STATE OF VERMONT
PUBLIC UTILITY COMMISSION

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

MOTION FOR RECONSIDERATION OF HEARING OFFICER'S ORDER DENYING INTERVENORS' MOTION TO QUASH DEPOSITIONS AND MOTION FOR A PROTECTIVE ORDER

Libby Harris, *pro se*, Apple Hill Homeowners Association represented by Lora Block, *pro se*, and Mount Anthony Country Club represented by Maru Leon, *pro se*, hereby move the Vermont Public Utility Commission to reconsider the Hearing Officer's Order of July 31, 2018 denying Intervenors' motion to quash depositions and motion for a protective order. The Commission should reconsider the Hearing Officer's Order because it unduly burdens *pro se* litigants who are faced with a petitioner who, in the words of the Department of Public Service, "is choosing to utilize a scorched earth approach against not only the Department, but all parties to this proceeding, many of whom are *pro se*." With this Motion to Reconsider, pro se parties are putting the Public Utility Commission on notice that if the Hearing Officer's Order is upheld, some or all of the *pro se* parties intend to withdraw from this case. In support of this Motion *pro se* litigants offer the following Memorandum of Law.

BACKGROUND

On July 5, 2018, Libby Harris, the Apple Hill Homeowners Association ("AHHA"), and the Mt. Anthony Country Club ("MACC") submitted a motion to quash their depositions and a motion for a protective order in response to the deposition demands of Chelsea Solar LLC. As

part of their motion for a protective order request that Chelsea Solar LLC's discovery be limited to written interrogatories; and that, if Chelsea Solar LLC's discovery is not so limited, Chelsea Solar LLC be required to pay attorneys' fees for the depositions.

On July 11, 2018, Chelsea Solar LLC filed its response to the *pro se* parties' Motions.

On July 18, 2018, the *pro se* parties filed a supplemental brief in support of their motions (Libby Harris, Apple Hill Homeowners Association, Mt. Anthony Country Club Response to Hearing Officer's Request for Particular Factual Issues of Proposed Harris, appended to this Motion for Reconsideration).

On July 31, 2018, the Hearing Officer denied *pro se* parties' Motion to Quash Depositions and Motion for a Protective Order.

Chelsea Solar LLC has scheduled Maru Leon of the Mt. Anthony County Club's deposition for August 24, 2018.

Chelsea Solar LLC has scheduled Lora Block of Apple Hill Homeowners Association's deposition for August 24, 2018.

Chelsea Solar LLC has scheduled Libby Harris's deposition for August 27, 2018.

MEMORANDUM OF LAW

PUC Rule 2.201 (B) defines the requirements for *pro se* party participation. The Rule includes the requirement that, "Except as provided in Rule 2.201(D), anyone appearing as a pro se representative **shall be under all the obligations of an attorney admitted to practice in this state** with respect to the matter in which such person appears." [*emphasis added*] *Pro se* parties in this case are acting as their own attorneys. As such, similar to the Department of Public Service's role, Harris, Block and Leon are in the role of attorneys whose work product is

protected by attorney/client privilege. The role of *pro se* parties acting as their own attorney must be protected.

VRCP Rule 26 (b)(5) refers to "Experts" who may be deposed. Harris, Block and Leon, *pro se*, have submitted lay witness testimony and are not presenting as "expert" witnesses in this case. Conducting depositions of *pro se* parties who are also lay witnesses is unnecessarily burdensome and goes beyond what is envisioned by Rules governing depositions of "expert" witnesses.

VRCP Rule 26 (b)(2)(B) allows a judge to limit the frequency or extent of discovery if it determines that:

> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
> (iii) the proposed discovery is outside the scope permitted by paragraph (b)(1) of this rule.

Harris, Block, and Leon, *pro se*, have responded to written interrogatories, many of which were outside of the scope of the testimony relevant to the issues in this case and nevertheless required many hours of time to answer. Further discovery via deposition is overly burdensome and expensive for *pro se* parties in this case, especially given the "scorched earth" approach being used by Petitioner, as accurately described by the Department of Public Service in its August 3, 2018 "Motion to Quash Notice of Deposition."

ARGUMENT

Petitioner is a skilled and experienced litigator. It would clearly be unwise for *pro se* parties to submit to deposition by Petitioner unless represented by legal counsel, which according

to the Hearing Officer's Order, on which the *pro se* parties must spend their own money to hire for the depositions. This is an unreasonable burden and expense to place on Vermont citizens who have a right to participate in the only process available to them to protect their particularized interests regarding the siting of energy projects in Vermont.

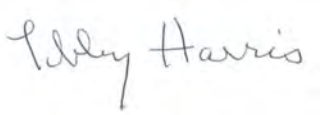
With this Motion, *pro se* parties want to make it clear to the Public Utility Commissioners, and not just the Hearing Officer, that if the Hearing Officer's Order denying Intervenor's Motion to Quash Depositions and Motion for a Protective Order stands, the *pro se* parties may have no choice but to withdraw from this case due to the unreasonable burden and expense that submitting to Petitioner's depositions places on them.

CONCLUSION

Harris, Block and Leon, *pro se*, have responded to extensive written interrogatories, many of which were off topic and not relevant to the issues in this case. As *pro se* parties they have participated fully and to the best of their abilities. Any further discovery is unnecessarily expensive, overly burdensome, stressful and intimidating.

