

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NUMBER 17-5024-PET

PETITION OF CHELSEA SOLAR LLC, PURSUANT TO 30 V.S.A.
SECTION 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

July 12, 2018
2 p.m.

112 State Street
Montpelier, Vermont

Status Conference held before the Vermont Public
Utility Commission, at the Susan M. Hudson Conference
Room, People's United Bank Building, 112 State Street,
Montpelier, Vermont, on July 12, 2018, beginning at 2 p.m.

P R E S E N T

HEARING OFFICER: Michael Tousley, Staff Attorney

CAPITOL COURT REPORTERS, INC.
P.O. BOX 329
BURLINGTON, VERMONT 05402-0329
(802/800) 863-6067
E-mail: info@capitolcourtreporters.com

A P P E A R A N C E S

JAKE CLARK, ESQUIRE

JAMES PORTER, ESQUIRE

SARAH ACEVES, ESQUIRE

Appearing for the VT Department of Public Service
112 State Street
Montpelier, VT 05620-2601

RANDY MILLER, ESQUIRE

Appearing for the Agency of Natural Resources
One National Life Drive, Davis 2
Montpelier, VT 05602-3901

PAUL, FRANK + COLLINS P.C.

Appearing for the Petitioner
One Church Street - P.O. Box 1307
Burlington, VT 05402-1307

BY: KIMBERLY K. HAYDEN, ESQUIRE

WOOLMINGTON, CAMPBELL, BERNAL & BENT, P.C.

Appearing for the Town of Bennington
P.O. Box 2748
Manchester Center, VT 05255

BY: MERRILL E. BENT, ESQUIRE

THOMAS AND MICHAEL MELONE

Allco Renewable Energy Limited
1740 Broadway - 15th Floor
New York, NY 10019

LIBBY HARRIS, PRO SE

531 Apple Hill Road
Bennington, VT 05201

LORA BLOCK

Apple Hill Homeowners Association
34 McIntosh Lane
Bennington, VT 05201

1 HEARING OFFICER TOUSLEY: Okay. Thank
2 you. I think we're going to go ahead and get
3 started. Good afternoon. I am Mike Tousley. I've
4 been assigned to serve as the Hearing Officer for the
5 Public Utility Commission in this matter which is the
6 petition of Chelsea Solar LLC, pursuant to 30 V.S.A.
7 Section 248, for a Certificate of Public Good
8 authorizing the installation and operation of the
9 Chelsea Solar project, a 2 megawatt project, solar
10 generation electric facility off Willow Road in
11 Bennington, Vermont.

12 This petition has been assigned Case
13 Number 17-5024-PET. We are together today in
14 Montpelier and on the phone to conduct a status
15 conference. First I would like to take appearances
16 starting with the Town.

17 MS. BENT: Merrill Bent for the Town.

18 HEARING OFFICER TOUSLEY: The
19 Department?

20 MR. PORTER: Jim Porter and Sarah Aceves
21 and Jake Clark.

22 HEARING OFFICER TOUSLEY: Okay. For the
23 Petitioner?

24 MS. HAYDEN: Kim Hayden.

25 MR. T. MELONE: Thomas Melone and

1 Michael Melone.

2 HEARING OFFICER TOUSLEY: Okay, and from
3 the Agency of Natural Resources?

4 MR. MILLER: Randy Miller sitting in for
5 Don Einhorn.

6 HEARING OFFICER TOUSLEY: Okay, and we
7 have Ms. Harris and Ms. Block; is that correct?

8 MS. BLOCK: Yes.

9 MS. HARRIS: Pro se.

10 HEARING OFFICER TOUSLEY: Yes, ma'am.
11 Are there any other parties on the line? Okay. I'm
12 going to ask that you put your phones on mute unless
13 you want to talk and please take it off mute. I want
14 to talk -- to start off a little bit I called this
15 status conference because I'm a little bit concerned
16 about civility and the practices in this proceeding,
17 and making sure that the parties are talking to each
18 other consistent with the requirements of the
19 Commission's rules and the Rules of Civil Procedure.

20 In particular, I want to initially focus
21 on Rule 2.201(b) which defines the responsibilities
22 for pro se appearances, and part of that rule states
23 that "Any individual may be a pro se representative
24 in his or her own cause. This rule shall in no
25 respect relieve any person or party from the

1 necessity of compliance with any applicable rule,
2 law, practice, procedure, or other requirement.

