the Town's specific land use measures governing the RCON district and how the Project satisfied them. The PUC, however, refused to consider those because they were not previously offered into evidence. *See*, A263, Denial Order, at 51, fn. 25 ("in the Chelsea PFD Comments, Chelsea cites to section 9.2 of the Town Plan at page 100. This part of the Town Plan was not included in the excerpts and therefore as not admitted into evidence.") *See*, A263, *id.*, fn. 27 ("Citing table 3.13 of the Bennington zoning rules attached as 'Exhibit A' to the Chelsea PFD Response, Chelsea argues that certain allowable uses in the Rural Conservation Districts include 'electrical facilities.' Exhibit A is not in evidence because Chelsea failed to offer it into the record; therefore we cannot rely on Exhibit A in making our determination.")

Second, Harris never raised the primary issue relied on by the PUC—*i.e.*, that commercial ground-mounted solar projects were prohibited in the RCON zone. As a result Chelsea had no reason to specifically address such a claim. Further, Harris never argued that the Project was sited in a prominently visible location on a hillside or ridgeline. To be sure Harris talked about aesthetics and viewpoint, but she based her aesthetics argument on her incorrect allegation that the record was devoid of color visual simulations, analysis of aesthetics and a screening plan. *See*, A318, Harris Comments at 5 ("It is impossible to understand the visual impact of the final project based on the evidence in the record.") Harris made those incorrect factual assertions even though she questioned Chelsea's expert at the technical hearing about the exact evidence she claimed in her comments was absent from the record. As a result Chelsea had no reason to address the second basis on which the PUC concluded the Town Plan was violated because it was not raised. An opportunity to submit evidence that is excluded is not an opportunity at all. Nor is it fair or consistent with due process for Chelsea to be presumed to need to address

arguments of which it has no notice.

The Corrections Order

On April 17, 2017, the PUC issued a further order (A311) because it realized that the primary basis in the Motions Order on which it denied much of Chelsea's relief—alleged untimeliness of Chelsea's filings—was simply wrong.

Efforts With the Town Regarding the Revised Plans

For the better part of the past year, Chelsea and Apple Hill Solar have engaged both intervenor Harris and the Town in settlement discussions to address their concerns and produce projects that all would agree would not be visible to the public or the neighbors. Adjustments to the amended plans of both projects were made based upon input from the Town.⁶ The revised final plans and visual simulations were prepared and distributed to the Town, the neighbors and made available to the public. The Town's Select Board held several public meetings on the revised plans, culminating last month in the Select Board voting to withdraw its opposition to the Apple Hill project because in the words of the Town Attorney, the revised plans are "consistent with what I see is the text of the Town Plan." *See*, A174. The Town, however, voted to continue its opposition of the Chelsea Project in this Court because that appeal currently involves the original (not the revised) plans. *See*, A149.

LEGAL STANDARD

Under 3 V.S.A. §815(b), remand to the PUC to take additional evidence is appropriate if (1) "the additional evidence is material" and (2) "there were good reasons for failure to present it

⁶ Harris never seriously engaged in settlement discussions claiming, among other things, that solar was not permitted in the RCON zone even though she was, at the same time, urging that solar be restricted to the sites designated as preferred in the plan approved by the Town's solar siting committee, which designated hundreds of acres in the RCON zone as preferred sites for solar, but none of which were near her property.

in the proceeding before the [PUC].”

Under this Court’s inherent authority to act in the interests of justice, remand is appropriate, among other reasons, if “the [PUC] may have acted on incomplete or inadequate information; or may have failed to give adequate consideration to an alternate route.” *In re Maple Tree Place*, 156 Vt. 494, 499 (1991) (quoting the “common sense approach to remand” contained in *State ex rel. Gunstone v. Washington State Highway Comm’n*, 72 Wash. 2d 673, 674-75, 434 P.2d 734, 735 (1967)).

ARGUMENT

I. The Common Sense Approach Is To Remand This Case For the Taking Of Additional Evidence.

This Court takes a “common sense approach to remand.” *In re Maple Tree Place*, 156 Vt. 494, 499 (1991). Remand is appropriate if “the [agency] may have acted on incomplete or inadequate information; or may have failed to give adequate consideration to an alternate route.” *Id.* (internal citations and quotations omitted). Remand to the agency for further consideration is “not a determination that the [agency] is wrong,” but rather “an indication that the disinterested court, which has reviewed the record, is not satisfied on the basis of that record that the [agency] is right.” *Id.* (internal citations and quotations omitted). Remand is appropriate even if “no grounds for reversal [are] found.” *Id.*

An early remand is particularly appropriate here for several reasons.

A. Economy Of Judicial And Agency Resources Favor Remand.

It would be inefficient use of judicial and agency resources to fight over a site plan that Chelsea has already agreed it would revise so as to comply with the criticisms (justified or not) of the earlier plan. Chelsea has filed a rule 60(b) motion with the PUC submitting the revised plans and asking the PUC to provide relief from its Denial Order. *See*, A1 *et seq.* Both the

Chelsea and Apple Hill projects have been significantly reduced in size through a combination of using higher wattage black-faced solar modules (which were not available when the original section 248 petition was filed), reducing row-to-row spacing, and decreasing the tilt angle of the modules. With additional adjustments to the plan at the Town's suggestion, the net result is that both projects would be completely screened from view from the public and the neighbors. Expert testimony on the revised site plans states that there is no adverse effect on aesthetics because the projects cannot be seen. *See*, A46-47, ¶¶58-59.

The PUC has already agreed to re-open the Apple Hill section 248 proceedings, *see* A201, and review the revised site plans for that project. After months of public comments, on August 14, 2017, the Bennington Select Board voted 5-1 to discontinue its opposition to the Apple Hill Solar project in PUC docket 8454 because the revised plans meet the requirements of the Bennington Town Plan. At the Select Board's public hearing, the Town of Bennington's counsel, Rob Woolmington, stated: "I never read the Town Plan as prohibiting all alternative energy everywhere in the [rural conservation] district. I think what they've done is consistent with what I see is the text of the Town Plan." *See*, A174.

The Select Board, however, voted to continue its opposition to Chelsea in this proceeding because the original plans are at issue, not the revised plans. A149. But there is no reason for the parties to continue litigating the original plans in this Court when Chelsea is willing to move forward with the revised plans submitted to the PUC in the rule 60(b) motion. Moreover, when the PUC issued the Denial Order in February 2016, it did not have the benefit of any input from the Town in the Chelsea proceeding. Now it does. That input is directly contrary to the PUC's blanket legal conclusion that the Town Plan bars commercial solar projects. On that particular

issue the following statement from the Town’s attorney at the August 14 public hearing is especially relevant:

the Town Plan I do not think can credibly be construed to bar alternative energy projects in the rural [conservation] district because of the preceden[ts], because of the language of the plan, because of the way the zoning by-laws allow specific uses in that area and because of the planning that’s been underway for the future that includes a number of properties in that area for solar energy.

See, A157.⁷

Thus a common sense approach to the current dispute is to remand the case to the PUC for further consideration of the revised plans. Remand makes even more sense in the current environment. The Governor’s Climate Action Commission was told last month that “Vermont is ‘nowhere near’ meeting goals set in law and policy to stem the state’s contribution to global climate change.”⁸ Further, everyday scientists urge immediate action to combat climate change.

B. The PUC Failed To Give Adequate Consideration To An Alternate Plan.

In *In re Jolley Assocs. (Town of Shelburne)*, 2006 VT 132, P13, this Court stated that “[r]emand is appropriate to return the matter [] for further consideration if the proposed use or site plan, or both, were [] subject to a different approach,” citing *Maple Tree Place*. (emphasis added.) That is precisely the case here as the revised site plans fully eliminate the bases for the

⁷ The PUC’s conclusion was also contradicted by the PUC’s approval of commercial solar projects in the Bennington RCON district both before and after the Denial Order. *See, e.g.*, CPG (#NMP-6523), October 15, 2015, Kobelia Bennington GLC Solar LLC, approving a solar project before the Denial Order; *see*, Exhibit B to Chelsea’s Motion for Mediation filed January 20, 2017, for the order approving one afterwards—Order approving CPG for ER Paper Mill Village Solar, LLC, November 17, 2016 .

⁸ *Vermont ‘nowhere near’ climate change goals, panel hears*, VT Digger, August 16, 2017, available at <https://vtdigger.org/2017/08/16/vermont-nowhere-near-climate-change-goals-panel-hears/>. (“‘We’re nowhere near achieving the type of (greenhouse gas) reductions we need to reach our goals,’ said Jeff Merrell, the Department of Environmental Conservation’s air quality planning section chief and a speaker at the task force meeting.”)

denial of the CPG. The PUC refused to give any consideration to the alternate plan proposed by Chelsea. The PUC's rationale was that because Chelsea proposed the alternate plan after the evidentiary record closed, it would not consider it.⁹ However, it is unclear when the PUC officially closed the record, if at all.

In the Motions Order, the PUC also suggested that Chelsea had an opportunity to completely revise the Project once the PUC issued its request for comments on Harris' claim that the project would violate the Town Plan. But it was not reasonable for Chelsea to have anticipated from the PUC's request for comments that the PUC (i) would ignore the two years of effort designing a project that was reviewed by experts including those of the Department, (ii) would ignore expert testimony and visual analysis in the record, (iii) would act contrary to its actions approving other projects approved in the RCON zone, (iv) would ignore the supplemental testimony of Chelsea's aesthetics expert, and (iv) would not adopt the hearing officer's conclusions on bases never raised by any party, and would do so all without proposing another decision or scheduling further evidentiary hearings.

⁹ The PUC's rationale, however, is less than clear. At one point the PUC states that "Chelsea's Motion to Amend the Petition is untimely under Rule 59(e) because it was offered after the [Denial] Order." A297, Motions Order at 22. Then the PUC stated: "Because the amendment was proposed after the evidentiary record closed, it is not appropriate to address the substance of this Motion to Amend the Petition as part of our reconsideration of the [Denial] Order. The Motion to Amend the Petition is therefore untimely." *Id.* Although it is not clear when, if at all, the record closed, the PUC's refusal to accept the amendment directly contradicts the plain language of PUC Rule 2.204(G). The PUC treated the amendment as a motion to amend, but unlike VRCP 15, Rule 2.204(G) does not require consent or a motion for an amendment. Rather Rule 2.204(G) is self-executing and expressly permits amendments "at any time," and the only basis on which the Rule disallows an amendment is if the PUC affirmatively finds that the amendment has "the effect of unreasonably delaying any proceeding" or that it would "unreasonably adversely affect[] the rights of any party." No such findings were made by the PUC. No party objected to the amendment within the ten-day period stated in rule 2.204(G).

C. The PUC Acted On Incomplete Information.

Prior to the issuance of the Denial Order, the PUC realized that it was going to issue the Denial Order based upon incomplete information. The PUC realized from Chelsea's submission in January 2016 on the Town Plan issue that the PUC did not have the complete Town Plan or complete regional plan. The PUC also realized from the Bennington by-laws submitted at that time that it did not have the full picture of the intention of the Town Plan because the by-laws provided the guidelines as to the Town Plan's development criteria in the RCON zone. In addition, as the PUC conceded in the Motions Order, it did not have a real grasp on the facts and fudged calculations in order to reconcile certain facts in the proposed decision with its own analysis. A287, fn. 26.

Crucially, in the Motions Order the PUC admitted that it was basing its decision on superseded testimony. The PUC's rationale for disagreeing with the hearing officer's proposed findings regarding aesthetics and orderly development rested on the Project allegedly violating three criteria in the Bennington Town Plan related to development in the Bennington RCON zone, which is where the Project site sits. *First*, the PUC found that development in the RCON zone was limited to "limited residential development" and thus a commercial ground-mount solar project such as the Project was prohibited in the RCON zone. *Second*, the PUC found that the Project violated the Town Plan criterion that prohibits development "in prominently visible locations on hillsides and ridgelines" in the RCON zone. *Third*, the PUC found that the Project violated the Town Plan criteria that "any development must minimize the clearing of natural vegetation."

The first basis has been discredited by the Town. As stated above, the Town Attorney has publicly stated that the PUC's finding that commercial grounded-mounted solar is not

permitted in the RCON zone under the Town Plan *is simply not credible*. See, A157. As to the second basis, as argued above, the PUC (i) ignored the supplemental testimony of Mark Kane, which superseded what was relied on by the PUC, (ii) ignored the plain language of the Town Plan by equating mere alleged “visibility” with being in a “prominently visible location[] on [a] hillside[],” A290, and (iii) ignored the evidence that Chelsea did submit in connection with its January 2016 comments. Had the Commission accounted for the supplemental testimony and actual evidence, as Kane explains, there is “no reasonable basis to conclude that the Project even as originally proposed was sited in a prominently visible location on a hillside or ridgeline as it would be barely visible.” See, A28, ¶13. The PUC’s second basis is simply not credible either.

The end result is that the PUC’s disagreement with the hearing officer’s proposed findings relies solely on the vagaries of a statement that development in the RCON zone must “minimize clearing”. Even the PUC has failed to explain what type of standard that really is, how it could possibly be a clear and unambiguous standard, how it applies to the Project, and how the Project allegedly fails it.¹⁰

Whether any of that information would be decisive is for the PUC to determine in the first instance. Accordingly, remand is appropriate on that basis as well.

¹⁰ The Chelsea site’s usefulness for solar was emphasized in a recent email by Bennington Select Board Vice Chair, Don Campbell, to Libby Harris, a copy of which was provided by Harris:

“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.”

See A186.

D. Remand Is Required To Avoid Unconstitutional Selective Enforcement.

To make matters worse, in the Motions Order the PUC admitted to selective enforcement of its view of the allegedly violated provisions of the Bennington Town Plan. The PUC's explanation for its different treatment of Chelsea as compared to other solar projects it approved in the Bennington RCON zone before its denial of the CPG for Chelsea, was that no one complained.¹¹ As this Court acknowledged in *In re G.T.*, 170 Vt. 507 (2000), such an explanation is the paradigm of unconstitutional discrimination and selective enforcement. See, *id.* at 514 citing *People v. Acme Markets, Inc.*, 37 N.Y.2d 326, 334 N.E.2d 555, 558, 372 N.Y.S.2d 590 (N.Y. 1975) (discriminatory enforcement found where Sunday sales law was unenforced, save upon complaint). The parallel between the *Acme Markets* case and this case is striking. In *Acme Markets* the Sunday sales law was enforced only upon complaint, which turned it into a tool for private purposes. Here, both before and after it denied Chelsea a CPG, the PUC issued CPGs for solar projects in the RCON zone, a result directly at odds with the basis for its denial here that putting solar facilities in the RCON zone violates the Town Plan.

II. Remand Is Appropriate Under 3 V.S.A. §815(b).

Remand to the PUC to take additional evidence is appropriate if (1) “the additional evidence is material” and (2) “there were good reasons for failure to present it in the proceeding before the [PUC].”

¹¹ In the Motions Order, the PUC only mentioned its decisions rendered prior to the Denial Order. See A294, Motion Order at 19, fn. 48. The PUC did not address the fact that even after it issued its well-publicized Denial Order, and Chelsea filed its various post-order motions, the PUC continued to issue CPGs to commercial utility scale solar projects in the RCON zone. This was pointed out to the PUC in Chelsea's motion for mediation filed on January 20, 2017. In that motion Chelsea attached the PUC's order dated November 17, 2016, issuing a CPG for a commercial utility-scale solar facility in the RCON district.