For the foregoing reasons, Harris, Block and Leon, *pro se*, respectfully request that the Commission reconsider the Hearing Officer's Order denying Intervenor's Motion to Quash Depositions and Motion for a Protect Order, due to *pro se* parties' role acting as their own attorneys and through their lay witness testimony that does not qualify as "expert" testimony that should be subject to deposition. Harris, Block and Leon, *pro se*, wish to continue to participate in this proceeding. However, if the PUC determines they must submit to deposition, that decision will serve to discourage public participation at the PUC for the siting of electric generation facilities.

Respectfully submitted this 6th day of August, 2018 in Bennington by,



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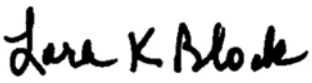

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

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	)	Case 17-5024-PET

LIBBY HARRIS, APPLE HILL HOMEOWNERS ASSOCIATION, MT. ANTHONY COUNTRY CLUB RESPONSE TO HEARING OFFICER'S REQUEST FOR PARTICULAR FACTUAL ISSUES OF PROPOSED HARM

Intervenors Libby Harris, *pro se,* Apple Hill Homeowners Association represented by Lora Block, *pro se*, and Mt. Anthony Country Club represented by Maru Leon, *pro se*, hereby respond to Hearing Officer Tousley's request made during the July 12, 2018 status conference for particular factual issues of proposed harm in support of *pro se* parties' July 4 Motion to Quash and Motion for Protective Order.

Participating in this case has prevented *pro se* parties from performing their full time wage earning livings, causing financial harm due to the enormous work load and number of hours that have resulted from the intrusive and abusive discovery and motion practice that has been engaged in by this Petitioner in an attempt to destroy any opposition to this project. *Pro se* parties have had to cancel or reschedule family gatherings and vacations, and be consumed by the case while attempting to be on vacation.

This case presents extraordinary, unprecedented components that require the PUC to take notice of the complexity of the process, and the business practices of this particular Petitioner who has essentially declared war on the Town of Bennington and anyone who dares to challenge Petitioner's plans. The PUC must establish limits and boundaries to protect parties from

frivolous litigation, threats of litigation, and intimidating communications that are the norm for this Petitioner. Without protections, *pro se* parties will experience particularized harm, as supported by the facts.

Two cases occurring simultaneously and twice over a four year period are confusing and overwhelmingly demanding

Chelsea Solar LLC originally petitioned for a Certificate of Public Good in 2014. Apple Hill Solar LLC initially petitioned for a CPG in 2015. In 2016, the PUC denied a CPG for Chelsea Solar LLC. In 2017, the PUC ruled on more than a dozen motions filed in the two cases and allowed Apple Hill Solar LLC to continue with an amended plan that required a second round of testimony and a second technical hearing. In 2017, Chelsea Solar was allowed by the PUC to submit a brand new petition with a new case number.

Two cases moving through the PUC's process with two different sets of application materials has never happened before to the knowledge of *pro se* parties, and has created an enormously confusing circumstance for every Vermonter involved, including the Hearing Officer who was confused at the pre-hearing conference for Chelsea Solar LLC's second petition held earlier this year.[1] *Pro se* parties are finding the process to be overwhelmingly complicated due to two amended plans moving forward at the same time but at different stages in the process, and for a second time. For example, filings are due in Case No. 17-5024 on July 18 and July 20[2] and a filing is due in Case No. 8454 on July 23. The amount of time required just to participate in a normal proceeding, multiplied by two, plus a Petitioner who is highly litigious, is excessive

[1] See Case 17-5024 prehearing conference transcript.
[2] On July 17, Parties agreed to extend the July 20 deadline to July 31 at the request of the Town.

for *pro se* parties who are not paid to participate and have numerous other work and personal obligations.

Petitioner is highly litigious

Adding to the challenge the *pro se* parties face in simultaneously participating in Case No. 17-5024 and Case No. 8454, Petitioner Chelsea Solar LLC is represented by two attorneys, Thomas Melone, and his son Michael Melone, who owns the company Allco, and/or Allco Renewable Energy, that finances and develops solar projects, and who own a related company, PLH LLC, that enters into lease or purchase agreements for the company's solar sites.[3] According to testimony in a PUC case in Weybridge[4], Thomas Melone is the sole owner of all the companies. (*hereinafter, "Petitioner" refers to all companies under the ownership of Thomas Melone*).

Chelsea Solar LLC and its adjacent project of equal size, Apple Hill Solar LLC, received one standard-offer contract in 2013 for Chelsea Solar LLC. The PUC declined to issue a standard-offer contract for Apple Hill Solar LLC in a 2-1 decision because the two projects are functionally 4 MW and do not comply with the rules for standard-offer bids that limit size to 2.2 MW. (The dissenting opinion by Commissioner Burke was that both projects should have been denied.) Petitioner appealed the denial of the Apple Hill Solar LLC standard-offer contract to the Vermont Supreme Court and chose not to move forward with the Chelsea Solar LLC project

[3] Petitioner also does business in Vermont under the name Allco Finance Limited which owns Otter Creek LLC, and Ecos Energy, LLC, which was the original Petitioner in Case No. 8302 and is said to be located in Minnesota.
[4] See Case No. 8775, Transcript of Technical Hearing April 25, 2017, pages 46 and 47.

until the Vermont Supreme Court issued a ruling[5] a year after the standard-offer contract was awarded.[6]

That history of Petitioner's litigation in its first entrance into Vermont's renewable energy world foreshadowed what Vermonters have come to expect from this Petitioner: excessive, often frivolous, and limitless litigation in virtually every venue available, or threats of litigation made to people and entities who have issues and concerns about the projects Petitioner proposes to construct at great profit.