3 Anyone appearing as a pro se
4 representative shall be under all the obligations of
5 an attorney admitted to practice in this state with
6 respect to the matter in which such person appears,"
7 and I state and make that quote because I want to
8 make sure that all the parties know that there is a
9 requirement -- part of what goes on in discovery is
10 the good faith discussion amongst counsel which
11 includes pro se's about scheduling, establishing
12 times and dates for depositions and other events. So
13 if there's -- if parties are not responding to each
14 other, that's not -- you're not meeting your
15 requirements as a party and you're cautioned about
16 that, that you need to make sure that if -- that if
17 you're being engaged in the good faith discussions of
18 what goes on in discovery that you need to be
19 responsive to that.

20 MS. HARRIS: Excuse me. In what way
21 have we not been responsive?

22 HEARING OFFICER TOUSLEY: I'm not
23 accusing anybody of anything, Ms. Harris. I'm simply
24 stating what the rule says.

25 MS. HARRIS: So you know we received

1 notices of deposition to come to Burlington and
2 counsel did not contact us at all first to ask if we
3 were available -- if we were available that day to go
4 to Burlington, and so we feel that we've complied,
5 but you know we were not contacted first about
6 anything and we feel we have behaved in good faith.

7 HEARING OFFICER TOUSLEY: Okay. Great.
8 The good faith requirement applies to all the parties
9 not just to the pro se parties. I just want to make
10 sure that people are being responsive when they are
11 being contacted. My purpose again is to both remind
12 -- is to articulate my concern in what I was seeing
13 in the various motions. You know generally speaking
14 during discovery the parties do their own thing based
15 on the schedule that they have established for
16 themselves, and it's only when there are serious
17 conflicts that rulings are required from the
18 Commission or from a judge in a court case. So I
19 became a little bit concerned about some of the
20 dialogue that I was seeing and I want to encourage
21 the parties to do a better job working together so
22 that that perception goes away.

23 I wanted to also talk a little bit about
24 the pending motions. There are by my count five or
25 six pending motions. I say six because there's a

1 motion that was made by ANR which they have
2 tentatively withdrawn that we won't talk about, but
3 there are five other ones, and if I -- if there are
4 more that I'm missing, please let me know.

5 The first motion is Miss Harris's motion
6 to change the schedule dated -- that was filed on the
7 11th of June, 2018. It sought the movement of an
8 evidentiary hearing -- of the scheduled evidentiary
9 hearing from September 13 and 14 to September 19
10 through 21. I haven't ruled on that motion primarily
11 because there are some active other things going on
12 in this case that might otherwise drive a later
13 scheduling of that hearing. In particular, there is
14 the motion for interlocutory review of the vested
15 rights order which the Commission will rule upon
16 after it receives its reply briefs. That may affect
17 -- depending upon how that resolves may require
18 changes in the parties' desires for discovery and in
19 the schedule. So I'm going to defer ruling on the
20 date of the hearing in September until after the
21 Commission has completed its interlocutory review and
22 the parties have had an opportunity to comment on it.
23 So that's the first motion.

24 MS. HARRIS: I have a question for you.

25 HEARING OFFICER TOUSLEY: Sure.

1 MS. HARRIS: I need to know if the 13th
2 is not going to happen at the very least. If you're
3 not going to rule on a date, that's fine for now. We
4 can -- you know you can decide that later, the date
5 that's mutually consented upon, but the fact that I'm
6 not available on the 13th I would like to know at
7 least that it's not going to happen on the 13th.

8 HEARING OFFICER TOUSLEY: Miss Harris,
9 is there a medical reason or some reason you couldn't
10 attend by phone?

11 MS. HARRIS: There is a reason. I'm
12 going to be out of the state and it's a family
13 gathering for an ancient aunt of mine that was set a
14 while ago.

15 HEARING OFFICER TOUSLEY: Okay. I can
16 tell you right now that it will not be the 13th and
17 the 14th of September. Right now it's most likely --
18 unless there's a further delay -- in fact I'll just
19 rule right now that unless I hear further otherwise,
20 the evidentiary hearing is now going to be on the
21 19th through the 21st of September, and if I need to
22 change it again, I'll do it after the Commission
23 rules on the vested rights consent.

24 MS. HARRIS: Okay. Thank you very much.

25 HEARING OFFICER TOUSLEY: Sure. The

1 second motion that's out there -- so the first was
2 Miss Harris's motion to change the schedule which
3 I've just granted.