A. The Additional Evidence Is Material.

Chelsea meets the two-prong test for remand under 3 V.S.A. §815(b). The evidence Chelsea wishes the PUC to consider is certainly material, as it eliminates the bases for the PUC's denial. The evidence Chelsea wishes to present and have the PUC consider is contained in its rule 60(b) motion (A1 *et seq.*) and includes:

1. The revised plan for the Project (and the affirmations related thereto) which eliminates all potentially adverse effects to aesthetics, thus eliminating the bases under 248(b)(1) and 248(b)(5) (whether correct or not) for the denial of the CPG;
2. The Town's position with respect to compliance with the Town Plan of the revised Apple Hill plans, which in all material respects are the same as the Chelsea proposed plan;
3. The publicly stated legal position of the Town discrediting the primary basis for the PUC's denial of the CPG, all of which are equally applicable to the Chelsea project;
4. The PUC's approval (subsequent to the Denial Order) of a utility scale solar project in the RCON zone;
5. The full Town Plan and Regional Plan which set forth a multitude of goals that support the project; and
6. Chelsea's expert's supplemental testimony, which the PUC has admitted it failed to consider, and the affirmations explaining to the PUC the consequences of its failure.

B. There Were Good Reasons For Failure To Present The Additional Evidence.

This Court has stated that it is good policy for applicants to resolve differences by amending projects to respond to issues raised by interested participants. *See, In Re Chaves A250 Permit*, 2014 VT 5 (2014) at P16. ("Applicants are encouraged to resolve differences with

interested parties by amending a project to respond to issue.”) This Court has also stated that it would not allow parties to bide their “time for months during complex, lengthy, and expensive proceedings, and then attempt an ambush when those proceedings draw to a close.” *In Re Lakatos*, 2007 VT 114 (2007) at P9 quoting *In Re Burlington Elec. Dep’t*, 141 Vt. 540, 547 (1982).

This case involved a lengthy section 248 process, including a technical hearing, and the issuance of a proposed favorable decision by the hearing officer during which no party at the hearing (or at any time prior to the hearing) raised the issue of whether putting a commercial ground-mounted utility-scale solar project in the Bennington RCON zone was contrary to the Town Plan. It would not be reasonable to conclude that Chelsea should have been aware that the PUC was considering ruling against it, particularly on issues never raised by any party, and that Chelsea’s last chance to amend its CPG application to address the perceived shortcomings (especially those raised *sua sponte* by the PUC) would slip away within a few weeks. That is particularly so given the PUC’s prior approvals for CPGs in the RCON zone, and as argued above, the fact that the Harris comments did not raise the primary two bases ultimately relied on by the PUC. There is certainly good reasons for not presenting evidence to rebut a claim when the claim was never made.

Had the PUC issued a revised proposed decision adverse to Chelsea, or at the very least provided some clear notice to Chelsea as to its intentions, then an amendment with the revised plans would have been filed earlier, and the additional evidence that it wishes to present would have been presented earlier.

III. Remand Is Appropriate Because The PUC Failed To Afford Chelsea Its Procedural Rights Under 3 V.S.A. §811.

A remand is required because the record does not show a majority of the PUC commissioners heard the case or read the record. Under the plain language of 3 VSA §811, a majority of the PUC commissioners must have either heard the case or read the record, if it issues a final decision without first issuing an adverse proposed decision. No commissioner heard the case, as the case was heard by a hearing officer. And despite multiple requests, the PUC has refused to state whether a majority of the commissioners “read the record.” Instead the PUC has taken the position that the due process rights guaranteed under 3 VSA §811 simply do not apply to the PUC. A285. Such a position is plainly contradicted by the language of the statute. It is also contrary to this Court’s holding that the Public Utility Commission is only freed from the due process requirements of 3 VSA §811 if a majority of the commissioners either hear the case or read the record. *See, Vermont Elec. Power Co., Inc. v. Bandell*, 135 Vt. 141, 147 (1977) (section 3 VSA §811 does not apply if “the Board does read the record or hear the case, or both.”)

To make matters worse, the PUC’s failure to observe the procedural safeguards of 3 VSA §811, led directly to the PUC concluding that it had the ability to dismiss the amendment Chelsea filed in which Chelsea proposed revised site plans, as compared to the Apple Hill case where it has realized the amended plans should be reviewed. Thus the PUC refused to give Chelsea the opportunity to present an alternate configuration to address the two issues raised by the PUC in the Denial Order—compliance with orderly development of the region (§248(b)(1)) and aesthetics (§248(b)(5)), both of which were never raised as an issue by any party prior to the issuance of the hearing officer’s proposed decision approving the CPG for the project, and in the

case of §248(b)(1) was an issue never raised by any party (including the PUC) prior to the PUC's decision.

Under 30 V.S.A. § 8, the chairman of the PUC may appoint a hearing officer to inquire into and examine any matter within the jurisdiction of the PUC. That was done in this proceeding. 3 V.S.A. § 811 states that, "[w]hen in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding [] shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to *each party adversely affected* to file exceptions and present briefs and oral argument to the officials who are to render the decision." (emphasis added.)

The PUC held that only the hearing officer was bound by 3 VSA §811 and that the PUC is not. A285. There is no question that the hearing officer issued a proposed decision, but that decision was not adverse to Chelsea. It is also true that under 3 VSA §811, the PUC is permitted to adopt all, part or none of the hearing officer's decision and issue its own decision. But the PUC's ability to issue its own decision that is adverse to Chelsea is constrained by 3 VSA §811, constraints which the PUC ignored.

There is no dispute that this case is a contested case, and that a majority of the officials of the PUC who rendered the final decision did not hear the case. In such a circumstance, under 3 VSA §811, the PUC can only be freed of the requirement to issue its own proposed decision adverse to Chelsea if a majority of the PUC commissioners "read the record." The "record," i.e., what must be read, is clearly defined in 3 VSA §809(e), which defines the "record" as including "(1) all pleadings, motions, intermediate rulings; (2) all evidence received or considered; (3) a

statement of matters officially noticed; (4) questions and offers of proof, objections, and rulings thereon; (5) proposed findings and exceptions; and (6) any decision, opinion, or report.”

In its motion to vacate the Denial Order for failure to comply with the requirements of 3 VSA §811, Chelsea pointed out that the PUC had not stated that a majority of the PUC commissioners “read the record.” In response the Department pointed out that there is no requirement in section 811 that the PUC state whether, or which, commissioners “read the record.” While true, that misses the point. This Court cannot adequately review whether section 811 has been complied with without such a statement. In its reply to the Department, Chelsea asked that the PUC simply state which PUC commissioners “read the record.” As stated in that reply, there was no reason to debate the issue of whether a majority of the PUC commissioners read the record because the PUC commissioners can simply clarify the issue by declaration or a statement.

Tellingly, in its Motions Order, the PUC refused to answer the question of whether a majority of the PUC commissioners read the record. Instead the PUC ignored the plain language of section 811 stating: “nothing in Section 811 requires the PUC to circulate a draft of its final decision.” A285, Motions Order at 10. The PUC’s avoidance of the question creates the inference that it cannot give the response required by section 811. The PUC’s conclusion also ignores the plain language of section 811. The PUC has denied Chelsea, as a party adversely affected by the decision, the right to “file exceptions and present briefs and oral argument to the officials who are to render the decision.” Making matters worse, the PUC dismissed the amendment to the site plan only because it had issued an order denying the CPG.

The procedural protections in section 811 are substantial rights which must be “scrupulously observed and impartially administered.” *See, In re State Aid Highway No. 1*, 133

VT 4, 11 (1974) (discussing 3 V.S.A. § 811: “Environmental laws affect very substantial rights, and it is vital that the procedures under which they are enforced be scrupulously observed and impartially administered. Any failure in this respect can quickly rise to constitutional dimensions.”)

The PUC has essentially conceded it did not follow the requirements of section 811 because it held that “section only requires that a hearing officer’s proposal for decision be circulated. Nowhere in that section does it require that the PUC, as the decision maker, circulate a draft of its determination.” A284, Motions Order at 9. This Court should remand the case to the PUC ordering the PUC to clarify whether a majority of the PUC commissioners “read the record.” If the PUC cannot affirmatively state that a majority of the PUC commissioners read the record, as such term is comprehensively defined by 3 VSA §809(e), then the PUC should be required to vacate the Denial Order and issue a revised proposed decision or consider the revised plans. Anything less would require this Court to engage in speculation as to whether a majority of the PUC commissioners “read the record.”

CONCLUSION

For the above reasons, this Court should vacate the Denial Order and remand this case to the PUC.

Dated: September 9, 2017



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ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-195

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

NOVEMBER TERM, 2017

NOV 08 2017

In re Petition of Chelsea Solar LLC
(Allco Renewable Energy Limited*)

} APPEALED FROM:
}
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} Public Utility Commission
}
} DOCKET NO. 8302
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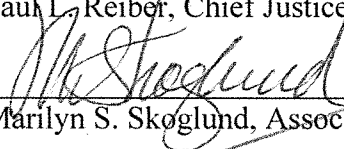
In the above-entitled cause, the Clerk will enter:

Pursuant to appellant's request, the above-captioned appeal is dismissed.

BY THE COURT:



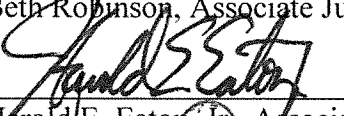
Paul L. Reiber, Chief Justice



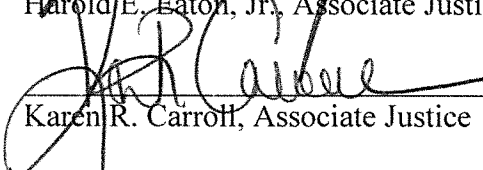
Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice

EXHIBIT C

**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 DIRECT TESTIMONY
OF BRAD WILSON
ON BEHALF OF PETITIONER**

November 27, 2017

EXHIBITS

Exhibit CS-BW-1	Resume of Brad Wilson
Exhibit CS-BW-2	Clearing Boundary Comparison
Exhibit CS-BW-3	Project Footprint Comparison
Exhibit CS-BW-4	45-Day Notice Materials
Exhibit CS-BW-5	ALTA Survey of Project Parcel
Exhibit CS-BW-6	Vicinity Map of Project Parcel
Exhibit CS-BW-7	Aerial View of Project Parcel
Exhibit CS-BW-8	Decommissioning Plan
Exhibit CS-BW-9	System Impact Study
Exhibit CS-BW-10	Interconnection Agreement
Exhibit CS-BW-11	Interconnection Map
Exhibit CS-BW-12	Transcript of 08.14.17 Bennington Select Board Meeting
Exhibit CS-BW-13	Comments from BCRC Energy Committee
Exhibit CS-BW-14	Bennington County Regional Plan
Exhibit CS-BW-15	Bennington County Regional Energy Plan
Exhibit CS-BW-16	Email from VT DHP and 02.11.15 DHP Letter
Exhibit CS-BW-17	Email from Don Campbell to Libby Harris
Exhibit CS-BW-18	Bennington Solar Screening Ordinance
Exhibit CS-BW-19	Bennington Solar Facility Siting Amendment
Exhibit CS-BW-20	Bennington Letter to PUC re Paper Mill Solar Project
Exhibit CS-BW-21	Photo of Paper Mill Solar Project
Exhibit CS-BW-22	Photo of ER Bennington Solar Project
Exhibit CS-BW-23	Bennington Town Plan
Exhibit CS-BW-24	Bennington Scenic Resource Inventory
Exhibit CS-BW-25	Deposition of Dan Monks for the Town of Bennington
Exhibit CS-BW-26	Bennington RCON Design Standards
Exhibit CS-BW-27	Bennington Land Use Regulations

1 **Q1. Please state your name, occupation, and business address.**

2 A1. My name is Brad Wilson. I am a Project Developer at Ecos Energy LLC (“Ecos”). My
3 business address is 222 South 9th Street, Suite 1600, Minneapolis, Minnesota 55402. Ecos and
4 the Petitioner are sister companies under indirect common ownership.

5

6 **Q2. Please describe your educational background and work experience.**

7 A2. I received a Bachelor of Science degree in Environmental Science, Policy, & Management
8 from the University of Minnesota. In 2010, I joined the project development team at Ecos. Ecos
9 provides project development and operations support services for utility-scale solar projects. In
10 my role as Project Developer, I perform work in all phases of the development of ground-mounted
11 utility-scale photovoltaic (“PV”) solar projects. I specialize in project design, permitting &
12 community outreach, project construction, and project operation. I have been directly involved,
13 from concept through operation, in the development of 21 currently-operational solar generating
14 facilities with a combined nameplate generating capacity of 43 megawatts (“MW”), including one
15 in Vermont (the Sudbury Solar Project in Sudbury, VT). A copy of my resume is included as
16 *Exhibit CS-BW-1*.

17

18 **Q3. Have you previously testified before the Public Utility Commission or in other**
19 **judicial or administrative proceedings?**

20 A3. Yes. I have testified on multiple other ground-mounted solar projects before the Public
21 Utility Commission, including the Sudbury Solar Project (PUC Docket No. 8225), the Apple Hill
22 Solar Project (PUC Docket No. 8454), the Otter Creek 1 Solar Project (PUC Docket No. 8797),

1 the Otter Creek 2 Solar Project (PUC Docket No. 8798), and the Battle Creek 1 Solar Project (PUC
2 Docket No. 17-3727-PET).

3
4 **Q4. What is the purpose of your testimony?**

5 A4. My testimony introduces the Chelsea Solar Project (the “Project”), and it introduces the
6 testimony and exhibits being provided by Dori Barton, Ian Jewkes, Mark Kane, Harnoor Dhaliwal,
7 Ryan Haac, and Scott Reynolds. My testimony describes details regarding Project design,
8 construction, operation, and decommissioning. My testimony details the community outreach
9 undertaken by Chelsea Solar LLC (the “Petitioner”) during the development of the Project site
10 design prior to the filing of this petition for a Certificate of Public Good (“CPG”) under 30 V.S.A.
11 § 248. My testimony describes the Project’s compliance with specific elements of certain
12 municipal and regional plans. In addition, my testimony discusses the Project’s compliance with
13 the relevant statutory criteria under 30 V.S.A. § 248, 10 V.S.A. § 6086, and 10 V.S.A. § 6001.

14
15 **Q5. Can you briefly describe how the Project differs from the project that was the**
16 **subject of PUC docket 8302?**

17 A5. The design of the Project is an amended version of the design for the project that was the
18 subject of PUC docket 8302. The amended design significantly reduces the Project’s footprint and
19 clearing area compared to the original design in docket 8302. The reduced clearing results in
20 increased setbacks and substantial vegetation being retained which naturally screens the Project.
21 The design for the Project’s generation facility sits completely within the footprint reviewed
22 previously in docket 8302. However, portions of the Project’s access road corridor (and associated

clearing area) sits outside of the original clearing and Project footprint boundaries. See the included *Exhibit CS-BW-2* for a comparison of clearing boundaries between the original and amended site plans. See the included *Exhibit CS-BW-3* for a comparison of Project footprint boundaries between the original and amended site plans. Versus the original plans in docket 8302, the amended plans also reduce the Project's equipment profile as described later in my testimony. The footprint reduction was accomplished by switching to the use of higher-wattage solar modules, reducing the module tilt angle, and reducing the amount of space between each row of module racking. Fencing height has been increased to 10-feet so that a partially-opaque mesh screening material can be used in certain locations for aesthetics purposes. The amended plans also call for a different method of clearing the site to reduce impact; specifically cutting stumps off at ground level and leaving them in place in most locations rather than site-wide mechanized grubbing.

Q6. Did the Petitioner submit a 45-day advance notice filing for the Project in accordance with 30 V.S.A. § 248(f)?

