

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	)	PUC Case No. 17-5024
operation of the “Willow Road Project,” a	)	
2.0 MW solar electric generation facility	)	
on Willow Road in Bennington, Vermont	)	

**INTERVENORS’ BRIEF ADDRESSING THE APPLICABILITY OF
THE DEFINITION OF A SINGLE PLANT IN THIS CASE
AND WHETHER THE STANDARD-OFFER CONTRACT REQUIRES AMENDMENT**

On Feb. 14, 2019, the Public Utility Commission (“PUC”) issued an Order requesting additional briefing by Intervenor addressing the applicability of the definition of a single plant in this case. The parties were also specifically requested to address whether the changes between what was proposed in the 2014 standard-offer Vermont Supreme Court case and what was proposed in this Section 248 case are so significant as to require an amendment to the standard-offer contract. Intervenor Mount Anthony Country Club (“MACC”) and Apple Hill Homeowners Association (“AHHA”) submit this Brief in response to the Commission’s Order.

Based on the true facts and circumstances now known and the record of evidence before the Public Utility Commission, MACC and AHHA recommend that the PUC find that the Apple Hill Solar, LLC project, which proposes to use Willow Road for access (hereinafter referred to as “AHS/Willow Road”) and the currently proposed Chelsea Solar, LLC “Willow Road Project” (hereinafter referred to as “CH2/Willow Road”) are a single 4 MW plant according to the statutory definition as interpreted by the Vermont Supreme Court. Intervenor also recommend, based on the true facts and circumstances now known and the record of evidence in the standard-

offer and Vermont Supreme Court case, that the PUC find that the Bennington Solar¹ project presented in the 2013/2014 standard-offer Vermont Supreme Court case is so significantly different from what is proposed by CH2/Willow Road in this Section 248 case, that the standard-offer contract is voidable based upon the Petitioner's material misrepresentations of fact and/or fraud and should be rescinded by the PUC after a separate investigation to determine whether such misrepresentations of fact were knowing, intentional and/or fraudulent.² Moreover, it is suggested that the PUC request that the Vermont Supreme Court remand the AHS/Willow Road case on appeal since both cases are tainted by the material representations of fact and/or fraud.

Lastly, in conjunction with the AHS/Willow Road project sharing the same road and

¹ Bennington Solar proposed to use Russet Drive in May 2013. Chelsea Solar 1 proposed to use an extension of Apple Hill Road through the orchard parcel in AHHA in June 2014 (denied 2016, appealed and withdrawn 2017). Chelsea Solar 2 proposed to use Willow Road in 2017, renamed the Willow Road Project by the PUC in 2019.

² The Vermont Supreme Court has explained:

It is well established that a party induced into a contract by fraud or misrepresentation can rescind the contract and avoid liability for any breach thereon. *See Negyessy v. Strong*, 136 Vt. 193, 194, 388 A.2d 383, 384-85 (1978) (Where a party was induced to enter into a contract by fraud or misrepresentation, "the deceived party may seek the remedy of being excused from the contract through rescission, or seeking the damages occasioned by the fraud."). A misrepresentation is fraudulent when made with knowledge of its falsity. *See Smith v. De Metre*, 119 Vt. 73, 79, 118 A.2d 346, 351 (1955). Where the procurer of a statement knew it was false, materiality is not required. *New York Life Ins. Co. v. McLaughlin*, 112 Vt. 402, 408, 26 A.2d 108, 111 (1942). Materiality is required where the mistake or false statement was not intentionally made, see *id.*, and may be proved where the statement is "likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce" such assent. Restatement (Second) of Contracts § 162(2) (1981). Unlike a fraud action seeking damages in tort, a party seeking to rescind a fraudulently induced contract is not required to prove its case by clear and convincing evidence. *Union Bank v. Jones*, 138 Vt. 115, 121, 411 A.2d 1338, 1342 (1980) (noting distinction between the elements for an action in fraud and deceit, and fraudulent misrepresentation, providing grounds for rescission of a contract).

We have applied this well-established principle to a variety of contractual relationships. *See, e.g., Winey v. William E. Dailey, Inc.*, 161 Vt. 129, 132-34, 636 A.2d 744, 747-48 (1993) (discussing fraudulent inducement in a contract for professional services); *Larochelle v. Komery*, 128 Vt. 262, 267-69, 261 A.2d 29, 33-34 (1969) (discussing misrepresentation of value of consideration offered in sale of stock in hotel); *Collier v. Nolan*, 125 Vt. 82, 84-87, 211 A.2d 265, 268-70 (1965) (finding misrepresentation of milk production of farm herd offered in sale of dairy farm); *Gramatan Nat'l Bank & Trust Co. v. Beecher*, 121 Vt. 39, 48-49, 146 A.2d 246, 252 (1958) (discussing fraud in the inducement of a contract and note).

interconnection infrastructure, CH2/Willow Road project exceeds the standard-offer program's capacity limit of 2.2 MW and should be denied.