Indeed, Petitioner's reputation for litigation was referenced in a Letter to the Editor in a Connecticut media outlet earlier this year:

> https://aspetuck.news/lead-news/letter-weston-solar-purveyor-has-history-of-lawsuits-98043
>
> **Letter: Weston solar purveyor has history of lawsuits**
>
> FEBRUARY 11, 2018 BY HAN NETWORK
>
> **To the Editor:**
>
> This is regarding the story that Weston has entered a deal to buy electricity from a solar farm.
>
> The last time Weston got involved in discussions with a solar energy company, the deal faltered, the vendor sued, and the town paid an expensive settlement, plus legal fees.
>
> This time it's a much bigger deal, and the vendor — which is headed by an attorney — has a history of filing lawsuits against governments. To see what I mean, Google the following words together: Allco, Lawsuit.
>
> You will find quite a number of lawsuits involving Allco and its founder, Thomas Melone Esq. According to the Hartford Courant, Allco has filed suits against the states of Connecticut, California, Massachusetts, and Vermont. See courant.com/business/hc-connecticut-clean-energy-lawsuit-allco-story.html.
>
> Mr. Melone has even personally sued to prevent the construction of a wind energy farm

[5] https://www.vermontjudiciary.org/sites/default/files/documents/op16-399.pdf
[6] Petitioner has sought and received three extensions of the standard-offer program's Commissioning deadline from the PUC.

> off the Massachusetts coast that would interfere with the views from his $15-million beach house.
>
> You might say the company is better known for filing lawsuits than it is for producing green energy.
>
> I sure hope the selectmen's budget has a lot in reserve for future legal fees and settlements relating to this deal.
>
> **Peter Blau** Lyons Plain Road, Weston[7]

Petitioner is currently suing VTrans over a setback issue related to another Bennington solar project for which a CPG was recently issued by the PUC.[8]

Petitioner appealed to the Vermont Supreme Court over the PUC's approval of GMP's solar project. The Vermont Supreme Court found "no abuse of discretion" by the PUC in a decision[9] that references (on page 14) other apparently unsuccessful litigation brought by Petitioner in other states on the same issue.

Petitioner sued the Bennington County Regional Commission, the Town of Bennington's Select Board, Planning Commission, and individual volunteers, including a State Representative, who served on the Town of Bennington's ad hoc energy committee. The lawsuit was filed in Chittenden County Superior Court by one of Petitioner's companies using a "virtual office" to claim residency and increase the burden on the Town of Bennington. After the Town moved the case to Federal Court, Petitioner withdrew the litigation the same day. Petitioner's company PLH LLC then filed suit against the Town of Bennington Select Board and Planning Commission and the Bennington County Regional Commission in Environmental Court. On

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[7] *Pro se* parties in this case have no knowledge of the author of the letter, which was found via an internet search that also found that in addition to the $15 million Massachusetts property referenced in the letter to the editor, Thomas Melone also owns a pair of penthouses in New York City recently marketed for $19 million, a $6 million property in New Jersey and a $7 million property in Florida. Any claims of hardship due to the expenses Petitioner has incurred in this case and claims that Petitioner is addressing climate change are obviously without merit.

[8] Petitioner is now seeking an extension of its standard-offer contract due to litigation, even though the Petitioner is causing the delay due to its own litigation.

[9] https://www.vermontjudiciary.org/sites/default/files/documents/op16-034.pdf

July 11, 2018, the Environmental Court judge dismissed PLH LLC's lawsuit, finding what is obvious to anyone familiar with Vermont's jurisdictional system: "this Court lacks subject matter jurisdiction over the case." The Bennington Banner quotes the Town attorney, "It appears that the plaintiffs are focused on burning taxpayer dollars, not on what the law says."[10]

Not satisfied with failing in three different venues, the Bennington Banner reports that Petitioner is not finished litigating its issues with the Town's adoption of its enhanced energy plan: "Allco Renewable Energy has at least three commercial solar projects in the planning or permitting stages for sites in Bennington. A company spokesman said Wednesday afternoon that further appeals are likely concerning the energy siting issues raised in the Environmental Court complaint."