A6. Yes. 45-day advance notice documents for the Project were delivered to the required parties on October 13, 2017. A copy of these documents and confirmation of delivery is included as *Exhibit CS-BW-4*.

Q7. Please generally describe the Project.

A7. The Project is a 2.0 MW ground-mounted PV solar electricity generation facility located on a portion of a 27.3 acre parcel of land in the town of Bennington, Vermont. The generator portion of the Project sits entirely within the boundaries of the project boundaries proposed in

1 docket 8302. The Project utilizes crystalline silicon PV solar modules to convert solar radiation
2 to electricity. Through a grid interconnection, that electricity would be placed onto the distribution
3 circuit of a local electric utility (Green Mountain Power (“GMP”) in this case) and would be sold
4 under a long-term standard offer power purchase agreement (“PPA”) to VEPP, Inc. The Project
5 is simple in its design and construction, and it consists of only a few major elements. The primary
6 component of the Project is an array of PV solar modules. These modules perform the work of
7 converting solar radiation into direct-current (“DC”) electricity. These modules are of the
8 crystalline silicon variety, which is the most common type of solar module and widely used on top
9 of homes, on top of businesses, and within other ground-mounted solar projects across Vermont.
10 The Project is designed to use a higher-wattage variety of crystalline silicon solar module widely
11 known as “mono PERC.” The solar cells used in a mono PERC module have a dark black color,
12 as opposed to the blue color seen in the more common polysilicon variety of solar module. The
13 modules are positioned above the ground and held in place by a steel and aluminum racking
14 system. The racking system groups the modules into multiple rows that run west to east. The
15 racking system orients the modules facing directly south at a tilt angle of 15 degrees. The racking
16 system is “fixed-tilt,” meaning that the modules are held in a fixed position and do not move during
17 the course of a day; there are no moving parts or pieces within the racking system. The racking
18 system is planned to be supported above the ground by galvanized steel h-beams that are driven
19 directly into the soil. The h-beams are designed to allow for 36 inches of clearance between the
20 ground surface and the lowest edge of the solar modules. In this arrangement, the solar modules
21 will reach a maximum height of approximately 7 to 8 feet above the ground surface at their highest
22 edge. A cross-section illustration of the racking system can be found on Sheet 102 of *Exhibit CS-*

1 **IJ-2**, which is included with the Prefiled Testimony of Ian Jewkes in this docket. The majority of
2 the Project footprint is comprised of the rows of racking and modules. Solar modules are
3 connected to a number of “string” dc-to-ac inverters, located behind the racking rows, throughout
4 the array. Underground collection wiring connects the inverters to an equipment skid located along
5 the northern boundary of the solar module array. This equipment skid will house the switchboard,
6 transformer, and communications/monitoring equipment for the Project. The skid supports the
7 equipment atop a pre-fabricated steel floor that includes a secondary transformer oil containment
8 system built into the base. The major equipment cabinets on the skid, as well as the skid frame
9 and floor, will be painted ANSI 61 dark gray. Underground cabling will connect the skid location
10 to a set of pole-mounted utility equipment located at the southeastern corner of the Project
11 footprint. Here, the utility interconnection equipment will be installed and the Project output
12 cabling will run above-ground and ultimately connect with the existing GMP electric circuit that
13 runs overhead along Willow Road at the southern boundary of the Project property. The Project
14 also includes a 14-foot wide gravel private access driveway that extends south approximately 850
15 feet from Willow Road to the Project equipment skid location. A 10-foot high security fence will
16 surround the perimeter of the Project. The fence will utilize metal fence posts and chain-link style
17 fencing fabric. No barbed wire will be used atop the perimeter fence, and a padlocked vehicle gate
18 will control access through the fence at the access driveway entrance near the equipment skid.
19 Certain portions of the fenceline will also be covered with a partially opaque mesh screening
20 material, which is described in more detail in the Prefiled Testimony of Mark Kane in this docket.
21 Within the Project footprint, ground-cover will consist of mulch, periodically-mown native grass
22 mix, and existing brush vegetation. There are no other major Project components. The area inside

1 the perimeter fence (the “Project Site”) will cover approximately 7.1 acres with the solar modules
2 occupying approximately 3.34 acres. The Project’s overall site plan is detailed in ***Exhibit CS-IJ-***
3 ***2***, which is included with the Prefiled Testimony of Ian Jewkes in this docket.

4
5 **Q8. Where is the Project located?**

6 A8. The Project is located on a portion of a 27.3 acre parcel of land in the town of Bennington,
7 Vermont. The ALTA survey for the entire 27.3 acre parcel (the “Parcel”) is included as ***Exhibit***
8 ***CS-BW-5***, a vicinity map is included as ***Exhibit CS-BW-6***, and an aerial view of the Parcel is
9 included as ***Exhibit CS-BW-7***. The Parcel is located in the northern area of the Town and is
10 situated within the northeastern quadrant of the Route 7 / Route 279 interchange. The Parcel is
11 accessed via Willow Road, which is a public road that intersects the Parcel’s southern boundary.
12 The Parcel is vacant, containing no structures. The Parcel can be identified with the GPS
13 Coordinates 42.9083, -73.2059. Decades ago, portions of the Parcel were used as grazing pasture;
14 however, currently the Parcel is almost entirely covered in a mix of existing invasive species and
15 forest-type vegetation. The Parcel contains a small segment of Class II wetlands in the
16 southwestern corner, which are entirely avoided by the Project. Please refer to the Prefiled
17 Testimony of Dori Barton and related exhibits in this docket for a more detailed description of the
18 ecological characteristics of the Parcel and Project Site. The solar array portion of the Project site
19 slopes gently to the southwest at an average slope around 8%. It is that slope together with the
20 proximity to existing hedgerows and other topographical features that naturally screen the Project.
21 Please refer to the Prefiled Testimony of Ian Jewkes and related exhibits in this docket for a more
22 detailed description of the civil and topographical characteristics of the Parcel and Project Site.

1 The Parcel is located within the Rural Conservation Land Use District in the Bennington Town
2 Plan and the Rural Conservation Zoning District in the Bennington Land Use Regulations. The
3 Project Site is bounded (i) on the west by the Route 7 corridor, (ii) on the south by the Route 279
4 / Route 7 interchange, (iii) on the north by existing residential uses, and (iv) on the east by an old
5 apple orchard, no longer in use. Please refer to the Prefiled Testimony of Mark Kane and related
6 exhibits in this docket for a further description of the Parcel and Project Site's land use designation
7 and neighboring land uses. The Petitioner will lease the land necessary for the Project from the
8 owner of the Project Site, PLH LLC ("PLH") (PLH LLC and Chelsea Solar LLC are indirectly
9 under common ownership).

10
11 **Q9. Please describe the construction phase of the Project.**

12 A9. Given that the Project Site is currently vegetated, an area for the Project footprint must be
13 cleared of existing vegetation prior to the commencement of Project construction. The area to be
14 cleared for the Project is estimated to be 9.64 acres. The area to be cleared is the minimum needed
15 for the construction and efficient operation of the Project. The boundary of this clearing area is
16 detailed on Sheet 103 of *Exhibit CS-IJ-2*, which is included with the Prefiled Testimony of Ian
17 Jewkes in this docket. Also please refer to the Prefiled Testimony of Ian Jewkes for a more detailed
18 description of how these clearing activities will be performed. Vehicles and equipment associated
19 with the clearing work will access the site via the vehicle access driveway off of Willow Road.
20 Vehicle traffic could vary from day to day, but may reach up to a maximum of 6 heavy trucks and
21 30 passenger vehicles to and from the site per day. Average traffic per day over the course of the
22 clearing phase would likely be substantially less than this. The clearing work will take up to 1 to

1 2 months to complete, depending on site conditions and weather conditions. Construction of the
2 vehicle access driveway would occur in tandem with site clearing activities, as the driveway would
3 be used to access the site. Clearing activities will be limited to Monday through Friday, 8:00 AM
4 to 5:00 PM, with no work on Saturdays, Sundays, or state/national holidays. If possible, the
5 Petitioner would prefer to commence this work no later than April 15, 2017. Once the site clearing
6 work is complete, the Project Site will be ready for construction of the actual solar facility. Project
7 construction will take an estimated 2 to 4 months to complete, depending on site conditions and
8 weather conditions. The construction activities for this Project using motorized machinery will be
9 limited to between the hours of 8:00 AM and 5:00 PM Monday through Friday. Non-machinery
10 construction activities will be limited to between the hours of 7:00 AM and 6:00 PM Monday
11 through Friday and 8:00 AM to 5:00 PM on Saturdays and Sundays. Although generally work on
12 Sundays is not anticipated, we are not certain as to when a CPG for this Project might be issued in
13 relation to the Project completion deadline in the PPA. Therefore, we propose quiet non-
14 machinery work on Sundays so that option is available if needed to meet the construction
15 completion deadline. No construction activities will occur on state/federal holidays. Vehicles and
16 equipment associated with the construction work will access the site via the vehicle access
17 driveway off of Willow Road. Vehicle traffic could vary from day to day, but may reach up to a
18 maximum of 4 heavy trucks and 40 passenger vehicles to and from the site per day. Average
19 traffic per day over the course of the construction phase would be less than this. In particular,
20 most days would see no heavy truck traffic whatsoever, as those are associated with equipment
21 deliveries to the site. Project construction will begin with the site grading activities to complete
22 the gravel access driveway and to perform the contour smoothing in the southeastern portion of

1 the Project. Once grading is complete, Project equipment will be physically installed, including
2 pier supports, racking, modules, equipment skids, wiring, security fence, and interconnection
3 equipment. After the Project equipment is installed, the Project Site will be cleaned up and
4 landscaping work performed, which includes re-seeding disturbed areas with a native grass mix.
5 Once all Project components are in place, the Project can be connected to the utility distribution
6 grid and commissioned to begin full operation.

7
8 **Q10. Please describe the operation phase of the Project.**

9 A10. Once Project construction and commissioning are complete, the Project will begin
10 operation. The Project will operate 24 hours a day, 7 days a week, although it will only generate
11 electricity during daylight hours. The Project is an unmanned facility; it is designed to operate
12 correctly without personnel onsite. There will not be personnel visiting the site on a daily or even
13 weekly basis. Maintenance personnel may visit the site approximately twice a month on average
14 to perform equipment testing or repairs. Periodically, grounds-keeping personnel may visit the
15 site approximately once every five weeks on average (during the non-winter months) to mow the
16 ground cover. Vehicle traffic due to these visits would be limited to passenger vehicles with
17 trailers, unless in the event of a major equipment malfunction. Washing of the solar modules is
18 not anticipated in the Vermont environment, but if module washing is needed, that would be
19 performed with only water (no solvents) that is trucked in from offsite. Other than some cooling
20 fans within the string inverters, there are no moving parts during Project operation. Project
21 operation generates no waste of any kind – liquid, solid, or gas. Noise generated during Project
22 operation is minimal. Please refer to the Prefiled Testimony of Ryan Haac for a more detailed

1 description of the Project's potential operational noise impacts. The Project includes a robust set
2 of monitoring, metering, and communications equipment. All aspects of Project equipment
3 operation will be monitored via internet connection from a remote location, and any equipment
4 problems will result in immediate notifications being sent to maintenance personnel. The Project
5 Site will be monitored by a set of infrared, motion-sensitive video security cameras which will
6 alert maintenance personnel to any unauthorized persons trespassing within the Project Site area.

7
8 **Q11. Please describe the decommissioning phase of the Project.**

9 A11. Most of the equipment installed for the Project carries a manufacturer warranty of 25 years,
10 however up to 40 years of useful life for the Project equipment is anticipated. At the end of the
11 Project's useful life, the Project would be decommissioned. Decommissioning involves the
12 removal of Project equipment from the site, restoration of any stockpiled soils, revegetation, and
13 restoration of the Project Site to a natural state. During decommissioning, all above-ground
14 electrical equipment would be removed from the site and taken to the appropriate nearby materials
15 recycling facility. This includes solar modules, racking, foundation posts, combiner boxes, and
16 equipment skids. Most of the Project components can be recycled for their base materials.
17 Underground conduits, wiring, and foundation posts will be cut off at a depth of 24 inches below
18 ground surface level and backfilled. Concrete foundations for the equipment skid would be
19 removed entirely. The gravel access driveway and perimeter security fence may remain, as those
20 elements may offer some benefit to future uses of the Project Site. Once the Project equipment is
21 removed, any stockpiled soils on the site would be restored. Then, the site would be re-seeded for
22 natural vegetation ground-cover and monitored for invasive species for a period of one year. To

1 provide assurance to the PUC that the decommissioning activities would be performed at the end
2 of the Project's useful life, the Petitioner will agree to create a decommissioning fund at its own
3 expense prior to the commencement of Project construction. The decommissioning fund would
4 be an escrow account or letter of credit, funded by the Petitioner, with the PUC named as
5 beneficiary. If the Petitioner fails to execute the decommissioning plan as required, these funds
6 would be released to the PUC for the purpose of covering the cost of the decommissioning
7 activities. However, if the Petitioner does execute the decommissioning plan, as is anticipated,
8 then those funds are released back to the Petitioner. A decommissioning plan is included as
9 ***Exhibit CS-BW-8***. This document was prepared in a format that has been previously approved by
10 the PUC and the Department of Public Service ("DPS") in other solar project dockets. This
11 document provides more detail about the decommissioning process and the decommissioning
12 fund, as well as providing an estimated amount to perform the decommissioning activities. This
13 amount matches the approximate dollar amount-per-MW that has been approved by the PUC and
14 DPS in previous other solar project dockets. I have also reviewed this dollar amount and
15 determined it to be reasonable for the proposed activities.

16
17 **Q12. How will the Project interconnect to the electric distribution grid?**

18 A12. The Project will interconnect to a GMP overhead distribution line that runs up to the
19 Parcel's southern boundary along Willow Road. This line is apparently identified by GMP as
20 "Line 2136," which is part of distribution circuit "MS50," which connects to the "Mill Street
21 Substation." This is a three-phase circuit with a voltage of 12.47 kV. The Petitioner submitted
22 an interconnection application for the Project to GMP in May of 2013. GMP evaluated the

1 proposed interconnection and generated a System Impact Study. The System Impact Study is
2 included as **Exhibit CS-BW-9**. The Petitioner has entered into an executed Interconnection
3 Agreement for the Project with GMP and made payment to GMP for all interconnection costs.
4 The Interconnection Agreement is included as **Exhibit CS-BW-10**. An executed interconnection
5 agreement means that GMP has evaluated the proposed Project and determined that, after the
6 implementation of the identified system upgrades, interconnection of the proposed Project can be
7 safely and reliably done in accordance with good utility practice and Federal and State standards
8 and will not result in any adverse impacts to the electrical grid or any degradation of reliability.
9 The existing overhead circuit along a portion of Willow Road near the Parcel is currently a single-
10 phase line. Per the upgrades detailed in the Facilities Report, a section of new overhead three-
11 phase line will be installed along a portion of Willow Road and Hewitt Drive. The portion of new
12 line will connect with existing three-phase overhead line along East Road. A map detailing the
13 location of the new line is included as **Exhibit CS-BW-11**. There will be approximately 20 new
14 poles required for this portion of new line; the new poles will be approximately 38 feet in height.
15 A set of pole-mounted protection and metering equipment will be installed on three poles located
16 within the southern portion of the Project array as shown on the Project site plan. Please refer to
17 the Prefiled Testimony of Dori Barton in this docket for a description of potential ecological
18 impacts of the GMP line extension. Please refer to the Prefiled Testimony of Mark Kane in this
19 docket for an aesthetic review of the GMP line extension, which Mark Kane has concluded would
20 not be adverse. While the GMP line extension and associated equipment will serve the Project
21 Site once installed, it will remain an element of public utility infrastructure. The line extension

1 will not be owned or controlled by the Petitioner, and other landowners along the line extension's
2 route may utilize it.