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1. Introduction

AHS/Willow Road received a Certificate of Public Good from the PUC in 2018.³

AHS/Willow Road, as approved by the PUC, is to be cleared, constructed, operated and maintained off of an improved quarter mile extension of Willow Road which approaches the site from the south. AHS/Willow Road has been approved to interconnect to the electric grid with a new mile long extension of Green Mountain Power's distribution system. AHS/Willow Road, as

³ Docket No. 8454 which is currently on appeal to the Vermont Supreme Court Docket No. 2018-358.

permitted by the PUC, is on the same parcel of land, under the same ownership, to be accessed from the same road with approximately the same point of interconnection to the same one mile long power line extension as shown in PC 155. PC 155 is an exhibit from the Printed Case in Vermont Supreme Court appeal Docket No. 2013-308 filed on Oct. 18, 2013 which was an appeal filed by Ecos Energy LLC and Allco Renewable Energy's Thomas and Michael Melone regarding the PUC's original decision that the two projects (AHS/Willow Road and Bennington Solar/Russet Drive) qualified as one "plant." Only the layout of the solar panels and angle of the driveway is modified in the current AHS/Willow Road project from what is shown in PC 155.

Intervenors agree that AHS/Willow Road as currently proposed to be constructed is substantially consistent with the specifications set forth in PC 155, including the access road and interconnection infrastructure.

Intervenors MACC and AHHA had not seen PC 155 or PC 156 prior to Feb. 14, 2019. Upon inquiry, the original intervenor in Chelsea Solar 1 and 2, Libby Harris who withdrew from Chelsea Solar 2, also had never seen PC 155 or PC 156 until the PUC issued its Order requesting this Brief on Feb. 14, 2019.

CH2/Willow Road proposes to clear, construct, operate and maintain the solar array on the same parcel of land as AHS/Willow Road, under the same ownership, sharing the same access road and sharing the same interconnection infrastructure. The plan for CH2/Willow Road currently before the PUC is **not** substantially consistent with the specifications set forth in PC 156, in which Bennington Solar proposed to use a different access road, Russet Drive, and different interconnection infrastructure in the vicinity of Russet Drive. Of fundamental importance it must be noted that Ecos Energy provided the Vermont Supreme Court with PC 155 and 156 and the factual representations contained therein served as the Vermont Supreme

Court's basis for overturning the PUC's denial of the Apple Hill Solar standard-offer contract in 2014. However, it now appears that material representations contained in PC 155 and 156 are false.

The evidentiary record in AHS/Willow Road Case No. 8454 and this CH2/Willow Road Case No. 17-5024 supports the finding that AHS/Willow Road and CH2/Willow Road are, as proposed, a single 4 MW plant. As currently configured, AHS/Willow Road and CH2/Willow Road qualify as a single plant according to the definition. They are proposed to be located on the same parcel of land owned by the same legal entity, financed by the same entity. In contrast to the evidence provided to the Vermont Supreme Court, they **do** share common equipment, common infrastructure, common roads, common control facilities and common connections to the electric grid. The System Impact Study evaluated the projects as one plant. Petitioner's expert witnesses evaluated the two projects together. They are, as proposed, a single plant. In finding that Bennington Solar/Russet Drive and AHS/Willow Road were separate plants under the definition, the Vermont Supreme Court relied on Petitioner's representations in PC 155 and 156 that the two projects would have different access roads and use different interconnection infrastructure. That is not the proposal before the PUC; thus, the facts underlying the Supreme Court's decision no longer support the conclusion that the projects are separate plants.

2. "Willow Road Project," is substantially different from "Bennington Solar" as presented to the Vermont Supreme Court

The current plan for the CH2/Willow Road Project is not consistent with the Bennington Solar/Russet Drive project as presented to the Vermont Supreme Court in October 2013 as PC 156, upon which the Court based its reversal of the PUC's denial of the original AHS/Willow Road contract.

Until the PUC issued the Procedural Order re Additional Briefing on Feb. 14, 2019, Intervenorors MACC and AHHA, along with withdrawn intervenor Libby Harris, had never seen the maps identified as PC 155 and 156 that are included in the Order; nor had the landowners at the end of Russet Drive. The rendition of the original Bennington Solar/Russet Drive project comes as a major surprise to residents of Apple Hill, especially to the property owners through whose property a road was drawn by Petitioner as shown in PC 156.

a. There is no road in the location shown on PC 156

The current status at the end of Russet Drive and the Google Maps Street View is that the road dead ends at a line of trees. There is also buried electrical equipment serving the residences. There is no road as shown on PC 156. Exhibit MACC-AHHA-SP-1. It does not exist and was an utterly false representation made to the Supreme Court. Moreover, there are no easements or rights-of-way that connect the end of Russet Drive to the subject parcel.