Upon the Apple Hill Homeowners Association's filing a Motion to Intervene in the contiguous Case No. 8454, Petitioners threatened to sue the Apple Hill Homeowners Association, of which it is a member, for allegedly failing to properly warn the meeting where the organization voted to intervene in Apple Hill Solar LLC.[11] Petitioner Thomas Melone threatened to "file suit in Superior Court" and "seek damages and attorney's fees."[12]

Petitioner raised the possibility of seeking sanctions against *pro se* party Harris in Case No. 8302 as follows:

> Although the actions of Harris are sanctionable, Chelsea Solar is not asking at this time that the Board hold a hearing as to why Harris should not be sanctioned. Rather the Board should immediately strike or deny Harris' motion. P. 2[13]

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[10] https://www.benningtonbanner.com/stories/court-dismisses-solar-developers-complaint-against-town,544542
[11] See Exhibit 1 of AHHA President Bill Knight's prefiled testimony in Case No. 8454.
[12] Nonsensically, Petitioner's discovery questions served on Intervenors Harris and AHHA in June 2018 asks them to "Admit that the deed attached as Exhibit LH3 describes the property description as "taken from a certain survey map entitled 'Apple Hill Development – Orchard Lot, … July, 1988, revised August 1988," and that such Apple Hill development is NOT part of the Apple Hill Homeowners Association development." Petitioner made demands on AHHA and threatened litigation as a member due to its ownership of the "Orchard Lot" and now seems to want to claim their "Orchard Lot" parcel is not part of AHHA.
[13] Motion to Strike (FINAL with cover letter and cert of service).pdf, May 19, 2015

Petitioners have demonstrated a pattern of suing or threatening to sue people and entities with whom they come into contact in opposition to their projects. Petitioner has hired several Vermont lawyers to assist them in their litigation. This has created a tremendous burden on *pro se* parties who seek to find expert witnesses and evidence to present in this case. An artist who has documents the scenic beauty of the prominent hillside on which Petitioner proposes to clear-cut the forest and erect a "black box" is likely to be subject to depositions and the same type of intimidation that the Town and people of Bennington have learned to expect from Petitioner. The PUC must protect participants in this case from Petitioner's aggressive tactics.

Petitioner has opposed all intervention by all parties

Petitioner has objected to intervention by every party that has moved to intervene in Chelsea Solar LLC and Apple Hill Solar LLC. For example, in Case No. 8302, Petitioner stated[14]

> Harris's interests are private property interests not properly before the Board and she has failed to demonstrate a substantial interest which may be affected by the outcome of the proceeding. P. 1
>
> Harris' unsubstantiated assertion that the Project will increase the already "fierce" winds that she experiences at her house, will result in an increase in noise and will affect her view are all matters of individual property values or property rights that are not properly before the Board. P. 4

In Case No. 8454, Petitioner again objected to intervention by Harris

> The Petitioner hereby opposes this attempt at intervention in this docket by Harris p. 1[15]

[14] Memorandum in Opposition to Harris Motion to Intervene.pdf, March 24, 2015
[15] memorandum in response to motion to intervene Apple Hill (FINAL with cover letter).pdf, May 19, 2015

In the second iteration of Apple Hill Solar, Case No. 8454, Petitioner opposed intervention by the Apple Hill Homeowners Association

> the motion must be denied. P. 1
>
> Further, Rule 2.201(B) states that the Commission should preclude *pro se* appearances when the Commission "is of the opinion that there is a substantial possibility that the participation of a pro se representative will unnecessarily prolong or will result in inadequate exposition of factual or legal matters." Here, there is much more than a substantial possibility that the participation of the AHHA will *both* unnecessarily prolong the proceedings and result in inadequate exposition of factual *and* legal matters. Pp. 4-5[16]

Petitioner opposed intervention by the Town of Bennington in filings made on August 17 and 18, 2015. Most recently, petitioner objected to the intervention of Mt. Anthony Country Club, Roberta Caslin, and Caroline McEver in Case No. 17-5024.

Petitioner is not interested in working with people or communities in which they propose to locate projects. Rather, the record shows that Petitioner is hostile to all parties that have particularized interests who attempt to protect those interests through intervention. It is a curious business model not often seen in Vermont, and one that can be predicted to fail given how Vermonters invite collaboration over litigation. The PUC is in a position to provide protections for parties with particularized interests. To do otherwise in this specific circumstance rewards Petitioner's intimidating behavior and encourages more of it.

Petitioner has engaged in inappropriate name calling of *pro se* party Harris

Petitioner has repeatedly gone beyond acceptable norms in its filings with the PUC by calling *pro se* party Harris names. For instance, in Case No. 8302, Petitioner attempted to denigrate her concerns by using an acronym intended to convey disdain:

The Board specifically conditioned intervention on Harris providing the applicable

[16] memorandum in response to AHHA motion to intervene (FINAL with Exhibits).pdf, Dec. 15, 2017

> testimony on a timely basis. Instead of sponsoring testimony, Harris has just recycled her **NIMBY's** laundry list of objections to the project in a meritless motion. P. 2[17] *(emphasis added)*

Later that year in the same case, Petitioner invoked another phrase intended to cast a negative tone on *pro se* party Harris's intervention.

> Ms. Harris is the **lone wolf** that continues to object, but she has not provided any substantive evidence that can assist the Board in making its decision regarding the Petitioner's satisfaction of the Section 248 criteria. P. 38[18] *(emphasis added)*

In Petitioner's contiguous Case No. 8454, Petitioner continues to inappropriately call *pro se* party Harris names:

> Ms. Harris is the **lone wolf** that continues to object, but she has not provided little substantive evidence that can assist the Board in making its decision regarding the Petitioner's satisfaction of the Section 248 criteria. P. 41[19] *(emphasis added)*

Petitioner has a right to argue its case on the merits. However, engaging in personal attacks on a party who has legitimate particularized interests and who has been accepted by the PUC as a party to a case should be protected from Petitioners who have shown a penchant for disrespectful name calling. *Pro se* parties have rights, too, and if the PUC wants the public to be able to participate, it is responsible for assuring that there is not a hostile environment such as has been occurring in this case. The PUC could and should have reprimanded Petitioners years ago for their treatment of *pro se* party Harris. By not doing so, the PUC has set a standard whereby Petitioners are free to treat the public with derogatory phrases that stray from the issues, with no consequences. *Pro se* parties ask the PUC to make this type of behavior stop.