3
4 **Q13. How will the Petitioner sell the electricity that is generated by the Project?**

5 A13. The Project will sell the electricity under the PPA with VEPP, Inc., which provides a fixed
6 rate for the sale of all electricity and renewable energy credits generated by the Project for a period
7 of 25 years.

8
9 **Q14. Will the Project generate Renewable Energy Credits?**

10 A14. Yes. For every 1 megawatt-hour ("MWh") of electricity that the Project generates, the
11 Project will also produce 1 Renewable Energy Credit ("REC"). RECs are tradable and non-
12 tangible units that represent the environmental benefit attributes of 1 MWh of electricity that has
13 been generated by a renewable energy source (rather than a fossil-fuel based source). Per 30 V.S.A
14 § 8001 through 30 V.S.A § 8010, the Project is a distributed renewable generation resource and
15 RECs from the Project are eligible to count towards the Vermont Renewable Energy Standard
16 ("RES") goals, as long as they are transferred to and then retired by a Vermont retail electricity
17 provider. RECs generated by the Project will be transferred to VEPP, Inc. under the terms of the
18 Project's PPA.

19
20 **Q15. How much electricity will the Project generate annually?**

21 A15. The Project will generate an (estimated) 3,350 MWh of electricity annually. This amount
22 matches up to the annual electricity usage of approximately 491 average Vermont homes. This is

1 an average estimate, and Project performance will vary closely in line with local weather
2 conditions. Some years may see lower performance and some years may see higher performance.
3 This number is an estimate, not a guarantee.

4
5 **Q16. Has the Petitioner received feedback from any neighbors, Town boards, Regional**
6 **commissions, or State agencies?**

7 A16. Yes. Due to the history of the development of the Project, the Petitioner has had multiple
8 opportunities to discuss the Project with the Town of Bennington, Bennington County Regional
9 Commission, neighboring property owners, the Vermont Department of Public Service (“DPS”),
10 the Agency of Natural Resources (“ANR”), and the Vermont Division for Historic Preservation
11 (“DHP”). Part of the history of those discussions are part of the record in PUC docket 8302. For
12 the better part of the last year, Petitioner has continued to engage neighbors and the Town of
13 Bennington to address their concerns and to ensure the Project and the neighboring Apple Hill
14 Solar Project (docket 8454) would be adequately screened from the public or the neighbors. The
15 Project plans submitted herewith were made based upon the continuing input from the Town.
16 Revised plans and visual simulations for the Project were prepared and distributed to the Town,
17 the neighbors, and made available to the public. The Town’s Select Board held several public
18 meetings on the revised plans, culminating in August 2017 in the Select Board voting to withdraw
19 its opposition to the Apple Hill Solar Project because, in the words of the Town Attorney, the
20 revised plans are “consistent with what I see is the text of the Town Plan.” (See included **Exhibit**
21 **CS-BW-12**, Transcript of August 14, 2017 Select Board meeting, at 38.) The Town, however,
22 voted to continue its opposition of the original plans for the Chelsea Solar Project in the Vermont

1 Supreme Court and as a result did not express a view on the Project plans submitted herewith. On
2 November 20, 2017, the Town held a joint session of the Bennington Planning Commission and
3 the Select Board to review Project. Petitioner had provided to them the 45-day notice documents
4 and also shared the visual simulations attached to Mark Kane's prefiled testimony. The Town
5 adjourned their consideration of the Project until the Select Board's upcoming November 27, 2017
6 meeting. No written comments or recommendations were received from the Town during the 45-
7 day notice period and prior to the filing of this Petition. The Bennington County Regional
8 Commission ("BCRC") energy committee reviewed the 45-day notice documents for the Project
9 and provided the email comments attached as *Exhibit CS-BW-13*, expressing the Project's
10 compliance with the regional plan. For reference, that Bennington County Regional Plan is
11 included as *Exhibit CS-BW-14* and the Bennington County Regional Energy Plan is included as
12 *Exhibit CS-BW-15*. The Petitioner received comments from the Vermont Division for Historic
13 Preservation ("DHP") (see included *Exhibit CS-BW-16*), and these comments are described in
14 more detail in my answer to Question 28 below. No other state agencies provided have provided
15 feedback to the Petitioner.

16
17 **Q17. What other experts has the Petitioner consulted with regarding the Project design?**

18 A17. The Petitioner has worked closely with a number of local experts to make sure that the
19 Project design is in accordance with applicable Vermont rules regarding ground-mounted solar
20 facilities. Those experts will also provide testimony and exhibits in this docket. Dori Barton will
21 provide testimony regarding wildlife, ecology, wetlands, and water quality issues. Ian Jewkes will
22 provide testimony regarding the Project's civil and stormwater designs, as well as overall facility

1 design. Mark Kane will provide testimony regarding the Project's aesthetics and compatibility
2 with orderly development of the region. Ryan Haac will provide testimony regarding the Project's
3 potential noise impacts. Scott Reynolds will provide testimony regarding the behavior of wind at
4 the Project Site. Harnoor Dhaliwal will provide testimony regarding the Project's effect on
5 greenhouse gas emissions.

6
7 **Q18. Will the Project adhere to all applicable local, state, and national design codes,**
8 **regulations, and standards?**

9 A18. Yes. If the Project is issued a Certificate of Public Good, all aspects of Project design will
10 adhere to all applicable local, state, and national design codes, regulations, and standards.

11
12 **Q19. Will the Project unduly interfere with the orderly development of the region? (30**
13 **V.S.A § 248(b)(1))**

14 A19. No. This conclusion is supported by my testimony that follows, and the testimony of Mark
15 Kane, as well as the comments from the BCRC Energy Committee (see *Exhibit CS-BW-13*). The
16 Project is well-sited per the current Town and Regional plans, and the Project design also complies
17 with the Town's design standards for the Rural Conservation zoning district. The appropriateness
18 of the site for solar is highlighted by a recent email by Bennington Select Board Vice Chair, Don
19 Campbell, to Project neighbor Libby Harris, a copy of which was provided by Harris to Petitioner,
20 and is included as *Exhibit CS-BW-17*:

21 "the lot is small, there is no river or lake to protect, the forest is in terrible condition (basal
22 area is so low it barely qualifies as forest in many places and it is rife with invasives), it

1 does not connect to other conserved lands, it is not part of an animal corridor, it does not
2 provide significant public access, it is not high quality farm land nor is it suitable for low-
3 income housing, and is not tribal or cultural heritage land.”

4 The Project complies with the screening requirements of the Town of Bennington solar screening
5 bylaw adopted in 2015 as further described later in my testimony and in the Prefiled Testimony of
6 Mark Kane. The Project is effectively screened year round as viewed from public streets and
7 thoroughfares, scenic viewpoints, and adjacent properties. The retained hedgerows and vegetation
8 on the site enables the Project to be naturally screened making the Project site a preferred location
9 for solar under the current Town Plan. But as described herein and in Mark Kane’s testimony, the
10 Project far surpasses the requirements set forth in the screening bylaw and the Town Plan.

11
12 **Q20. Does the Project meet the Section 248 criteria listed in 30 V.S.A § 248(b)(1)(A)?**

13 A20. The Project is not a natural gas transmission line, therefore 30 V.S.A. § 248(b)(1)(A)
14 does not apply.

15
16 **Q21. Does the Project comply with the screening requirements of a municipal bylaw in**
17 **the town of Bennington? (30 V.S.A. § 248(b)(1)(B))**

18 A21. Yes. This conclusion is supported by Mark Kane’s testimony and my testimony below.
19 The Town’s screening requirements are set forth in the Town’s solar screening ordinance (included
20 as ***Exhibit CS-BW-18***) and the Town Plan solar facility siting amendment (included as ***Exhibit***
21 ***CS-BW-19***). Neither the screening ordinance nor the solar facility amendment set forth any clear
22 or measurable standards that could be used to design a project screening plan. The screening

1 ordinance (Article 29) states that, “All solar facilities shall be sited and screened so that visual
2 impacts of such facilities [...] are mitigated as viewed from public streets and thoroughfares, scenic
3 viewpoints, and/or adjacent properties.” However, there are no definitions or standards given for
4 what constitutes ‘mitigated.’ In the absence of clearly written standards, it is possible to get some
5 guidance on what constitutes ‘mitigated’ in this context by examining other solar facilities that
6 have been reviewed by the Town and determined by the Town to be compliant with Article 29. I
7 am aware of two completed commercial-scale solar facilities that have been reviewed by the Town
8 since Article 29 was adopted in November 2015; the 500 kW ER Bennington Solar Project (“ER
9 Bennington”) and the 500 kW Paper Mill Solar Project (“Paper Mill”). ER Bennington was
10 awarded a CPG in October 2016 under PUC case number 16-0044-NMP and Paper Mill was
11 awarded a CPG in November 2016 under PUC case number 16-0049-NMP. The PUC final orders
12 for both of these projects state that the projects comply with the Town’s screening requirements
13 (Article 29). In the case of Paper Mill, both the Town Planning Commission and Select Board
14 reviewed the project, and the Select Board voted unanimously that it found no adverse impacts
15 resulting from Paper Mill; the Town stated this in an October 2016 comment letter to PUC, which
16 is included as **Exhibit CS-BW-20**. The Select Board identified no issues with Paper Mill’s
17 screening plan. The Town did not send a letter to PUC regarding ER Bennington, however ER
18 Bennington was also reviewed by both the Town Planning Commission and Select Board, and the
19 Select Board voted unanimously to support the project. The Select Board identified no issues with
20 ER Bennington’s proposed screening plan. A photo of Paper Mill from Murphy Road, dated
21 November 20, 2017, is included as **Exhibit CS-BW-21**. A photo of ER Bennington from Route 7,
22 dated October 16, 2017, is included as **Exhibit CS-BW-22**. These photos demonstrate the visual

1 appearance of solar facilities that the Town has determined are in compliance with Article 29. In
2 the absence of any language in Article 29 that could be used to evaluate compliance, the examples
3 provided by Paper Mill and ER Bennington serve as meaningful benchmarks that indicate what
4 type and level of mitigation is necessary to comply with the Town's requirements. Mark Kane's
5 testimony and exhibits in this docket clearly demonstrate the level of mitigation planned for the
6 Project, which far exceeds that for either Paper Mill or ER Bennington. Therefore, I conclude that
7 the Project complies with the screening requirements of Article 29 and the Town solar facility
8 siting amendment.

9
10 **Q22. Is the Bennington Town Plan a duly adopted municipal plan that has received an**
11 **affirmative determination of energy compliance under 24 V.S.A § 4352? (30 V.S.A. §**
12 **248(b)(1)(C))**

13 A22. No, it is not.

14
15 **Q23. Is the Bennington Regional Energy Plan a duly adopted regional plan that has**
16 **received an affirmative determination of energy compliance under 24 V.S.A § 4352? (30**
17 **V.S.A. § 248(b)(1)(C))**

18 A23. Yes, it is.

Q24. Does the Project provide satisfy the requirements of 30 V.S.A. § 248(b)(2)?

A24. As a renewable project with a plant capacity of 2.0 MW, the Project is waived from evaluation under 30 V.S.A. § 248(b)(2) per Public Utility Commission Section 8007(b) order, dated August 31, 2010.

Q25. Will the Project adversely affect system stability and reliability? (30 V.S.A. § 248(b)(3))

A25. No. Please refer to my response to Question 12, above, for more details.

Q26. Does the Project satisfy the criteria of 30 V.S.A. § 248(b)(4)?

A26. As a solar facility under the Standard Offer program with a plant capacity of 2.0 MW, the Project is waived from evaluation under this criteria per Public Utility Commission Section 8007(b) order, dated August 31, 2010.

Q27. Does the Project have an undue adverse effect on aesthetics? (30 V.S.A. § 248(b)(5))

A27. No. Please refer to the Prefiled Direct Testimony of Mark Kane and associated exhibits in this docket for more details, and my testimony below regarding the Project's compliance with the Town Plan.

1 **Q28. Does the Project have an undue adverse effect on historic sites? (30 V.S.A. §**
2 **248(b)(5))**

3 A28. No. The original, larger, project design's potential impacts on cultural or historic resources
4 was addressed in the June 18, 2014 prefiled testimony of Scott Mapes in docket 8302. Mr. Mapes
5 stated that the Project was reviewed with a representative from DHP and DHP concluded that the
6 Project did not have potential for any undue adverse impacts on cultural or historic resources or
7 archaeological sites. Mr. Mapes provided similar testimony in docket 8454. I also took part in
8 that consultation with DHP. DHP's conclusion was based upon their determination that the Project
9 site did not have potential for containing any significant cultural or historic resources. DHP issued
10 a letter, dated February 11, 2015 confirming its conclusion. (See *Exhibit CS-BW-16*) I recently
11 requested DHP to review the Project site plan as submitted herewith. DHP reached the same
12 conclusions that the Project will not have an undue adverse impact on cultural or historic sites, and
13 the resulting correspondence from DHP is included as *Exhibit CS-BW-16*. Based on
14 conversations with DHP, DHP may submit further confirmation in this docket once the Petition is
15 marked complete and the corresponding docket is open to state agencies.

16
17 **Q29. Does the Project have an undue adverse effect on air and water purity? (30 V.S.A. §**
18 **248(b)(5))**

19 A29. No. Please refer to the Prefiled Direct Testimony of Dori Barton, Ian Jewkes, and Harnoor
20 Dhaliwal in this docket for more details. The Project will not create undue adverse impacts on
21 nearby air and water resources, and the Project will result in a net positive and beneficial effect on
22 greenhouse gas ("GHG") emissions. The Project will emit no GHG's or other emissions during

operation, and the Project will displace the use of fossil fuels, which have a damaging effect on the natural environment. The Project will also reduce the need for other non-renewable sources of electricity generation.

Q30. Does the Project have an undue adverse effect on the natural environment? (30 V.S.A. § 248(b)(5))

A30. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more details and my response to Question 29, above.

Q31. Does the Project have an undue adverse effect on the use of natural resources? (30 V.S.A. § 248(b)(5))

A31. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more details.

Q32. Does the Project have an undue adverse effect on the public health and safety? (30 V.S.A. § 248(b)(5))

A32. No. The Project creates no adverse environmental effects (see Questions 27 through 31 above). The Project does not create any waste or other emissions that would be harmful to the public health and safety. The Project will be designed to follow all applicable safety codes and will include safety and security measures designed to discourage access to the site by unauthorized/untrained members of the public.

1 **Q33. Does the Project have an undue adverse effect on outstanding resource waters? (30**

2 **V.S.A. § 248(b)(5))**

3 A33. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more
4 details.

6 **Q34. Does the Project have an undue adverse effect on primary agricultural soils? (30**

7 **V.S.A. § 248(b)(5))**

8 A34. No. Please refer to the Prefiled Direct Testimony of Ian Jewkes in this docket for more
9 details.

11 **Q35. Does the Project result in undue adverse greenhouse gas impacts? (30 V.S.A. §**
12 **248(b)(5))**

13 A35. No. Please refer to the Prefiled Direct Testimony of Harnoor Dhaliwal in this docket for
14 more details. The Project has a positive impact on greenhouse gases by displacing fossil fuel-
15 based electricity generation.