4 The second is Chelsea's motion or the
5 Petitioner's motion under 60(b)(6) and its motion to
6 consolidate comments in response to that motion were
7 due yesterday. The PUC will rule on that motion in
8 due course. So that's the status of that motion.

9 The third motion --

10 MS. BENT: I have that on my calendar
11 response today. So my response is coming today.

12 HEARING OFFICER TOUSLEY: Okay. That's
13 fine. I may have had that off by a day.

14 MS. BENT: Okay. Thank you.

15 HEARING OFFICER TOUSLEY: The third
16 motion is the Town's motion for a protective order
17 with regard to, in particular, the deposition of the
18 selectboard members. That motion is outstanding and
19 I will be ruling on that shortly. I was going to ask
20 some questions with regard to that motion as well as
21 Miss Harris's motion for protective order which is
22 the fourth motion. Basically with regard to those --

23 MS. BLOCK: This is Lora Block. I'm
24 wondering if you had my motion for protective order
25 as well because I had filed that as well as Libby

1 Harris filing one. That's also outstanding.

2 HEARING OFFICER TOUSLEY: When did you
3 file that?

4 MS. BLOCK: It's all the same motion.

5 HEARING OFFICER TOUSLEY: Right. It was
6 for you and for Miss Harris.

7 MS. BLOCK: And for Maru Leon as well.
8 We were all on the same one. I'm sorry.

9 HEARING OFFICER TOUSLEY: I'm sorry. I
10 simply referred to it as the Harris. I meant it to
11 be for all of you, and what I wanted to ask with
12 regard to those two motions first was of the movants
13 whether the movants wanted an opportunity to
14 supplement their protective order request with some
15 articulation of specific allegations of harm. That
16 is some less than general reason why the depositions
17 -- you need to be protected from them. What other
18 than you've told me; the cost, you told me you feel
19 that -- the things you told me that are in those
20 motions, but if there are particular things with
21 regards to the times and dates and a particularized
22 harm that might be relevant to those times and dates,
23 you have the opportunity, if you want it, to file
24 additional information. Do you want that
25 opportunity? Ms. Bent.

1 MS. BENT: Yes. This is Merrill Bent on
2 behalf of the Town. The Town would take the
3 opportunity to file a supplemental brief on that.

4 HEARING OFFICER TOUSLEY: Okay. That
5 would be due on Wednesday, July 18.

6 MS. BENT: Thank you.

7 HEARING OFFICER TOUSLEY: And, Ms.
8 Harris and Ms. Block, and for -- you have the
9 opportunity as well.

10 MS. HARRIS: Thank you. We know that --
11 this is Lora Block. We appreciate the opportunity to
12 file some supplemental brief on this. We are feeling
13 very overwhelmed now with the discovery questions and
14 answers and all the legal filings. As you know we
15 are not attorneys and we feel there's overwhelming --
16 we have deadlines of other filings on July 20th and
17 on July 23rd already. To now give us an opportunity
18 to file about additional harms and put that together
19 on the 18th seems very crammed and very overwhelming
20 for us to do. Can we ask for a further away deadline
21 for that? That's not the right way to say it, but
22 more time I guess is what I'm trying to say because
23 we are scrambling as civilians here to try to meet
24 all these requirements of filings without having any
25 training whatsoever on how to do this.

1 HEARING OFFICER TOUSLEY: And you're
2 doing a great job and I want you to know that I don't
3 want the proceeding delayed by the opportunity I'm
4 giving you to supplement your initial filing. So I'm
5 going to stick with the 18th as the date on this, and
6 really, ma'am, what I'm looking for is maybe one page
7 or two that talks about particular factual issues
8 that prevent you or that create a harm for you with
9 regard to the proposed deposition. It shouldn't be a
10 repetition of what you have already filed.

11 MS. BLOCK: Well we feel we need
12 protection in general from the entire overwhelming
13 other litigation that we have been facing in general.

14 HEARING OFFICER TOUSLEY: I understand
15 that, ma'am, and I really don't want to litigate this
16 on the phone in this session. I really wanted to
17 give you the opportunity to provide me with some more
18 facts to use when I write my determination.

