STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 17-5024-PET

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 on Willow Road in Bennington, Vermont	

Order entered: 07/31/2018

ORDER DENYING INTERVENORS' MOTION TO QUASH DEPOSITIONS AND MOTION FOR A PROTECTIVE ORDER

I. INTRODUCTION AND BACKGROUND

On July 5, 2018, Libby Harris, the Apple Hill Homeowners Association (the "AHHA"), and the Mt. Anthony Country Club (collectively, the "Intervenors") filed with the Vermont Public Utility Commission ("Commission") a motion to quash their depositions and a motion for a protective order in response to the discovery requests of Chelsea Solar LLC ("Chelsea") (the "Intervenors' Motions"). As part of their motion for a protective order the Intervenors request that Chelsea's discovery be limited to written interrogatories; and that, if Chelsea's discovery is not so limited, Chelsea be required to pay attorneys' fees for the depositions.

On July 11, 2018, Chelsea filed its response to the Intervenors' Motions (the "Chelsea Response").

On July 18, 2018, the Intervenors filed a supplemental brief in support of their motions (the "Intervenors' Supplementary Brief").

No other parties filed any responses.

In this Order, I deny the Intervenors' Motions, but remind Chelsea to ensure that its discovery and depositions of Ms. Harris, Lora Block, and Maru Leon is limited to the scope of each of their respective prefiled testimony.

II. DISCUSSION

As stated in Commission Rule 2.214(a), discovery in Commission proceedings is guided by the Vermont Rules of Civil Procedure, Rules 26 through 37. These rules establish guidelines

for the discovery process, and they address the methods of discovery, the general scope of discovery, depositions, written interrogatories, protective orders and limits on discovery, and sanctions for failure to be responsive to discovery requests.

In particular, Rule 26(c) establishes guidelines for when a judge may protect a party from "annoyance, embarrassment, oppression, or undue burden or expense" and further states that the "provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to" a motion for a protective order. Rule 37(a)(4) permits a judge to issue an order compelling discovery responses "if a deponent fails to answer" and may issue a sanction ordering that the party being compelled to provide discovery "pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees."

The Intervenors request that their noticed depositions be quashed because: (1) the interrogatories and deposition will be duplicative of the information the Intervenors provided in their prefiled testimony; (2) the depositions will impose an unreasonable burden on the Intervenors and will "impede their ability to maintain their own business and personal schedules;" (3) the cost of responding to the deposition will harm the Intervenors; and (4) Chelsea has created a hostile environment and the Intervenors are afraid of being sued by Chelsea.[1] The Intervenors argue that, because of these factors, extraordinary circumstances exist meeting the standard in Rule 26(c), and, if the protective order request is denied, they are entitled to an award of attorney's fees to pay for their being represented at the depositions.

Chelsea responds that the Intervenors have not shown "good cause" for protection and have not met the "heavy burden" required of a party seeking to resist discovery.[2] Chelsea argues that the broad allegations of harm in the Intervenors motion are insufficient and do not satisfy Rule 26(c).[3]

I am not persuaded that the Intervenors have met the high standard Rule 26(c) sets for limiting discovery. The Intervenors have been interacting with Chelsea and its agents since

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[1] Intervenors Supplementary Brief at 20-21.

[2] Chelsea Response at 5 (citing *Schmitt v. Lalancette*, 2003 VT 24, ¶ 13, 175 Vt. 284, 289, quoting *Int'l Bus. Mach. Corp. v. Edelstein*, 526 F.2d 37, 41 (2d. Cir. 1975) ("[r]estrictions which may impede the development, presentation and determination of facts should be avoided.")).

[3] *Id*. at 6 (citing *Schmitt* at ¶¶ 15-16 (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1114 (3d Cir.1986) ("Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.")).

2014. The extended litigation associated with Chelsea's first petition, Chelsea's lengthy appeal of that decision, and now the continued litigation of Chelsea's second petition have been a burden to the Intervenors, particular as *pro se* litigants. Unfortunately, the long familiarity of the opposing parties with each other in this contentious case has bred distrust and allegations of bad faith on both sides. The Intervenors' allegations that Chelsea is "highly litigious," "opposed by all the parties," "inaccurate," and that Chelsea "gets personal in depositions," as well as the Intervenors' concern that they are being overwhelmed by the "sheer volume of production of paperwork" do not amount to the kind of specific and individualized harm that are foreseen by the protective order standard set in Rule 26(c).[4] Therefore, I am denying the Intervenors' Motions to quash their depositions and requests for a protective order.

Chelsea has a due process right to be permitted to engage in discovery in order to prepare for the evidentiary hearing in this proceeding. In particular, Chelsea is permitted to further inquire into each of the Intervenors' prefiled testimony and to engage in live questioning of the Intervenors, not simply written interrogatories, prior to questioning them live at the hearing. Chelsea's depositions of the Intervenors should be limited. Questioning that "gets personal" or goes beyond the scope of the Intervenors' prefiled testimony such that it is not reasonably likely to result in relevant, admissible evidence should not occur, but, if it does, may be objected to and left unanswered.

I am also denying the Intervenors' request that the Commission order Chelsea to "pay attorneys fees to that they can hire legal counsel to represent them"[5] at the depositions. This request is unsupported by Rules 26(c) and 37(a), which would permit a judge to award expenses as a sanction when a party has failed to obey an order to provide discovery. That is not the case here.

SO ORDERED.

[4] Intervenors' Supplementary Brief at 3, 7, 12, 16, 17, and 19.
[5] Intervenors' Motions at 3.

Dated at Montpelier, Vermont, this 31st day of July, 2018 .

Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: July 31, 2018

Attest: _____
Deputy Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

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