17 **Q36. Does the Project meet the Section 248 criteria listed in 30 V.S.A. § 248(b)(6)?**

18 A36. The Project is a non-utility renewable energy generation facility with a plant capacity of
19 2.0 MW, and as such is not subject to the criteria in section 248(b)(6) per Public Utility
20 Commission Section 8007(b) order, dated August 31, 2010.

1 **Q37. Is the Project in compliance with the 2016 Vermont Comprehensive Energy Plan and**
2 **Electric Plan? (30 V.S.A. § 248(b)(7))**

3 A37. The Project is a non-utility renewable energy generation facility with a plant capacity of
4 2.0 MW, and as such is not subject to the criteria in section 248(b)(7) per Public Utility
5 Commission Section 8007(b) order, dated August 31, 2010.

6

7 **Q38. Does the Project involve a facility affecting or located on any segment of the waters**
8 **of the State that have been designated as outstanding resources waters? (30 V.S.A. §**
9 **248(b)(8))**

10 A38. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more
11 details.

12

13 **Q39. Does the Project meet the Section 248 criteria listed in 30 V.S.A § 248(b)(9)?**

14 A39. The Project is not a waste-to-energy facility, therefore 30 V.S.A. § 248(b)(9) and related
15 sub-criteria does not apply.

16

17 **Q40. Can the project be served economically by existing or planned transmission facilities**
18 **without undue adverse effect on Vermont utilities or customers? (30 V.S.A. § 248(b)(10))**

19 A40. Yes. Please refer to my answer to Questions 12 and 25, above. The Project will
20 interconnect to the utility distribution system rather than the utility transmission system, and any
21 required system upgrade costs are paid (and have been paid) by the Petitioner rather than the utility
22 or utility customers.

Q41. Does the Project meet the Section 248 criteria listed in 30 V.S.A. § 248(b)(11)?

A41. The Project is not a woody biomass facility, therefore 30 V.S.A. § 248(b)(11) and related sub-criteria does not apply.

Q42. Will the Project result in undue water or air pollution? (10 V.S.A. § 6086(a)(1))

A42. No. Please refer to the Prefiled Direct Testimony of Dori Barton and Ian Jewkes in this docket for more details.

Q43. Will the Project result in undue adverse impact to headwaters? (10 V.S.A. § 6086(a)(1)(A))

A43. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more details.

Q44. Will the Project inject waste materials or toxic substances into ground water or wells? (10 V.S.A. § 6086(a)(1)(B))

A44. No.

Q45. Does the Project design consider water conservation and incorporate multiple use or recycling where technically and economically practical? (10 V.S.A. § 6086(a)(1)(C))

A45. As a renewable project with a plant capacity of 2.0 MW, the Project is waived from evaluation under this criteria per Public Utility Commission Section 8007(b) order, dated August 31, 2010.

1 **Q46. Will the Project result in undue adverse impact to floodways? (10 V.S.A. §**
2 **6086(a)(1)(D))**

3 A46. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more
4 details.

5
6 **Q47. Will the Project result in undue adverse impact to streams? (10 V.S.A. §**
7 **6086(a)(1)(E))**

8 A47. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more
9 details.

10
11 **Q48. Will the Project result in undue adverse impact to shorelines? (10 V.S.A. §**
12 **6086(a)(1)(F))**

13 A48. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more
14 details.

15
16 **Q49. Will the Project result in undue adverse impact to wetlands? (10 V.S.A. §**
17 **6086(a)(1)(G))**

18 A49. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more
19 details.

20
21

1 **Q50. Does the Project have sufficient water available for the reasonably foreseeable needs**
2 **of the subdivision or development? (10 V.S.A. § 6086(a)(2))**

3 A50. As a renewable project with a plant capacity of 2.0 MW, the Project is waived from
4 evaluation under this criteria per Public Utility Commission Section 8007(b) order, dated August
5 31, 2010.

6
7 **Q51. Will the Project cause an unreasonable burden on an existing water supply if one is**
8 **to be utilized? (10 V.S.A. § 6086 (a)(3))**

9 A51. As a renewable project with a plant capacity of 2.0 MW, the Project is waived from
10 evaluation under this criteria per Public Utility Commission Section 8007(b) order, dated August
11 31, 2010.

12
13 **Q52. Will the Project cause unreasonable soil erosion or reduction in capacity of the land**
14 **to hold water so that a dangerous or unhealthy condition may result? (10 V.S.A. § 6086**
15 **(a)(4))**

16 A52. No. Please refer to the Prefiled Direct Testimony of Ian Jewkes in this docket for more
17 details.

18
19
20

1 **Q53. Will the Project cause unreasonable congestion or unsafe conditions with respect to**
2 **use of the highways, waterways, railways, airports and airways, and other means of**
3 **transportation existing or proposed? (10 V.S.A. § 6086 (a)(5))**

4 A53. No. The Project will be accessed via a private access driveway connecting to Willow Road.
5 The proposed ingress upgrade (private access driveway) is in accordance with state and local
6 standards and will not interfere with regular operation of Willow Road. Additional traffic
7 generated by the Project during construction and operation periods will be of a low volume and
8 will not cause congestion or otherwise adversely affect existing traffic patterns. Please see my
9 answers to Questions 9 and 10, above, for more detail regarding anticipated traffic patterns.

10
11 **Q54. Will the Project cause an unreasonable burden on the ability of the municipality to**
12 **provide educational services? (10 V.S.A. § 6086 (a)(6))**

13 A54. As a renewable project with a plant capacity of 2.0 MW, the Project is waived from
14 evaluation under this criteria per Public Utility Commission Section 8007(b) order, dated August
15 31, 2010.

16
17 **Q55. Does the Project place an unreasonable burden on the ability of the local**
18 **governments to provide municipal or governmental services? (10 V.S.A. § 6086 (a)(7))**

19 A55. No. The Project does not require any municipal sewer or water services. The Project will
20 not require above average use of municipal police, fire, rescue, or maintenance services. Per
21 Questions 17 and 31, above, the Project will be designed and installed in accordance with all
22 applicable safety codes and will not be a risk to public health and safety.

1 **Q56. Will the Project have an undue adverse effect on the scenic or natural beauty of the**
2 **area, aesthetics, historic sites, or rare and irreplaceable natural areas? (10 V.S.A. § 6086**
3 **(a)(8))**

4 A56. No. Please refer to the Prefiled Direct Testimony of Mark Kane, Dori Barton, and Ian
5 Jewkes in this docket. Also please refer to my answer to Question 28, above and Questions 64
6 through 75 herein.

7
8 **Q57. Will the Project have an undue adverse effect on necessary habitat or endangered**
9 **species? (10 V.S.A. § 6086 (a)(8)(A))**

10 A57. No. Please refer to the Prefiled Direct Testimony of Dori Barton in this docket for more
11 details.

12
13 **Q58. Does the Project unnecessarily or unreasonably endanger the public or quasi-public**
14 **investment in adjacent governmental and public utility facilities, services, and lands, or**
15 **does the Project materially jeopardize or interfere with the function, efficiency, or safety of**
16 **the public's use or enjoyment of or access to the facility, service, or lands? (10 V.S.A. §**
17 **6086(a)(9)(K))**

18 A58. No. Existing adjacent public investments are limited to Willow Road, GMP's overhead
19 distribution circuit, and the Route 279 / Route 7 interchange and Vermont Welcome Center area.
20 There are no Project impacts that would endanger or interfere with Willow Road or the Route 279
21 / Route 7 interchange and Vermont Welcome Center area, and per Question 11, above, there will
22 be no adverse impacts to GMP's distribution system.

1 **Q59. Is a permit with the Vermont Department of Transportation required for site access**
2 **off of Willow Road?**

3 A59. No. A Vermont Department of Transportation permit is not required for site access off of
4 Willow Road.

5
6 **Q60. Will the Petitioner pursue a 3-9020 Construction General Permit with the Vermont**
7 **Agency of Natural Resources for stormwater runoff during construction?**

8 A60. Yes. Please refer to the Prefiled Direct Testimony of Ian Jewkes in this docket for more
9 details.

10
11 **Q61. Will the Petitioner pursue a Wetlands Permit with the Vermont Wetlands Program**
12 **for impacts to or near a delineated wetland?**

13 A61. No. The project will not impact wetlands. Please refer to the Prefiled Direct Testimony
14 of Dori Barton in this docket for more details. GMP may need to pursue a Wetlands Program
15 permit for installation of some of the utility poles for the line extension within Class II wetland
16 buffer areas.

17
18 **Q62. Does the Project comply with the setback requirements described in 30 V.S.A. §**
19 **248(s)?**

20 A62. Yes. The Project is set back more than 100 feet from Willow Road and Route 7 and at
21 least 50 feet from the property boundaries.

22

1 **Q63. Is noise generated by vehicles traveling on a public highway a valid criteria under**
2 **Section 248 review by which to evaluate an energy generation project located on privately-**
3 **owned property?**

4 A63. No, I do not believe so. The topic of noise generated by vehicles traveling on a public
5 highway is addressed in more detail in the prefiled testimony of Ryan Haac in this docket. Some
6 neighboring residents have raised concerns that the proposed removal of trees on the Project
7 property might result in an unduly adverse increase in vehicle noise that they experience at their
8 homes. The vehicle noise in question is generated by vehicles traveling on highway Route 7,
9 which is located south and west of the Project property. In my own words, the vehicle noise in
10 question is not generated by the Project or on the Project property, and it is not generated by a
11 source that is associated with the Project in any way. The vehicle noise in question is not generated
12 by a source that the Petitioner has any control over or any responsibility for. While it is
13 theoretically possible that existing trees on the Project site may currently be providing some
14 amount of “noise break” benefit to neighboring properties, that is a benefit to which neighboring
15 properties have no rights whatsoever, and it is a benefit that the Petitioner is under no obligation
16 to continue to provide, regardless of the type of development project being proposed. Such a noise
17 source is not described under any applicable element of 30 V.S.A § 248, 10 V.S.A. § 6001, or 10
18 V.S.A. § 6086. This topic does not seem to fall under the scope of Section 248 review, and if the
19 Route 7 highway noise is a legitimate concern for certain residents, then it seems that it would be
20 reasonable to discuss the issue with the Vermont Agency of Transportation and not the Petitioner.
21 Still, the Petitioner anticipates that the question of highway noise may be raised during this
22 proceeding and therefore sought an analysis of the concern, which is included with the prefiled

1 testimony of Ryan Haac in this docket. That analysis concludes that any potential effect regarding
2 highway noise would not be significant and would not be unduly adverse.

3
4
5 **Q64. Is naturally occurring wind speed a valid criteria under Section 248 review by**
6 **which to evaluate a solar energy generation project located on privately-owned property?**

7 A64. No, I do not believe so. The topic of wind speeds for wind crossing the Project property is
8 addressed in more detail in the prefiled testimony of Scott Reynolds in this docket. Some
9 neighboring residents have raised concerns that the proposed removal of trees on the Project
10 property might result in an unduly adverse increase in wind speeds that they experience at their
11 homes. Wind is a naturally occurring environmental phenomenon that is experienced at every
12 residence in Vermont. While naturally occurring wind may frequently pass across the Project
13 property onto neighboring properties, that wind is certainly not being generated or amplified by
14 any element of the Project or the Project property. While it is theoretically possible that existing
15 trees on the Project site may currently be providing some amount of “wind break” benefit to
16 neighboring properties, that is a benefit to which neighboring properties have no rights whatsoever,
17 and it is a benefit that the Petitioner is under no obligation to continue to provide, regardless of the
18 type of development project being proposed. Whether or not a proposed project provides relief
19 from naturally occurring wind speeds to neighboring properties is not a criteria that is described
20 under any applicable element of 30 V.S.A. § 248, 10 V.S.A. § 6001, or 10 V.S.A. § 6086. This
21 topic does not seem to fall under the scope of Section 248 review. Still, the Petitioner anticipates
22 that the question of wind speeds may be raised during this proceeding and therefore sought an

1 analysis of the concern, which is included with the prefiled testimony of Scott Reynolds in this
2 docket. That analysis concludes that any potential effect regarding wind speeds would not be
3 significant and would not be unduly adverse.

4
5 **Q65. Is the Project located in the Rural Conservation zoning district as described in the**
6 **Town Plan?**

7 A65. Yes. The Project is in the Bennington Rural Conservation (“RCON”) district, which
8 encompasses roughly half of all land in Bennington and is described in the Bennington Town Plan
9 (included as *Exhibit CS-BW-23*). The Project would be bordered to the east by a 5-acre apple
10 orchard (which is under Petitioner’s control), to the north by wooded property of a neighbor, to
11 the west by a tree line along Route 7 North, and to the south by a heavily vegetated area across
12 from which is Route 279 and then the Vermont Welcome Center. The Town has designated certain
13 areas as scenic resources in the Town’s scenic resources inventory (included as *Exhibit CS-BW-*
14 *24*), and the Parcel is not one of them.

15
16 **Q66. Are commercial ground-mounted solar facilities, such as the Project, permitted in**
17 **the RCON district?**

18 A66. Yes. The Bennington Town Attorney has publicly stated that it is simply not credible to
19 argue that solar facilities such as the Project are excluded from the RCON district. (See *Exhibit*
20 *CS-BW-12*, Transcript, August 14, 2017, Select Board hearing at 21.):

21 “the Town Plan I do not think can credibly be construed to bar alternative energy projects
22 in the rural [conservation] district because of the preceden[ts], because of the language of

1 the plan, because of the way the zoning by-laws allow specific uses in that area and because
2 of the planning that's been underway for the future that includes a number of properties in
3 that area for solar energy."

4 Moreover, in the rule 30(b)(6) deposition of the Town of Bennington in docket 8454 (included as
5 *Exhibit CS-BW-25*), Dan Monks (Town of Bennington Planning Director) also confirmed that
6 commercial solar facilities are treated like any other development in the RCON district, which
7 means they are permitted and must meet the design guidelines. (see *Exhibit CS-BW-25* at 7)

8
9 **Q67. Has the Town supported and the Commission approved other commercial ground-**
10 **mount solar facilities and other electrical facilities in the RCON district?**

11 A67. Yes. There may be more, but I am aware of the Commission approving commercial
12 electrical facilities in the RCON district in (i) CPG # NMP-6523, Kobelia Bennington GLC Solar
13 LLC, (ii) CPG # 16-0044-NMP, ER Paper Mill Village Solar, LLC, and (iii) the Bennington
14 Substation Project (PUC Docket 7763).

15
16 **Q68. What are the general guidelines for development in the RCON district under the**
17 **Town Plan?**

18 A68. The Town Plan has two relevant guidelines. The first states that development should not
19 be located "in prominently visible locations on hillsides." The second states that any development
20 should minimize clearing.

Q69. Is the Project sited in a prominently visible location on a hillside?

A69. No. First, there is no definition of what is a “hillside,” so it is impossible to apply that guideline and create any meaningful development standards. But regardless of the issue of what constitutes a “hillside” the Project is not sited in a prominently visible location.

Q70. Has the Project minimized clearing?

A70. Yes. Clearing has been limited to what is reasonably necessary for the construction and operation of the Project.

Q71. Is the phrase “prominently visible location on a hillside” a clearly written community standard?

A71. No. The Merriam-Webster Dictionary defines “hillside” as “the side of a hill,¹” and “hill” as “a usually rounded area of land that is higher than the land around it but that is not as high as a mountain; an area of sloping ground on a road, path, etc; a pile of something.²” The American Heritage dictionary defines “hillside” as “The side or slope of a hill,³” and “hill” as “1. A well-defined natural elevation smaller than a mountain. 2. A small heap, pile, or mound. 3. a. A mound of earth piled around and over a plant. b. A plant thus covered. 4. An incline, especially of a road; a slope.⁴”

As the ordinary dictionary definitions make clear, the definition of hill and hillside can cover virtually any piece of land that has any change in slope, which would cover virtually every

¹ <http://www.merriam-webster.com/dictionary/hillside>

² <http://www.merriam-webster.com/dictionary/hill>.