Petitioners have inappropriately referenced someone who is not a party and made unproven, inaccurate, and unsupported allegations

[17] Motion to Strike (FINAL with cover letter and cert of service).pdf, May 19, 2015
[18] post hearing brief (FINAL) with cert.pdf, Aug. 6, 2015
[19] Apple Hill post hearing memorandum (FINAL).pdf, Sept. 9, 2015

Not content with calling *pro se* party Harris names, Petitioner has repeatedly made reference to a person and organization that is not a party to this case. For example, in Case No. 8302, Petitioner repeats the "lone wolf" and "NIMBY" phrases, and references a "sponsor organization" in ways that are factually inaccurate and without substantiation,

> Harris and **her sponsor, an organization that calls itself "Vermonters for a Clean Environment" ("VCE"),** continue to advocate for the status quo. As Governor Peter Shumlin recently stated: "Climate change is real. It's a threat to humanity." Harris **and her sponsor** would rather fiddle while Rome burns. P. 2
>
> Again, having failed in her bid to have the Board pay for expert testimony to address Ms. Harris' **NIMBY** concerns, Ms. Harris provided no expert witness testimony whatsoever with respect to wind. P. 7
>
> Ms. Harris is the **lone wolf (with the support of her anti-renewable energy sponsor VCE)** that continues to object, but she has not provided any substantive evidence that can assist the Board in making its decision regarding the Petitioner's satisfaction of the Section 248 criteria. P. 8 *(emphasis added)*[20]

Petitioner has also inappropriately and unnecessarily referenced non-parties in Case No. 8454, such as

> Indeed at the public site visit for the Apple Hill Solar project the only members of the public were Mr. Carroll, his wife, and **one of Annette Smith's colleagues (who is also advising Intervenor Libby Harris**). P. 2[21] *(emphasis added)*

And

> Having failed in her bid to have the Board pay for real expert testimony to address Ms. Harris' **NIMBY** concerns, she now attempts to drape an area resident and **fellow cohort of Annette Smith** in expert garb. P. 1
>
> And as to the opinions offered by Mr. Carroll, they are nothing more than the opinions of a lay person, and merely echo the **NIMBY** opinions that Libby Harris has asserted. P. 8 *(emphasis added)*[22]

Petitioner extends name-calling to a non-party in an unsupported attack on a person who was subsequently named Vermonter of the Year by the Burlington Free Press for effectively assisting

[20] Petitioner's Reply Brief (FINAL with Cert of Service).pdf, Aug. 12, 2015
[21] Response to Richard Carroll (Apple Hill) final with exhibits and cover letter.pdf, July 21, 2015
[22] Motion to strike pre-filed testimony of Richard Carroll (FINAL with cert....pdf, Aug. 4, 2015

the public and towns in participation at the PUC:

> The meeting clearly shows the result when **the Annette Smith circus** comes to Town and there is no one in attendance to correct false statements and misrepresentations. P. 7[23] *(emphasis added)*

And

> Obviously, the Select Board was unwittingly drafted into supporting an effort against the project being spearheaded by **anti-renewable energy advocate Annette Smith, one of the coal and gas industry's best friends in Vermont**. P. 1[24] *(emphasis added)*

Baseless personal attacks on non-parties should have no place in PUC regulatory proceedings. The PUC has allowed Petitioner to make allegations that are false and which are not possible to refute given *pro se* parties' need to stick to the issues in the case. It is long past time for the PUC to reign in this particular Petitioner's behavior towards parties who have been granted intervenor status at the PUC.

Petitioner has made inaccurate allegations about *pro se* parties refusing to respond

Consistent with Petitioner's hostile attitude exhibited towards *pro se* parties in this case and related cases, Petitioner has repeatedly made allegations that *pro se* parties have refused to respond regarding discussions about screening and other issues. For example,

> Chelsea Solar has made dozens of attempts over the past many months to contact intervenor Libby Harris to discuss the project, but so far Ms. Harris has been unresponsive. P. 2[25]

> Apple Hill Solar has made dozens of attempts over the past many months to contact intervenor Libby Harris to discuss the project, but so far Ms. Harris has been unresponsive. Addressing neighbors' concerns is not possible when those neighbors refuse to engage in discussion. P. 2[26]

Petitioner has in the past, and continues to this day, to attempt to engage Harris in

[23] Memo in opposition to intervention of Town of Bennington (FINAL with cert of service).pdf, Aug. 17, 2015
[24] Supplemental Memo in opposition to intervention of Town of Bennington - 8.18.pdf, Aug. 18, 2015

[25] Chelsea Solar Comments on Rule 16 Motion 2_17_17.pdf, Feb. 17, 2017
[26] Apple Hill Solar Comments on Rule 16 Motion 2_17_17.pdf, Feb. 17, 2017

> settlement discussions pursuant to Rule 408 of the Vermont Rules of Evidence in the same manner it has engaged in discussions with the Apple Hill Homeowners Association and the Town of Bennington. P. 1[27]

Pro se parties Apple Hill Homeowners Association and Libby Harris initially were very responsive to petitioner's requests to meet or confer about their issues. In Case No. 8302 the discussions with AHHA led to a Memorandum of Understanding that did not address all of AHHA's issues, but minimized the largest issue for AHHA which was the commercial use of AHHA properties in violation of deed restrictions. However, the issues of increased wind and increased noise were not addressed, which led to Harris's intervention.