19 MS. BLOCK: Okay. Thank you.

20 HEARING OFFICER TOUSLEY: And with
21 regard to the Petitioner I wanted the Petitioner to
22 offer -- go ahead. All right. I wanted to offer the
23 Petitioner the opportunity similarly to provide
24 additional information. It's my understanding from
25 reading your filings, and again this is my summary

1 for purposes of discussion here, that the deposition
2 provides an opportunity for Chelsea to isolate
3 specific admissible and relevant evidence to be
4 sought from individual selectboard members.
5 Specifically their personal motivation in opposing
6 the Chelsea project. I want to offer you -- is that
7 correct?

8 MR. T. MELONE: This is Tom Melone.
9 That certainly is the first aspect. It could
10 encapsulate the whole thing if you're viewing it
11 broadly in terms of not only their personal view of
12 it but how they personally differentiated from other
13 projects that they have either supported or not
14 opposed.

15 HEARING OFFICER TOUSLEY: Understood.

16 MR. T. MELONE: So it encompasses that
17 as well.

18 HEARING OFFICER TOUSLEY: Okay. Do you
19 want to provide a supplementary filing? I want to
20 give you that opportunity as well if you think I
21 didn't capture that or if you need to supplement that
22 bases for the requirement for deposition.

23 MR. T. MELONE: We would like that
24 opportunity if it could be say by the 20th, two days
25 after the movants file their's?

1 HEARING OFFICER TOUSLEY: Actually I
2 kind of wanted them both on the same day. I really
3 am just looking for some factual information.
4 Nothing that should in and of itself necessarily be
5 rebutted.

6 MR. T. MELONE: Okay. Sure. We will
7 file whatever supplemental information we think we
8 need to by the 18th.

9 HEARING OFFICER TOUSLEY: Okay. Great.
10 Thank you. So I've -- I also wanted to make sure I
11 had the parties -- make sure I was clear on what the
12 dates were for the proposed depositions. For Ms.
13 Harris and Ms. Leon it's August 7. For Ms. Block
14 it's August 8. For Mr. Raphael -- go ahead. Was
15 that Ms. Block?

16 MS. BLOCK: I'm sorry. This is Lora
17 Block. I don't believe that that's the decision. I
18 told the petitioners that I was not available that
19 day, August 8th, because my husband has a medical
20 appointment that I have to take him to, and so I
21 haven't heard back about a different day. I did
22 suggest -- I did answer by e-mail to the Petitioner.
23 After I filed for the protective order I did send an
24 e-mail giving an alternative date in September, but
25 that as far as I know has not been agreed upon. So I

1 don't believe, as far as I understand how these
2 things work, that I have a date that has already been
3 agreed upon.

4 HEARING OFFICER TOUSLEY: Okay.

5 MR. T. MELONE: This is Tom Melone. We
6 are fine rescheduling her for a date that's
7 convenient for Lora Block as well as the other
8 deponents as well if those dates are inconvenient,
9 but we haven't really heard from anybody except from
10 Lora Block as to whether the dates that were
11 specified were convenient or not.

12 HEARING OFFICER TOUSLEY: Okay. I don't
13 necessarily want to use this status conference -- I
14 don't need to hear that discussion, but I would
15 encourage you to either call each other or e-mail as
16 you have been doing with attempts at rescheduling.
17 Mr. Raphael was scheduled I believe for August 28.
18 Mr. Monks and Mr. Herd for August 29. The
19 selectboard members I had Connor for August 29,
20 Campbell August 30, Jenkins August 30, and Jacobs
21 August 30, and then Thurber August 31, and Garden
22 August 31. Did I get that correct?

23 MS. BENT: That's not quite what I have
24 in my records. This is Merrill Bent for the Town. I
25 had Jim Carroll on the 31st. I don't think you said

1 that one.

2 HEARING OFFICER TOUSLEY: Yeah.

3 MS. BENT: Okay. Maybe you did.

4 HEARING OFFICER TOUSLEY: So those dates
5 are the correct dates?

6 MR. CLARK: Mr. Tousley, this is Jake
7 Clark. David Raphael is not available on the 28th
8 and we're working on getting other dates that he's
9 available and we'll -- we'll be in contact with the
10 Melones to resolve that, but Raphael is not available
11 on the 20th.

12 HEARING OFFICER TOUSLEY: Thank you.
13 I'm glad you spoke up because you reminded me of
14 something else I wanted to take care of at the status
15 conference and that's your active pro hac vice
16 motion. Is there any objection to that motion?