³ <https://www.ahdictionary.com/word/search.html?q=hillside&submit.x=55&submit.y=20>.

⁴ <https://www.ahdictionary.com/word/search.html?q=hill&submit.x=20&submit.y=25>.

1 parcel of land in Bennington. Here, the test is whether there is a clear, unambiguous written
2 community standard. When development on hillsides is to be restricted, clear standards must be
3 set, and that must begin with defining hillside. Here there is no objective standard to guide
4 enforcement.

5 The American Heritage dictionary defines “prominent” as “1. Projecting outward or
6 upward from a line or surface; protuberant: prominent eyebrows. 2. Immediately noticeable;
7 conspicuous: a product with a prominent place in the store.”⁵ Similarly, the Merriam-Webster
8 dictionary defines “prominent” as “easily noticed or seen: sticking out in way that is easily seen
9 or noticed.”⁶

10 The Town Plan does not contain a definition of “prominently visible locations.” Without
11 a definition, the term is ambiguous and there is no meaningful way to have the term create a
12 development standard. However, even assuming the Project site is a hillside, the Project design
13 complies with the Town’s design standards for the Rural Conservation zoning district, which are
14 included as *Exhibit CS-BW-26*. Table 3.13(F)3.b of the Bennington Land Use Regulations
15 (included as *Exhibit CS-BW-27*) lists eight criteria for development on “hillsides or ridgelines:”

16 i. “Development shall be blended into the existing natural landscape to minimize its
17 visual impact from public roads and lands. This effect shall be accomplished through one or more
18 of the following: siting of structures within forest or forest edge areas.” That is precisely what has
19 been done with the Project. It is located within or at the edge of the wooded area. It is not visible
20 from the Vermont Welcome Center or other public lands or the neighbors, and visibility from

⁵ <https://www.ahdictionary.com/word/search.html?q=prominently&submit.x=0&submit.y=0>.

⁶ <http://www.merriam-webster.com/dictionary/prominently>.

1 public roads and the neighbors is screened. Of critical importance, the By-law makes it clear that
2 development is not prohibited. The statements of the Town's Attorney at the Bennington Select
3 Board meeting of August 14, 2017, confirm that is the case. Under the Town Plan, the visual
4 impact must be "minimized". That is what the Petitioner has done.

5 ii. "Development shall not cause undue alteration of natural topography." The Project
6 does not significantly alter the natural topography, and only minimal grading is required.

7 iii. "[T]ree removal shall not cause undue alteration of the natural vegetation patterns
8 of the hillside or ridgeline." This criteria provides two photo examples which emphasize that the
9 tree removal guideline is focused solely on the visual impact. Here the cleared area and the Project
10 would be screened from the Vermont Welcome Center or other public lands. Clearing will
11 eliminate the invasive vegetation.

12 iv. "Development shall be sited so that no structure shall exceed the height of land
13 serving as the visual and physical backdrop to the site as viewed from a public road or other public
14 land." The solar facility does not exceed the height of the trees serving as the visual and physical
15 backdrop and is screened from the Vermont Welcome Center or other public lands, or the
16 neighboring properties.

17 v. "Outdoor lighting should not illuminate off-site locations." The Project does not
18 include outdoor lighting that would illuminate off-site locations.

19 vi. "Utility lines should be constructed and routed to minimize the effects on the visual
20 setting. Above ground lines should follow tree lines and avoid straight runs across open fields."
21 The utility lines associated with the Project satisfy this requirement.

1 vii. “Towers and similar structures should not be prominently visible in a manner that
2 would detract from the scenic character of the area.” The Project does not include towers or similar
3 structures.

4 viii. “Windows that generate excessive glare shall not be used. Uninterrupted expanses
5 of glass shall be avoided.” The Project does not include windows or uninterrupted expanses of
6 glass.

7 Moreover, when one considers the Town’s example of a “prominently visible location on
8 a “hillside” that is contained in the Amendment to the Bennington Land Use and Development
9 Regulations, it is clear that the Project site is not on a “prominently visible” location on a hillside
10 nor on a “hillside” at all. The Bennington Town Plan and Land Use Regulations allow for ground-
11 mounted solar projects in the RCON district where the Project is proposed, and the Project meets
12 the relevant design criteria contained in the Town Plan and Town bylaws. The Project also meets
13 a number of goals for renewable energy contained in both the Town Plan and Bennington County
14 Regional Plan.

15
16 **Q72. Is the “minimize clearing” guideline a clearly written community standard?**

17 A72. No. The RCON district guideline that development “must minimize clearing of natural
18 vegetation” is on its face vague as there is no clear guidance as to what the requirements are.

19
20 **Q73. Does the Town Plan contain other provisions on the development of solar facilities?**

21 A73. Yes. In 2016 the Town targeted solar facilities greater than 150 kW through a solar facility
22 siting amendment to the Town Plan. (see *Exhibit CS-BW-19*)

1 **Q74. Does the solar facility siting amendment contain any clearly written community**
2 **standards that are enforceable against the Project?**

3 A74. No, for many reasons. *First*, the solar facility siting amendment does not apply on a non-
4 discriminatory basis to development. It does not apply at all to ground-mounted solar facilities
5 less than 150 kW. It does not apply to any other kind of electric generation facilities, such as wind,
6 biomass, natural gas, or hydro. It does not apply to any other type of development in the Town.

7 *Second*, it seeks to regulate off-site improvements such as electrical grid improvements,
8 which are either within the jurisdiction of the Commission or the Federal Energy Regulatory
9 Commission, and only if those off-site improvements happen to be connected to a solar project.
10 For example, if a landowner was building a single family home and needed a line extension, the
11 Town would not be regulating those at all even though they might be the identical improvements
12 that would be required if a solar facility were placed on the property.

13 *Third*, the “community standards” section of the Town’s solar amendment does not contain
14 any clear standards, and that section only applies to “municipal solar electricity projects and
15 programs,” which the Project is not.

16 *Fourth*, the “Solar Facility Siting” section states that “Projects must meet the following
17 criteria in order to be supported by this Town Plan.” It is not phased in terms of prohibition, but
18 rather gaining support from the Town Plan.

19 *Fifth*, the Project is located in what the solar amendment describes as a “Preferred Area”—
20 i.e., “Proximity to existing hedgerows or other topographical features that naturally screen the
21 entire proposed array.” As the visual simulations from SE Group clearly show, the existing

1 topographical features “naturally screen the entire proposed array.” As a result the Project is sited
2 in a preferred location under the Town Plan.

3
4 **Q75. Please comment on the last section of the solar facility siting amendment entitled**
5 **“Mass and Scale.”**

6 A75. That last part of the solar facility siting amendment states, “Except for solar facilities
7 located in preferred areas, solar facilities larger than 10 acres, individually or cumulatively,
8 cannot be adequately screened or mitigated to blend into the municipality’s landscape and are,
9 therefore, explicitly prohibited.” That section does not apply to the Project for several reasons.

10 *First*, the Project is sited in a preferred area as discussed above and in Mark Kane’s
11 testimony.

12 *Second*, the expressed rationale for the 10-acre restriction is that larger projects cannot be
13 adequately screened or mitigated to blend into the landscape. The visual simulations show that
14 rationale is manifestly erroneous and without merit. Therefore the entire 10-acre restriction is an
15 attempt at land-use government regulation not based upon a rational basis.

16 *Third*, the 10-acre provision is vague and ambiguous. There is no objective standard from
17 which it can be measured. This is plainly shown by referring to the rules under the Massachusetts
18 SMART program, 225 CMR 20.00 *et seq.* Those provision have a power purchase agreement rate
19 penalty for certain projects based upon the acreage the project occupies. The Massachusetts rule
20 provides a clear objective methodology for measuring the acreage occupied by a solar facility.
21 Based upon the Massachusetts rule, the Project would be occupying 3.34 acres, far below the 10
22 acres.

1 *Fourth*, the 10-acre rule applies to solar only and no other kind of development in
2 Bennington. It is unconstitutionally discriminatory on its face. It also violates 24 V.S.A.
3 §4413(g)(2) which provides a municipal bylaw may not “[p]rohibit or have the effect of
4 prohibiting the installation of solar collectors ... or other energy devices based on renewable
5 resources.” As applied, the Town Plan and By-laws would prohibit and have the effect of
6 prohibiting the installation of the Project if it exceeded the 10-acre provision. Thus the Town Plan
7 or Bylaws could not be applied, either directly or indirectly, to prohibit the Project. Furthermore,
8 24 V.S.A. §4413(g)(2) also overrides the first prong of the second part of the *Quechee* test, because
9 if it did not, then a clear community standard could do indirectly what the Legislature has
10 prohibited directly.

11
12 **Q76. Does this conclude your testimony?**

13 A76. Yes.

EXHIBIT D

**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 TOWN OF BENNINGTON**

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 **TOWN OF BENNINGTON** (“Town” or “Respondent”) 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. “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.

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

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

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

21. “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

22. “You” or “Your” shall mean and refer to the TOWN.

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

24. 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.

25. 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.

26. 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.

27. 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.

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

29. **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**

30. 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) Admit that the Project is sited within a “Preferred Area” for solar facilities, per the April 11, 2016 version of the Bennington Town Plan.
- 2) 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.
- 3) Admit that the proposed Chelsea project is not located within a visual gateway area, per the December 2004 Bennington Scenic Resource Inventory. .
- 4) 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.
- 5) List the landscape mitigation required for the Project that would satisfy the Solar Screening Ordinance.
- 6) Two car dealerships and a shopping plaza are located directly west of the Battle Creek Solar project site in PUC case 17-3727. When these developments were permitted, what visual mitigation was required or requested by the Town with respect to views of these developments? If no mitigation was required or requested, why not? Produce all Documents related to same
- 7) Admit that the ER Project satisfies the Solar Screening Ordinance.
- 8) 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.
- 9) Admit that the Project is not located within the Route 7A Corridor Overlay District.
- 10) Admit that the Project satisfies the Solar Screening Ordinance.
- 11) List each solar facility in the Town that satisfies the Solar Screening Ordinance and produce all Documents related to same.
- 12) With respect to each solar facility in the Town that satisfies the Solar Screening Ordinance, list each screening recommendation, requirement or restriction imposed or

recommended by the Town as a condition to or with respect to such solar facility and produce all Documents related to same.

- 13) 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.
- 14) 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.
- 15) Identify and list with specificity any and all screening requirements determined by the Select Board or the Development Review Board to be necessary for the ER Project to satisfy the Solar Screening Ordinance and produce all Documents related to same.
- 16) Identify and list with specificity any and all screening requirements determined by the Select Board or the Development Review Board to be necessary for the Paper Mill Solar Project to satisfy the Solar Screening Ordinance and produce all Documents related to same.
- 17) With respect to each of the requirements listed in the answer in 15) above, list the corresponding standards in the Solar Screening Ordinance upon which such requirements were based and produce all Documents related to same.
- 18) With respect to each of the requirements listed in the answer in 16) above, list the corresponding standards in the Solar Screening Ordinance upon which such requirements were based.
- 19) Identify and list with specificity List each time the Select Board or the Development Review Board has requested recommendations from the Town of Bennington Planning Commission (the "Planning Commission"), or from other boards or advisory groups with respect to the screening requirements of a solar facility, and produce all Documents related to same.
- 20) Identify and list with specificity all solar energy electric generating facilities in excess of 150Kw (AC).
- 21) With respect to each facility identified in response to the immediately preceding interrogatory identify and list with specificity:
 - i. The address of such facility;
 - ii. The zoning district in which such facility is located;
 - iii. The screening requirements determined by the Select Board or the Development Review Board to be necessary for such facility to satisfy the Solar Screening Ordinance and produce all Documents related to same.

- 22) Identify and list with specificity what buildings, developments, structures, and solar facilities have been built or proposed in the Town since the Solar Screening Ordinance was adopted (other than the Project).
- 23) With respect to each buildings, developments, structures, and solar facilities identified in response to the immediately preceding interrogatory identify and list with specificity:
- i. The address of such facility;
 - ii. The zoning district in which such facility is located;
 - iii. The screening requirements determined by the Select Board or the Development Review Board to be necessary for such buildings, developments, structures, and solar facilities and produce all Documents related to same.
- 24) Admit that portions of the ER Project are currently visible from Route 7 directly to the west of the ER Project.
- 25) 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.
- 26) Admit that the Project satisfies all requirements set forth in the Town Plan.
- 27) Admit that the Project satisfies all requirements set forth in the Town's Land Use & Development Regulations.
- 28) Admit that the Paper Mill Solar Project is located in the RCON and produce all Documents related to same.
- 29) Admit that the Kobelia Bennington GLC Solar Project, Docket No. NMP-6523 ("Kobelia Project") is located in the RCON.
- 30) 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." List each such screening requirement applied or adapted to commercial development in all zoning districts and produce all Documents related to same.
- a. The Land Use Regulations require that all parking areas within the Central Business District, Office Apartment District, Village Commercial District, Industrial District, the Route 7A Corridor Overlay District be screened from view of public roads.
 - (i) List all such parking areas within the Central Business District, Office Apartment District, Village Commercial District, Industrial District, the Route 7A Corridor Overlay District.
 - (ii) Are all parking areas within the Central Business District, Office Apartment District, Village Commercial District, Industrial District, the Route 7A Corridor Overlay District screened from view of public roads?

- (iii) If so, identify and list with specificity how are such parking areas screened? Produce all Documents related to same.
- b. Supplemental District Standard (7) of the Village Industrial District requires that all uses other than dwellings provide a year-round screen adjacent to residential uses.
 - (i) List all such uses other than dwellings in the Village Industrial District.
 - (ii) Do all such uses other than dwellings in the Village Industrial District provide a year-round screen adjacent to residential uses? Produce all Documents related to same.
 - (iii) If so, identify and list with specificity how are such uses screened? Produce all Documents related to same.
- c. List each development within the Industrial District where the Select Board or the Development Review Board has required a buffer as referred to in Section 2c. of the Supplemental Review Standards of the Industrial District, and produce all Documents related to same.
- d. The Land Use Regulations require that all outdoor storage of equipment and materials in the Industrial District shall be adequately screened from off-premises.
 - (i) List all locations where there is outdoor storage of equipment and materials in the Industrial District, and produce all Documents related to same.
 - (ii) Are all locations with outdoor storage of equipment and materials in the Industrial District adequately screened from off-premises?
 - (iii) If so, identify and list with specificity how are such locations screened? Produce all Documents related to same.
- e. Section 4.10(D) of Article 4 of the Land Use Regulations requires that all loading docks, trash collection, recycling areas and similar service areas of developments that require the frequent or regular loading and unloading of people or goods to be “screened on all sides so that no portion of such areas are visible from public streets and adjacent properties.”
 - (i) List each such loading docks, trash collection, recycling areas and similar service areas of developments in the Town, and produce all Documents related to same.
 - (ii) Are each such loading docks, trash collection, recycling areas and similar service areas of developments in the Town screened on all sides so that no portion of such areas are visible from public streets and adjacent properties? Produce all Documents related to same.
 - (iii) If so, identify and list with specificity how are such loading docks, trash collection, recycling areas and similar service areas of developments screened? Produce all Documents related to same.
- f. Section 4.13(E) of Article 4 of the Land Use Regulations requires that all dumpsters, regardless of the principal use of the property, be screened from view of streets and adjacent properties.
 - (i) List each location of dumpsters in the Town.