Pro se party Harris made several attempts to negotiate issues with Petitioner. The first issue is not relevant to the PUC case, and involves the legal requirement in state statute for owners of private roads to share maintenance expenses, a provision written into property deed language.[28] In discussions with Petitioner, which were witnessed by an attorney for *pro se* party Harris, Petitioner conditioned the agreement on Harris dropping her intervention. See Libby Harris's prefiled testimony in this case, which includes an Exhibit with the document Petitioner drew up, which Harris declined to sign due to the Petitioner's condition related to the case.

Pro se party Harris's second attempt to negotiate an issue related to the PUC case occurred just prior to the scheduled technical hearing. Petitioner requested a telephone conference call, which *pro se* party Harris participated in, with a witness and her attorney present. At the technical hearing for the Case No. 8302, Chelsea Solar LLC, held on July 16, 2015 pro se party Harris asked Petitioner's representative Brad Wilson about the discussion. The transcript[29] says:

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[27] Motion to Strike Harris Comments Apple Hill (FINAL).pdf, March 20, 2017
[28] See pre-filed testimony of Libby Harris in Case No. 17-5024.
[29] Case No. 8302 Technical Hearing Transcript, July 16, 2015, p. 64 Lines 1-8

Q. Did you or your company stipulate that this offer was conditional on my agreeing to give up my intervener status?
A. Yes, we did.
Q. Did you or your company state that if I didn't agree to this by June 26, with the technical hearings scheduled for June 29, that the offer would be removed?
A. Yes, we did.

The record in Case No. 8302 shows that *pro se* party Harris had issues (increased noise and wind damage) in addition to the one discussed in the conference call referenced above (trees to screen the view of the solar panels), so Petitioner's request to *pro se* party Harris to withdraw from the case was not in Harris's interests.

The third attempt by *pro se* party Harris to negotiate with Petitioner came during the summer of 2017, after the CPG for Chelsea Solar LLC was denied, and before a new petition for Chelsea Solar LLC was filed. It is not an overstatement to say that *pro se* party Harris, who was still an intervenor in Apple Hill Solar LLC, was being badgered by a member of the Bennington Select Board and Petitioner while she was attempting to take a vacation in Nova Scotia. Petitioner titled some of the emails "settlement discussions". *Pro se* party Harris was offered $50,000 if she would withdraw from the case. She was asked to participate in a site walk to look at screening the project. The email record showed that *pro se* party Harris attempted to engage in good faith in the discussions, which Petitioner is now using to make unsupported allegations regarding why Harris chose not to continue those discussions. As referenced above, Harris's interests go beyond screening trees and other issues with the projects were not being addressed. Subsequent testimony has shown that Harris's home in particular, which is the most exposed on Apple Hill, will receive increased noise and winds if the forest is clear-cut for the solar projects. To date, Petitioner has done nothing to offer mitigation that addresses those concerns.

After three failed attempts at negotiations, and with the third attempt extremely intrusive to the extent that *pro se* party Harris experienced the exchanges as attempting to bully Harris into submission, and with Petitioner freely distributing emails twisted to draw conclusions that are not factual, *pro se* party Harris has learned to be extremely careful in engaging in any discussions whatsoever with Petitioner. Petitioner takes every opportunity to claim that *pro se* party Harris is not responsive, when the facts are that all efforts to be responsive have met with the condition to withdraw as a party to the cases.

Most recently, Petitioner alleges that *pro se* parties have not complied with the rules for discovery, an argument the Hearing Officer appears to have accepted based on the manner in which he opened the July 12 Status Conference by reprimanding pro se parties as follows[30]

> In particular, I want to initially focus on Rule 2.201(b) **which defines the responsibilities for pro se appearances**, and part of that rule states that "Any individual may be a pro se representative in his or her own cause. This rule shall in no respect relieve any person or party from the necessity of compliance with any applicable rule, law, practice, procedure, or other requirement. *(emphasis added)*

Pro se parties were very surprised by the Hearing Officer's reprimand. *Pro se* parties Harris, Griffin, Caslin and McEver previously filed a Motion to Quash and Motion for Protection, and Harris, Block and Leon filed a second Motion to Quash and Motion for Protection, both of which reported that Petitioner had failed to comply with the rules by submitting Notices of Deposition in ePUC setting dates for depositions to be held on specific dates and locations, without first conferring with the parties. Petitioner's filings in response allege that *pro se* parties violated the rules by filing a Motion to Quash without first conferring with Petitioner. However, the rules contain no requirement to confer when filing a Motion to Quash.