17 MR. T. MELONE: No objection.

18 HEARING OFFICER TOUSLEY: Very well.
19 Having heard no objections the motion is granted.

20 MR. T. MELONE: Thank you.

21 MR. CLARK: Thank you.

22 HEARING OFFICER TOUSLEY: Okay. Do the
23 parties on the line have any further questions with
24 regard to the supplemental briefings that are
25 available to them with regard to the protective order

1 motions? Very well.

2 MR. T. MELONE: This is Tom Melone. No
3 other questions from our end.

4 HEARING OFFICER TOUSLEY: Okay.

5 MS. BLOCK: This is Lora Block. Since I
6 am completely new to all of this can I just ask
7 exactly what's happening. In other words, you're
8 saying -- you're giving us the opportunity to file
9 these supplemental motions on the protective order
10 which will be due July 18th, and the outstanding --
11 or the under discussion dates for deposition do they
12 need to be decided and agreed upon before your
13 decision on the protective order?

14 HEARING OFFICER TOUSLEY: That's up to
15 you. You know if you think that there are
16 particularized -- I would suggest that you shouldn't
17 be scheduling a deposition with the Petitioner on a
18 date that you know you have a problem with. So I
19 don't know that we need to settle that before you put
20 forward any additional information in a supplemental
21 filing. So -- but that's your call.

22 MS. BLOCK: That wasn't exactly my
23 question. Maybe I'm not allowed to ask this
24 question. You can tell me if it's a not allowed
25 question. I'm wondering if -- because you're saying

1 that we need to be dealing with the Petitioner to
2 settle some agreed upon dates for depositions, and
3 are you expecting those dates to be decided upon
4 before we hear your ruling on the protective order?

5 HEARING OFFICER TOUSLEY: I'm going to
6 rule on the protective order at some point
7 immediately after July 18th. It's up to you when you
8 schedule what you schedule. I would suggest that if
9 you're able to work out with the Melones a date and
10 time, that your supplemental filing might not be
11 necessary.

12 MS. BLOCK: Okay. So I guess what you
13 have given us to understand that you're expecting to
14 rule on the protective order soon after July 18, but
15 you want us to be working between now and then on at
16 least a tentative deposition date in case we do need
17 to be deposed?

18 HEARING OFFICER TOUSLEY: Yes, ma'am.

19 MS. BLOCK: Okay. Thank you.

20 MS. BENT: That raised a followup
21 question for me. This is Merrill Bent. I have a
22 reply brief due for the Petitioner's opposition to
23 the Town's motion for protective order. I have it
24 down for the 24th. So should I endeavor to just
25 submit that at the same time as the other

1 supplemental information on the 18th?

2 HEARING OFFICER TOUSLEY: And is the
3 24th what it says in ePUC for the date?

4 MS. BENT: Oh no, I'm following the
5 procedural rule.

6 HEARING OFFICER TOUSLEY: All right. So
7 there's no predetermined established date for that
8 filing and no requirement for that filing either. I
9 think that would be to -- I want to rule on that as
10 soon as possible after the 18th.

11 MS. BENT: Okay. All right. I will
12 endeavor to do that instead then. That's fine.

13 HEARING OFFICER TOUSLEY: And are there
14 any questions with regard to the change in schedule?
15 Very well. Are there any other matters that we need
16 to take up in this call? (Inaudible) That wasn't
17 clear.

18 MR. MILLER: This is Randy Miller for
19 the Agency. Will the Commission or the Hearing
20 Officer be issuing an order with the deadlines
21 discussed today?

22 HEARING OFFICER TOUSLEY: I don't know
23 that they apply necessarily to ANR, but I could do
24 that.

25 MR. MILLER: It was just a question if

1 one was coming out.

2 HEARING OFFICER TOUSLEY: Yeah I can do
3 that, and I'll basically do a summary of the status
4 conference that establishes these new dates.

5 MR. MILLER: Thank you.

6 HEARING OFFICER TOUSLEY: Any other
7 questions? Very well. Thank you for your time.

8 (Whereupon, the proceeding was
9 adjourned at 2:30 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

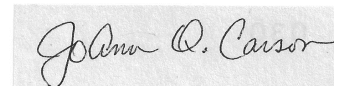
C E R T I F I C A T E

I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the status conference re: Case Number 17-5024-PET at the Susan M. Hudson Hearing Room of the Public Utility Commission, 112 State Street, Montpelier, Vermont, on July 12, 2018, beginning at 2 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 20 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 13th day of July, 2018.



JoAnn Q. Carson

Registered Merit Reporter

Certified Real Time Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25