- (ii) Are all such dumpsters screened from the view of streets and adjacent properties?
 - (iii) If so, identify and list with specificity how are such dumpsters screened? Produce all Documents related to same.
- g. Section 5.7(A)(2) of Article 5 of the Land Use Regulations requires landscaping and/or fencing along the property boundaries of RV Parks as appropriate for screening, security and privacy.
 - (i) List each location of RV Parks in the Town.
 - (ii) Are all such RV Parks appropriately screened (i.e. satisfying the requirements of Section 5.7(A)(2) of Article 5 of the Land Use Regulations)? Produce all Documents related to same.
 - (iii) If so, identify and list with specificity how are such RV Parks screened? Produce all Documents related to same.
- h. Section 5.7(A)(7) of Article 5 of the Land Use Regulations requires screened facilities for the sanitary collection and disposal of trash and recyclables in RV Parks.
 - (i) List each location for collection and disposal of trash and recyclables in RV Parks in the Town.
 - (ii) Are all such areas appropriately screened (i.e. satisfying the requirements of Section 5.7(A)(7) of Article 5 of the Land Use Regulations)? Produce all Documents related to same
 - (iii) If so, identify and list with specificity how are such areas screened? Produce all Documents related to same
- i. Section 5.8(C)(6)j. of Article 5 of the Land Use Regulations states that the Development Review Board may consider imposing landscaping and screening requirements for safety and aesthetic reasons with respect to the extraction of earth resources.
 - (i) Has the Development Review Board imposed any screening restrictions with respect to the extraction of earth resources within the Town?
 - (ii) If so, identify and list with specificity list each such location and corresponding screening restriction imposed and produce all Documents related to same.
- j. Section 5.10(B)(3) of Article 5 of the Land Use Regulations states that the Development Review Board may impose additional screening with respect to service stations as appropriate to minimize adverse impacts to adjoining properties.
 - (i) Has the Development Review Board imposed any screening restrictions with respect to service stations within the Town?
 - (ii) If so, identify and list with specificity list each such service station and the corresponding restrictions imposed and produce all Documents related to same.

- k. Section 5.10(B)(8) of Article 5 of the Land Use Regulations states that all automobile parts and dismantled vehicles at a service station shall be stored within an enclosed building or suitable screened area.
 - (i) List all service stations in the Town where automobile parts and dismantled vehicles are stored “within a suitable screened area”.
 - (ii) How are such areas screened? Produce all Documents related to same
- l. Section 5.13 of Article 5 of the Land Use Regulations states that contractors in the RR District may operate a home occupation provided all equipment (including vehicles) and material are fully and completely screened from the public right-of-way and adjoining properties.
 - (i) List each location in the RR District where a home occupation includes the use of equipment and materials.
 - (ii) Are all such home occupations appropriately screened (i.e. satisfying the requirements of Section 5.13 of Article 5 of the Land Use Regulations)?
 - (iii) If so, identify and list with specificity how such areas screened and produce all Documents related to same.
- m. Section 5.14(C)(1) of Article 5 of the Land Use Regulations states that the entire area of operation of junk yards shall be screened from view from off premises by a fence, at least 8 feet in height, or with other screening with Development Review Board approval where topography and location warrant. In addition, screening along the fence may also be required to minimize adverse visual impacts to public roads and neighboring properties.
 - (i) List each location of a junk yard in the Town.
 - (ii) Are all such junk yards appropriately screened (i.e. satisfying the requirements of Section 5.14(C)(1) of Article 5 of the Land Use Regulations)?
 - (iii) If so, identify and list with specificity how such areas screened and produce all Documents related to same.
- n. Section 5.14(C)(2) of Article 5 of the Land Use Regulations states that no vehicles associated with the junk yard or any other waste, scrap, parts or materials shall be placed within 200 feet of a stream, wetland or other surface water, or 150 feet from a public road.
 - (i) List each location of a junk yard in the Town.
 - (ii) Do all junkyards in the Town satisfy the requirements of Section 5.14(C)(2) of the Land Use Regulations?
 - (iii) Identify and list with specificity whether the Development Review Board increased or decreased such setback requirements in any particular case? If so, why? Produce all Documents related to same
- o. Section 5.17(D)(2) of Article 5 of the Land Use Regulations states that all mobile home parks must have a landscaped buffer strip, not less than 20 feet in width along all property and street lines and that the Development Review Board may require increased set back distances and/or buffering and screening to minimize or avoid adverse impacts to adjoining properties and public rights-of-way.

- (i) List each location of each mobile home park in the Town.
 - (ii) Are all mobile home parks appropriately screened (i.e. satisfying the requirements of Section 5.17(D)(2) of Article 5 of the Land Use Regulations)?
 - (iii) If so, identify and list with specificity how such mobile home parks screened and produce all Documents related to same.

- p. Section 5.17(D)(3) of Article 5 of the Land Use Regulations states that all open space for recreation within mobile home parks must be screened or protected from parking and service areas.
 - (i) List each location of open space recreation areas within each mobile home park in the Town.
 - (ii) Are all such open space recreation areas within mobile home parks appropriately screened (i.e. satisfying the requirements of Section 5.17(D)(3) of Article 5 of the Land Use Regulations)?
 - (iii) If so, identify and list with specificity how such open space recreation areas of mobile home parks screened and produce all Documents related to same.

- q. Section 5.18 of Article 5 of the Land Use Regulations states that the Development Review Board may regulate the screening requirements of public facilities.
 - (i) List each public facility location where the Development Review Board implemented screening requirements.
 - (ii) List such screening requirements imposed.
 - (iii) Are all such public facilities appropriately screened (i.e. satisfying the applicable screening requirements imposed by the Development Review Board)? If so, identify and list with specificity how such public facilities are screened and produce all Documents related to same.

- r. Section 5.19(F)(5)a. of Article 5 of the Land Use Regulations states that the Development Review Board may require an assessment of potential visual impacts of telecommunications facilities and may consider the degree to which the tower would be screened by existing vegetation, the topography of the land and existing structures.
 - (i) List each telecommunications facility where the Development Review Board implemented screening requirements.
 - (ii) List such screening requirements imposed.
 - (iii) Are all such telecommunications facilities appropriately screened (i.e. satisfying the applicable screening requirements imposed by the Development Review Board)? If so, identify and list with specificity how such telecommunications facilities are screened and produce all Documents related to same.

- s. Section 5.19(F)(5)e. of Article 5 of the Land Use Regulations states that “Telecommunications facilities shall be designed to blend into the surrounding environment, to the greatest extent feasible, through the use of natural topography, existing vegetation, landscaping and screening, the use of compatible materials and colors, and/or other camouflaging techniques. Camouflaging techniques which may be required by the Board include designing the facility to mimic natural or

architectural features, depending upon the context of the surrounding landscape and applicable zoning districts.”

- (i) List each telecommunications facility in the Town.
 - (ii) Are all such telecommunications facilities appropriately designed (i.e. satisfying the applicable screening requirements of Section 5.19(F)(5)e of the Land Use Regulations)? If so, identify and list with specificity how such telecommunications facilities are screened and produce all Documents related to same
- t. Section 5.19(F)(6) of Article 5 of the Land Use Regulations states that with respect to telecommunications towers, “The Board may require that appropriate landscaping materials be planted adjacent to the security fence to screen it from view of neighboring properties and public roads.”
 - (i) Has the Development Review Board ever required such screening of telecommunications towers?
 - (ii) List all such telecommunications towers and the screening requirements.
 - (iii) Are all such telecommunications facilities appropriately screened (i.e. satisfying the applicable screening requirements of Section 5.19(F)(6)? If so, identify and list with specificity how such telecommunications facilities are screened and produce all Documents related to same
- u. Section 5.19(F)(9) of Article 5 of the Land Use Regulations requires that all ground-mounted equipment of telecommunications towers be screened from view.
 - (i) List each telecommunications facility in the Town with ground mounted equipment.
 - (ii) Are all such telecommunications facilities with ground mounted equipment appropriately screened (i.e. satisfying the applicable screening requirements of Section 5.19(F)(9) of the Land Use Regulations)? If so, identify and list with specificity how such telecommunications facilities are screened and produce all Documents related to same
- v. Section 5.19(G)(1) of Article 5 of the Land Use Regulations allows for certain small scale wireless telecommunications equipment provided that any accompanying equipment shall be screened from view and requires that all ground-mounted equipment of telecommunications towers be screened from view.
 - (i) List each such small scale wireless telecommunications equipment in the Town and how such equipment is screened.
 - (ii) Is all such wireless telecommunications equipment appropriately screened (i.e. satisfying the applicable screening requirements of Section 5.19(G)(1) of the Land Use Regulations)? If so, identify and list with specificity how such telecommunications facilities are screened and produce all Documents related to same
- w. Section 6.3(B)(6) of Article 6 of the Land Use Regulations states that in approving outdoor display or storage, the Design Review Board may place conditions on the area and location of such storage or display, and shall require appropriate screening.

- (i) List all such areas where the Design Review Board has placed screening conditions on the outdoor display of goods, supplies, vehicles, equipment, machinery or other materials.
 - (ii) List all such screening requirements and restrictions imposed.
 - (iii) Are all such outdoor displays of goods, supplies, vehicles, equipment, machinery or other materials appropriately screened (i.e. satisfying the applicable screening requirements imposed by the Design Review Board)? If so, identify and list with specificity how such outdoor displays of goods, supplies, vehicles, equipment, machinery or other materials are screened and produce all Documents related to same
 - x. Section 6.3(B)(7) (“Screening”) of Article 6 of the Land Use Regulations allows the Design Review Board to impose specific conditions or require modifications to ensure that certain screening requirements are satisfied (see “Screening”).
 - (i) List each instance in the last ten years where the Design Review Board has placed screening conditions on the developments pursuant to Section 6.3(B)(7) (“Screening”) of Article 6 of the Land Use Regulations.
 - (ii) List all such screening requirements and restrictions that were implemented.
 - (iii) Are all such developments appropriately screened (i.e. satisfying the applicable screening requirements imposed by the Design Review Board pursuant to Section 6.3(B)(7) (“Screening”) of Article 6 of the Land Use Regulations)? If so, identify and list with specificity how such developments are screened and produce all Documents related to same
 - y. Section 8.4(B)(2) and (3) of Article 8 of the Land Use Regulations allows the Design Review Board to require additional screening with respect to subdivisions on wooded sites.
 - (i) List each instance in the last ten years where the Design Review Board has placed screening conditions on such sites.
 - (ii) List all such screening requirements and restrictions that were implemented.
 - (iii) Are all such subdivisions appropriately screened (i.e. satisfying the applicable screening requirements imposed by the Design Review Board pursuant to Section 8.4(B)(2) and/or (3) of Article 8 of the Land Use Regulations)? If so, identify and list with specificity how such subdivisions are screened and produce all Documents related to same
- 31) What measures, if any, DID THE TOWN ASK BE TAKEN to ensure that screening of the proposed site will provide a year-round visual screen of the location FOR THE FOLLOWING PROJECTS 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)
 - d. All other solar facilities identified in the response to interrogatory number 19

- e. All other solar facilities identified in the response to interrogatory number 21
- 32) Describe the process that will be implemented for monitoring screening plantings, including: (1) name of person tasked with monitoring plantings; (2) person responsible for making determination as to whether plantings are diseased; (3) person responsible for making determination as to whether plantings are dead; (4) credentials of persons named in (1)–(3); (5) frequency of monitoring FOR THE FOLLOWING PROJECTS 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)
 - d. All other solar facilities identified in the response to interrogatory number 19
 - e. All other solar facilities identified in the response to interrogatory number 21.
- 33) Admit that the Town did not, and has not, asked OF THE FOLLOWING PROJECTS the process that will be implemented for monitoring screening plantings, including: (1) name of person tasked with monitoring plantings; (2) person responsible for making determination as to whether plantings are diseased; (3) person responsible for making determination as to whether plantings are dead; (4) credentials of persons named in (1)–(3); (5) frequency of monitoring:
- 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)
 - d. All other solar facilities identified in the response to interrogatory number 19
 - e. All other solar facilities identified in the response to interrogatory number 21
- 34) 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;
- 35) Admit that NONE of the solar modules of the Project are located in a “gateway to Bennington.”
- 36) Reference the testimony of Daniel Monks at page 5, lines 12-20.

- i. Identify and list the dates of all meetings in which the Select Board voted on the recommendations listed by Monks, and provide the names of the Select Board members in attendance, the record of the vote of such meeting, a copy of the formal notice for such meetings and the minutes of such meetings and produce all Documents related to same;
- ii. Identify with specificity all the “undue adverse impact on aesthetics” that Monks refers to at page 5, line 13 of his testimony and produce all Documents related to same;
- iii. Identify with specificity all the “undue adverse impact on .. orderly development of the region” that Monks refers to at page 5, line 13-14 of his testimony and produce all Documents related to same
- iv. Identify with specificity all the “undue adverse impact on ... public health and safety” that Monks refers to at page 5, line 13-14 of his testimony and produce all Documents related to same;
- v. Identify with specificity the undue adverse impact on aesthetics on Route 7 that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same;
- vi. Identify with specificity the undue adverse impact on aesthetics on Route 279 that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:
- vii. Identify with specificity the undue adverse impact on aesthetics on the Bennington Welcome Center that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:
- viii. Identify with specificity the undue adverse impact on the orderly development of the region with reference to Route 7 that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:
- ix. Identify with specificity the undue adverse impact on the orderly development of the region with reference to Route 279 that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:
- x. Identify with specificity the undue adverse impact on the orderly development of the region with reference to the Vermont Welcome Center that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:
- xi. Identify with specificity the undue adverse impact on the public health and safety with reference to Route 7 that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:
- xii. Identify with specificity the undue adverse impact on the public health and safety with reference to Route 279 that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:
- xiii. Identify with specificity the undue adverse impact on the public health and safety with reference to the Vermont Welcome Center that Monks refers to at page 5, line 13 -20 of his testimony and produce all Documents related to same:.

37) Reference the testimony of Daniel Monks at page 6, lines 11-14.

- i. Identify and list the dates of all meetings in which the Select Board voted on the opposition listed by Monks, and provide the names of the Select Board members in attendance, the record of the vote of such meeting, a copy of the formal notice for such meetings and the minutes of such meetings and produce all Documents related to same;
- ii. Identify with specificity all the environmental damage that Monks refers to at page 6, line 11 of his testimony and produce all Documents related to same;
- iii. Identify with specificity all the safety damage that Monks refers to at page 6, line 11 of his testimony and produce all Documents related to same;
- iv. Identify with specificity all the visual damage that Monks refers to at page 6, line 11 of his testimony; Identify with specificity all the aesthetic values damage that Monks refers to at page 6, line 12 of his testimony and produce all Documents related to same;
- v. Identify all the citizens Monks refers to at page 6, line 14 of his testimony and produce all Documents related to same;

38) Reference the testimony of Daniel Monks at page 6, lines 15-21.