[30] Status Conference Transcript, Case No. 17-5024, July 12, pp. 4-5, lines 20 – 2.

Pro se parties' first Motion to Quash was filed in a timely manner, within days of receipt of the Notices of Deposition, but was not ruled on by the Hearing Officer in a timely manner. The failure to issue a decision resulted in two *pro se* parties withdrawing the day before[31] the Petitioner's scheduled depositions due to the possible threat of sanctions if they did not appear for the depositions, which were scheduled to be in Burlington, a six hour round trip drive from Bennington. By the time the Hearing Officer ruled on the Motion to Quash (but did not rule on the Motion for Protection) on the date of Petitioner's scheduled depositions, parties who were in receipt of the Notice of Deposition would have had to be in the car driving to Burlington, or face threats from Petitioner that were guaranteed based on how Petitioner has chosen to litigate this case and treat *pro se* parties.

The withdrawal of two *pro se* parties in this case was directly related to Petitioner's bullying approach, not following the rules by conferring first, then alleging *pro se* parties were the ones who did not follow the rules, and the untimely response by the Hearing Officer which served the function of allowing Petitioner to "get away with" failing to confer with parties first prior to setting dates and places for depositions. Petitioner won that round and has two fewer *pro se* parties to deal with. Petitioner will obviously not be satisfied until all *pro se* parties have been driven out of the case.

The Hearing Officer compounded *pro se* parties' frustration with the PUC process by calling them out at the beginning of the Status Conference on July 12.

As noted in the second Motion to Quash and Motion for Protection which awaits a ruling from the Hearing Officer, Petitioner has shown a double standard where *pro se* parties are concerned compared to parties represented by legal counsel, as demonstrated by Petitioner's filing a Notice of Deposition for *pro se* party Maru Leon for Burlington, while on the same day

[31] See Public Comment in Case No. 17-5024 submitted by Caroline McEver and Roberta Caslin, June 29, 2018

Petitioner was offering the Town depositions located nearby. As usual, Petitioner did not confer with the party prior to serving Notice of Deposition.

Petitioner has further shown disrespect for *pro se* parties by issuing a second Notice of Deposition to Maru Leon locally, as referenced in the second Motion to Quash and Motion for Protection. Petitioner is on notice that there are currently two Notices of Deposition out-standing for *pro se* party Maru Leon, yet Petitioner has not withdrawn the Burlington Notice of Deposition.

Petitioner has shown intention to "get personal" in depositions

Petitioner's first discovery question *to pro se* party Harris in this case is a personal question that has no bearing on any of the issues in the case. However, it has the effect of "setting the stage" for what is likely to occur in a face to face deposition where *pro se* party Harris has no protection from the aggressive tactics of highly skilled and experienced litigators.

Petitioner has served extensive discovery questions on all parties, many of which are irrelevant to the case, or overly burdensome. For instance, AHHA has been asked to search all of their members' computers, and MACC has been asked for their membership lists, tax returns and other irrelevant information. No matter how *pro se* parties respond in writing to discovery questions, based on Petitioner's aggressive litigation tactics, there is no question more demands will be made, followed by Motions to Compel and seeking sanctions against the remaining *pro se* parties, all of which is in addition to the proposed depositions from which *pro se* parties seek protection.

In contrast to what Petitioner expects from *pro se* parties, Petitioner's responses to discovery questions were wholly inadequate, and when the Town asked a second time to

respond, again Petitioner declined to answer the questions. Petitioner clearly intends use a double standard where Petitioner does not answer reasonable questions, but plan to put *pro se* parties on trial as though this is a criminal case, and every aspect of *pro se* parties' lives are open for Petitioner to explore through deposition, including their personal lives.

Petitioner has a pattern of sending emails to *pro se* parties late Friday and on weekends

Petitioner has exhibited a pattern of attempting to disrupt, distract, and otherwise annoy *pro se* parties by consistently sending emails late on Fridays and on weekends. Below are four example from the period between the July 12 status conference and the date of this submission as examples:

> **From:** Thomas Melone <thomas.melone@gmail.com>
> **Date:** July 13, 2018 at 4:27:03 PM EDT
> **To:** Libby Harris <libbyharris1@me.com>, maru@mtanthonycc.com, Lora Block <lblock@sover.net>
> **Cc:** Michael Melone <mjmelone@allcous.com>
>
> **From:** Brad Wilson <brad.wilson@ecosrenewable.com>
> **Date:** July 13, 2018 at 4:49:05 PM EDT
> **To:** Maru Leon <Maru@mtanthonycc.com>
>
> **From:** Michael Melone <mjmelone@allcous.com>
> **Date:** July 14, 2018 at 12:17:45 PM EDT
> **To:** Libby Harris <libbyharris1@me.com>
>
> **From:** Michael Melone <mjmelone@allcous.com>
> **Date:** July 14, 2018 at 12:19:55 PM EDT
> **To:** "maru@mtanthonycc.com"<maru@mtanthonycc.com>

Petitioner generated emails from three different entities making demands on *pro se* parties late Friday and on Saturday. *Pro se* party MACC received three different communications over the weekend. This appears to be a tactic used by experienced litigators, and this Petitioner in particular, to continually inject itself into the lives of *pro se* parties who

then feel they can never get a break or have a personal or professional life. *Pro se* parties have recently politely requested Petitioner to contain email correspondence to regular business hours.