- i. Identify and list the dates of all meetings in which the Select Board voted on the statement that the “Project would have an undue adverse impact on aesthetics,” and provide the names of the Select Board members in attendance, the record of the vote of such meeting, a copy of the formal notice for such meetings and the minutes of such meetings and produce all Documents related to same;
- ii. Identify and define with specificity what is meant by the term “hillside” on page 6, line 19 and produce all Documents related to same;
- iii. Identify and define with specificity what is meant by the term “prominent location” on page 6, line 19 and produce all Documents related to same;
- iv. Identify with specificity how the Project is out of character with “the major roadways into town,” as stated on page 6, line 20 and produce all Documents related to same;
- v. Identify with specificity how the Project is out of character with Welcome Center as stated on page 6, line 20 and produce all Documents related to same;
- vi. Identify with specificity how the Project is out of character with “woodlands” as stated on page 6, line 20 and produce all Documents related to same;
- vii. Identify with specificity how the Project is out of character with “well set-back and screened residential areas” as stated on page 6, line 20-21 and produce all Documents related to same;
- viii. Identify and define with specificity what is meant by the term “well set-back” as stated on page 6, line 21 and produce all Documents related to same;
- ix. Identify and define with specificity what is meant by the term “screened” as stated on page 6, line 21 and produce all Documents related to same;
- x. Identify and define with specificity what is meant by the term “residential areas” as stated on page 6, line 21, and list those residential areas and produce all Documents related to same

39) Reference the testimony of Daniel Monks at page 6, lines 7-8.

- i. Identify with specificity what infrastructure Monks claims is shared between the Project and the Apple Hill solar project and produce all Documents related to same:.

40) Reference the testimony of Daniel Monks at page 7, line 1.

- i. Identify with specificity how the Project would “significantly diminish the scenic qualities of the area” and produce all Documents related to same:

41) Reference the testimony of Daniel Monks at page 7, lines 12-14.

- i. Identify and define with specificity what is meant by the term “non-reflective” as stated by Mr. Monks at page 7, line 12-13 and produce all Documents related to same;
- ii. Provide technical specifications of what is meant by the term “non-reflective” as stated by Mr. Monks at page 7, line 12-13 and produce all Documents related to same;
- iii. Identify the manufacturer and model number of one photovoltaic solar module that is non-reflective as Mr. Monks uses the term at page 7, lines 12-13 and produce all Documents related to same;
- iv. Admit that the Town has not previously raised the issue of non-reflective solar modules for any other solar project in Bennington with the exception of Chelsea and Apple Hill Solar and produce all Documents related to same
- v. Identify with specificity all other solar projects in Bennington with respect to which the Town has raised the issue of non-reflective solar modules, and produce all documents evidencing the Town having raised the issue and produce all Documents related to same;
- vi. Admit that the solar modules used in the following projects are not non-reflective as the term is used by Mr. Monks:
 - a. Paper Mill Solar Project;
 - b. ER Bennington I Solar Project;
 - c. Kobelia Bennington GLC Solar Project
 - d. All other solar facilities identified in the response to interrogatory number 19
 - e. All other solar facilities identified in the response to interrogatory number 21

42) Reference the testimony of Daniel Monks at page 7, lines 15-16.

- i. Identify and define with specificity what is meant by the term “earth-tone colors” as stated by Mr. Monks at page 7, lines 15-16 and produce all Documents related to same;;

- ii. Identify and list with specificity are colors that qualify as “earth-tone colors” as the term is used by Mr. Monks at page 7, lines 15-16 and produce all Documents related to same;
 - iii. Admit that equipment used in the following projects are not “earth-tone colors” as the term is used by Mr. Monks:
 - a. Paper Mill Solar Project;
 - b. ER Bennington I Solar Project;
 - c. Kobelia Bennington GLC Solar Project
 - d. All other solar facilities identified in the response to interrogatory number 19
 - e. All other solar facilities identified in the response to interrogatory number 21
 - iv. Identify and list with specificity the equipment in the following projects that qualify as “earth-tone colors” as the term is used by Mr. Monks:
 - a. Paper Mill Solar Project;
 - b. ER Bennington I Solar Project;
 - c. Kobelia Bennington GLC Solar Project
 - d. All other solar facilities identified in the response to interrogatory number 19
 - e. All other solar facilities identified in the response to interrogatory number 21
 - v. Admit that the Town has not previously raised the issue of earth-tone colors for any other solar project in Bennington with the exception of Chelsea and Apple Hill Solar
 - vi. Identify with specificity all other solar projects in Bennington with respect to which the Town has raised the issue of earth-tone colors, and produce all documents evidencing the Town having raised the issue;
- 43) Reference the testimony of Daniel Monks at page 7, lines 19-21 and page 8, lines 1-2.
- i. Identify and define with specificity what is meant by the phrase “minimize clearing of natural vegetation” as used by Mr. Monks at page 8, line 1 and produce all Documents related to same;
 - ii. Identify and list with specificity how You assert the Project does not meet the phrase “minimize clearing of natural vegetation” as used by Mr. Monks at page 8, line 1 as he contends at page 8, lines 1-2 and produce all Documents related to same:.
- 44) Reference the testimony of Daniel Monks at page 8, lines 2-6.
- i. Identify and list with specificity what “clear, written community standards” in the Town Plan Mr. Monks refers to at page 8, lines 2-3 and produce all Documents related to same;

- ii. Identify and list with specificity what “clear, written community standards” in the Scenic Resources Inventory Mr. Monks refers to at page 8, lines 2-4 and produce all Documents related to same;
- iii. Admit that the following projects meet the “clear, written community standards” in the Town Plan Mr. Monks refers to at page 8, lines 2-3:
 - a. Paper Mill Solar Project;
 - b. ER Bennington I Solar Project;
 - c. Kobelia Bennington GLC Solar Project
- iv. Admit that the following projects meet the “clear, written community standards” in the Scenic Resource Inventory Mr. Monks refers to at page 8, lines 2-4:
 - a. Paper Mill Solar Project;
 - b. ER Bennington I Solar Project
 - c. Kobelia Bennington GLC Solar Project

45) Reference the testimony of Daniel Monks at page 8, lines 7-11.

- i. Admit that the solar modules of the Project would not be visible from the Welcome Center
- ii. Admit that the solar modules of the Project would not be visible from the Battle Monument;
- iii. Admit that from the viewpoint of the Welcome Center, the Project satisfies the Screening Ordinance (as referenced on page 3, line 3 of Mr. Monks’ testimony)
- iv. Admit that from the viewpoint of the Battle Monument, the Project satisfies the Screening Ordinance (as referenced on page 3, line 3 of Mr. Monks’ testimony)

46) Reference the testimony of Daniel Monks at page 8, lines 12-21.

- i. Identify and list the dates of all meetings in which the Select Board voted on the statement that the “Project would unduly interfere with the orderly development of the region,” and provide the names of the Select Board members in attendance, the record of the vote of such meeting, a copy of the formal notice for such meetings and the minutes of such meetings and produce all other Documents related to same;

47) Reference the testimony of Daniel Monks at page 9, lines 18-21.

- i. Identify and list the dates of all meetings in which the Select Board voted on the the conclusion that the Project is inconsistent with land conservation measures contained in the “Previous Town Plan.” “Project would unduly interfere with the orderly development of the region,” and provide the names of the Select Board members in attendance, the record of the vote of such meeting, a copy of the formal notice for such meetings and the minutes of such meetings and produce all other Documents related to same;

48) Reference the testimony of Daniel Monks at page 10, line 19.

- i. Identify and list with specificity the “many public vantage points” from which You assert the solar modules of the Project will be able to be seen as claimed by Mr. Monks and produce all Documents related to same.

49) Reference the testimony of Daniel Monks at page 10, line 20, and page 11, lines 1-2.

- i. Identify and list with specificity the evidence that supports Mr. Monks’ statement that a solar facility that exceeds an area of 10 acres “cannot be adequately screened or mitigated to blend into the landscape” and produce all other Documents related to same
- ii. Identify and list with specificity how the Town determines the area occupied by a solar facility and produce all other Documents related to same;
- iii. Admit that the Town Energy plan states: “When evaluating impacts of a proposed solar facility under the criteria set forth in this Town Plan, the cumulative impact of existing solar facilities, approved pending solar facilities, and the proposed solar facility shall be considered.”
- iv. Admit that the Apple Hill solar project in PUC docket 8454 is not an existing solar facility
- v. Admit that the Apple Hill solar project in PUC docket 8454 is not an “approved pending solar” facility.

50) Reference the testimony of Daniel Monks at page 12, lines 1-6.

- i. Identify and list with specificity the plantings that Mr. Monks claims are outside property owned or controlled by Petitioner and produce all Documents related to same.
- ii. Admit that approval from the Select Board of a screening plan is not required in this Case;
- iii. Admit that the Petitioner submitted the plans for the Project to the Town in a timely manner, and the Town never sent any screening concerns or recommendations to the Petitioner.
- iv. Identify and list with specificity all communications by the Town to the Petitioner evidencing any screening concerns or recommendations to the Petitioner for the Project and produce all Documents related to same;

51) Reference the testimony of Daniel Monks at page 13, lines 5-6.

- i. Identify and define with specificity the term “naturally” as used by Mr. Monks at page 13, line 6 and produce all other Documents related to same.

- ii. Identify and define with specificity the term “screen” as used by Mr. Monks at page 13, line 6 and produce all other Documents related to same.

52) Reference the testimony of Daniel Monks at page 3, lines 20-21 and page 4, lines 1-3.

- i. Identify and list with specificity the “significant visual elements of the town’s landscape” that You assert first appear term “naturally” as used by Mr. Monks at page 4, line 3 in gateway to Bennington that Mr. Monks refers to at page 3, line 20 and produce all other Documents related to same

53) Reference the testimony of Daniel Monks at page 5, lines 7-9.

- i. Identify and list with specificity the areas along Route 7 that You assert are “particularly important scenic gateways;
- ii. Identify and list with specificity the areas along Route 297 that You assert are “particularly important scenic gateways.

54) Admit that the SOLAR MODULES OF THE PROJECT will not be visible to vehicles traveling along Route 7 west of the Project site.

55) 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.”

56) 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.”

57) Please identify with specificity the financial arrangement between the Town of Bennington and the ER Project and produce all Documents related to same.

58) Please identify the dates that the ER Project and the Paper Mill Solar Project were reviewed by the Town of Bennington and produce all Documents related to same.

59) Reference the testimony of Daniel Monks at page 5, lines 3-4. Identify all documents, exhibits, and other materials referenced when writing the statement “Such scenic resources are unduly adversely impacted when they are no longer “intact,” but rather broken up by incongruous structures and buildings” and produce all Documents related to same.

- 60) Reference the testimony of Daniel Monks at page 7, lines 1-3. Admit that the scenic views from the Welcome Center are in the opposite direction from the Project, and pointed away from the Project site.
- 61) Admit that the Project will not be in direct line of sight from the Welcome Center.
- 62) Admit that the Town and the Petitioner engaged in multiple conversations, including formal public hearings, regarding revisions to the Project site plan and the Project's proposed screening in 2017.
- 63) Admit that the Petitioner implemented every request or recommendation from the Town in 2017 regarding revisions to the Project site plan and the Project's proposed screening.
- 64) Admit that approval from the Selectboard is not required for proposed screening with respect to forms of development other than solar projects.
- 65) Admit that the Town's land use regulations require replacement of dead and dying screening plants within one year of death for forms of development other than solar projects.
- 66) Identify and list each of the 30 V.S.A. §248 criteria with respect to which You assert the Petitioner has failed to meet its initial burden of proof, and produce all Documents relating to same.
- 67) With respect to the prior interrogatory, state with specificity the respondent's education, training and experience to offer an opinion with respect to each criterion and produce all documents concerning same.
- 68) With respect to each criteria listed in the response to #65, identify and explain with specificity the basis for Your assertion, and produce all Documents relating to same.
- 69) Identify all evidence that You will sponsor that supports the bases listed in the response to #67, and produce all Documents relating to same.
- 70) Produce Daniel Monk's resume or Curriculum Vitae.
- 71) Admit that there exist other factors affecting the general good of the State that individually and cumulatively outweigh the application of the Town's attempt to use its Town Plan to prevent the Project from being built.

72) 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.

73) Identify and describe with specificity why the Town did not object to clearcutting involved when the house occupied by Libby Harris was built, and produce all Documents related to same.

- 74) 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.
- 75) 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.
- 76) Have the residents of the Town voiced concerns over climate change at public meetings or otherwise?
- 77) Have the residents of the Town 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?
- 78) 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.
- 79) Admit that the Chelsea Solar Project will have a lower carbon footprint than fossil fuel based electric generation.
- 80) 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.
- 81) Identify and describe with specificity the changes in view that would occur from the locations identified in response 80, and produce all Documents relating to same.
- 82) Identify and describe with specificity the overall societal benefits of the Town's opposition to the Project and produce all Documents relating to same
- 83) Identify and describe with specificity how the general good of the State of Vermont is benefitted by the Town's opposition to the Project and produce all Documents relating to same.
- 84) Identify and describe with specificity how the Town's opposition to the Project is 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.

85) Identify and describe with specificity how the Town's opposition to the Project is 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.

86) Identify and describe with specificity how the Town’s opposition to the Project is 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 viewshed 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.

87) Identify and describe with specificity how the Town’s opposition to the Project is 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.

- 88) Identify all buildings or structures (and their respective locations) that have been built in the Town’s RCON zone since January 1, 2010, and produce all Documents related to same.
- 89) With respect to each building or structure identified in response 80, identify and describe the total acreage of clearing that occurred on the site either prior to or after the construction of such building or structure and produce all Documents related to same.
- 90) Admit that the groundwater in the vicinity of the Project site and the surrounding properties is contaminated with poly - and perfluoroalkyl substances (“PFOA”)
- 91) Admit that the well water in the vicinity of the Project site and the surrounding properties is contaminated with PFOA.
- 92) 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.
- 93) 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.
- 94) 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.
- 95) 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
- 96) Explain how MONKS 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
- 97) Identify and list with specificity what measures the Town has taken and is taking to address the contamination of the well water and ground water by PFOA in the vicinity of the Project site and the surrounding properties, and produce all Documents related to same.
- 98) Identify and explain with specificity how the Town accounts for PFOA contaminated well water areas in its planning of development in Town, and produce all Documents related to same.
- 99) One of the stated purposes of the RCON district is “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.

- 100) 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. Rick Carroll;
 - x. Peter Lawrence;
 - xi. Paper Mill solar;
 - xii. Landworks;
 - xiii. David Raphael;
 - xiv. ER Project;
 - xv. Paper Mill Project;
 - xvi. Kobelia;
 - xvii. Encore Renewable;
 - xviii. MHG Solar or MHG;
 - xix. Maple Leaf solar.
- 101) Admit that the Town has known for decades that carbon dioxide (“CO2”) pollution from burning fossil fuels was causing global warming and dangerous climate change.
- 102) Admit that the Town 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.
- 103) Admit that the Town knows of the unusually dangerous risks of harm to human life, liberty, and property that would be caused by continued fossil fuel burning.
- 104) 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.
- 105) Admit that the Town must exercise their governmental power consistent with protecting those trust resources.
- 106) Admit that as a sovereign trustee, the Town has a duty to refrain from actions which further impair these essential natural resources.
- 107) Admit that the affirmative aggregate acts of the Town in opposing the Project contribute to higher levels of fossil fuel electricity production than would otherwise occur.
- 108) Admit that as a sovereign trustee, the affirmative aggregate acts of the Town opposing the Project are unconstitutional.
- 109) Admit that as a sovereign trustee, the affirmative aggregate acts of the Town opposing the Project are in contravention of their duty to hold the atmosphere and other

public trust resources in trust.

- 110) Admit that the Project site is not located in a gateway area.
- 111) 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).
- 112) Produce a map detailing the boundaries of all gateway areas in Bennington.
- 113) Please produce all documents you expect to offer as exhibits at the technical hearing of these proceedings.

Dated June 29, 2018

CHELSEA SOLAR LLC

/s/Michael Melone

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