Petitioner expects immediate responses to email outreach, even when it is late on a Friday or after hours. When *pro se* parties do not respond immediately, Petitioner has used that to allege that the *pro se* party has not been responsive. For example, prior to the second Technical Hearing for Case No. 8454, Petitioner submitted a letter to the PUC requesting a status conference, claiming

> Harris and the AHHA have refused to inform the parties what witnesses they intend to cross examine and the estimated duration of such cross-examination. Instead Harris and the AHHA have merely stated that they will provide some response on Tuesday March 20, 2018.[32]

Pro se parties have been granted party status in these cases with the requirement that they confer and merge their submissions, including questioning at the technical hearing. This creates an extra component that requires meetings or conference calls and makes it impossible in most cases for *pro se* parties to respond immediately, especially when demands come in late on a Friday and a response is expected by Petitioner over the weekend. In the above instance, *pro se* parties were meeting on Monday to confer, and did respond to Petitioner's demands, that they would have a response on Tuesday. *Pro se* parties were responsive and the response was reasonable. Petitioner chose to twist the story to suit the need to denigrate *pro se* parties at every opportunity. *Pro se* parties have experienced many instances of Petitioner making demands to which the *pro se* parties respond, but not as quickly as Petitioner requires. Petitioner's behavior has the effect of wearing people down, which is clearly the intention.

[32] Allco letter hearing.pdf, March 15, 2018

Particular factual issues of proposed harm.

Pro se parties must be protected from this type of litigator in this venue, if there is to be any meaningful public participation in cases before the PUC. Otherwise, the PUC has functionally eliminated the ability of the average Vermonter to protect particularized interests unless represented by legal counsel.

The sheer volume of production of paperwork generated in the two cases running simultaneously over a period of four years with two different sets of plans and four technical hearings would have cost hundreds of thousands of dollars for a party to pay a lawyer to effectively participate. This is unreasonable and a deterrent to public participation. Petitioner has complained for years that it has spent hundreds of thousands of dollars on these cases. However, Petitioner is an extremely wealthy person with endless resources and a demonstrated ability to generate huge volumes of paperwork, while *pro se* parties, the Town of Bennington, and the State of Vermont have limited resources to respond to Petitioner's excessive litigation style that is intended to wear down all parties and beat them into submission.

Pro se intervenors by definition are amateurs who have other careers and family responsibilities beyond dealing with the issues in this case. *Pro se* parties to this case have already spent countless hours attempting to answer the over-litigation by Petitioners, and have not been able to engage in some of the issues in this case due to the excessive volume of filings generated by Petitioner. Participating in this case has prevented *pro se* parties from performing their full time wage earning livings, causing financial harm due to the enormous work load and number of hours that have resulted from the intrusive and abusive discovery and motion practice that has been engaged in by this Petitioner in an attempt to destroy any opposition to this project.

Pro se parties have had to cancel or reschedule family gatherings and vacations, and be consumed by the case while attempting to be on vacation.

Pro se parties intervened in this case assuming the PUC process would support the ability of *pro se* intervenors to have a voice in the proceedings despite not being attorneys. *Pro se* parties were aware that the PUC process is by definition not a "level playing field" but this case has taken that problem to an unprecedented extreme when the Petitioner has very deep pockets, time, and legal expertise to barrage *pro se* intervenors with abusive litigation and demands that are way beyond the resources of *pro se* parties in terms of time and money to adequately respond to. Petitioner's potential financial benefit outweighs any benefits to the State of Vermont and the Town of Bennington from the proposed 2 MW solar array.

Pro se parties in this case have learned that the playing field at the PUC is not fair to neighbors affected by solar projects, or to businesses that have particularized interests that are affected. Already two local individuals have been intimidated into withdrawing when they were ordered to depositions without any money to pay an attorney to help them prepare or assist during deposition, and were expected to travel six hours for said depositions.

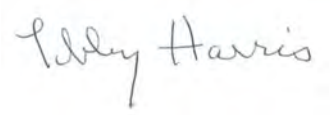
The demand for depositions of *pro se* parties is abusive. It is a process intended to harass and intimidate, consistent with the pattern of the Petitioner to swamp *pro se* parties and the Town of Bennington and the State of Vermont with litigation that requires financial resources beyond reason. Petitioner's strategy is to outspend "the other side" in order to remove any opposition.

Pro se parties have not presented themselves as "experts" and have submitted prefiled testimony that represents their best effort to present the facts of their situation. *Pro se* parties are responding to written discovery questions, and have no further relevant information to disclose in depositions. The demand to prepare for and be present at a deposition is an unreasonable burden

on *pro se* parties and will further impede their ability to maintain their own business and personal schedules. Petitioner's demand for depositions has real negative cost consequences that will cause harm to *pro se* parties. Petitioner has created a hostile environment for *pro se* parties in this case. Fear of being sued depending on what a party says to Petitioner is a very real possibility.

For all the reasons stated above, the PUC must set limits, establish boundaries, and protect *pro se* parties from these litigants and quash depositions of *pro se* parties in this case.

Respectfully submitted this 18th day of July, 2018 in Bennington,



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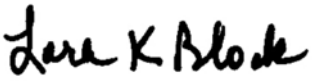

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