An affidavit by the president of the Apple Hill Homeowner's Association was submitted in the record of Chelsea Solar's request for an extension of the Standard Offer contract Case No. 17-4695-PET.⁴ Exhibit MACC-AHHA-SP-2. In it, Mr. Knight describes the circumstance that occurred in the Spring of 2013, when:

. . . neighbors at the end of Russet Drive called me informing me that there was heavy equipment and trucks at the end of their street. They did not know what was going on. I went to the scene, identified myself, and asked the man on the big earth mover what he was doing. He said he was going to make a road through the end of Russet Drive to a solar project. I told him he was in the wrong place. He made a phone call. He never said anything to me and left. I thought it was just a mistake.

Intervenorors ask the PUC to take notice that this activity occurred prior to Petitioner's

⁴ Case No. 17-4695-PET Petition of Chelsea Solar, LLC for relief from Standard-offer contract milestone, Harris_Response_ChelseaSolar_Extension_111717_Exhibits1,2,3.pdf

appeal of the denial of AHS/Willow Road's standard-offer contract to the Vermont Supreme Court, and prior to the submission of a Petition to the PUC for Chelsea Solar.⁵

b. One of the two affected landowners was approached in 2013 for a right of way for the access road shown in PC 156 and said no. The other landowner was not approached for a right of way.

Tom Cushman and Earl Senecal own the two properties shown in PC 156 with the line drawn through them for the road to serve Bennington Solar/Russet Drive. Upon inquiry by Intervenor AHHA, Mr. Cushman responded that he had not been contacted about a right of way and has not given legal access to anyone for the road shown in PC 156. The other property owner, Earl Senecal, passed away in January, 2019. His son Steven submits an affidavit in this case which affirms that his father also did not grant an easement for the road shown in PC 156. Exhibit MACC-AHHA-SP-3. Furthermore, Steven Senecal affirms that his father, Earl Senecal, was approached by someone representing the solar project in 2013 asking to purchase a right of way, and Earl Senecal refused to convey any type of property interest.

Despite Petitioner's attempt and failure to obtain legal access to Bennington Solar via Russet Drive in the Spring and Summer of 2013, Petitioner submitted the map showing Russet Drive as the access road to Bennington Solar in its Oct. 2013 appeal to the Vermont Supreme Court of the PUC's denial of the standard-offer contract for AHS/Willow Road that resulted in overturning the PUC's denial and allowed both projects to move forward.

There is no evidence that Petitioner had legal site control to construct the Bennington Solar project using an extension of Russet Drive as shown in PC 156 as presented to the PUC by Petitioner in the May 2013 Motion to Reconsider and the Oct. 2013 appeal to the Vermont

⁵ Petitioner attempted to begin construction of the Bennington Solar project approximately one year prior to submitting a petition to the PUC for Bennington Solar/Russet Drive which later morphed into and became the first Chelsea Solar proposed project with the access route coming off of Apple Hill Road which is located to the east of the proposed site.

Supreme Court. However, there is now evidence that misrepresentations of material fact were made in that regard.

c. Apple Hill Homeowners Association properties contain covenants that prohibit the commercial use of properties located within AHHA

AHHA members' properties, which include the properties at the end of Russet Drive, contain deed restrictions that prohibit the use of AHHA parcels for commercial activities. Exhibit LB-AHHA-1, p. 2, 1.

Bennington Solar's proposed road access as shown on PC 156 was prohibited by AHHA deed restrictions. Construction and use of an extension of Russet Drive to serve the commercial/industrial solar project would have violated AHHA's deed restrictions and is therefore a prohibited use. It could not have been built according to the plans that Petitioner submitted to the PUC in May 2013 or the Vermont Supreme Court in Oct. 2013.

AHHA's deed restrictions similarly prohibit the use of the orchard parcel owned by Petitioner's company PLH LLC for commercial purposes. No MOU is in place allowing CH2/Willow Road to re-visit the possibility of accessing CH2/Willow Road through Apple Hill Road and the orchard parcel owned by PLH LLC as was originally proposed in the first iteration of Chelsea Solar.⁶ AHHA strenuously objects to any attempt by petitioner to again reconfigure this project to propose using Apple Hill's Homeowners Association's deed-restricted property for access to the project parcel. Petitioner has no right to endless do-overs. Intervenors have a right to finality.

⁶ The original Petition, Case No. 8302, filed in June 2014 was called Chelsea Solar, and is on the same area of land as the project previously referred to as Bennington Solar in the standard-offer contract program. This current Case No. 17-5024 was filed as a new petition in Dec. 2017 and was also called Chelsea Solar. The PUC has renamed this current case the Willow Road Project in 2019.

d. Bennington Solar is not Willow Road Project

Petitioner represented to the PUC and Vermont Supreme Court that Bennington Solar would be constructed via an access road that extended Russet Drive in the Apple Hill deed-restricted residential development, and would interconnect to the grid in the Russet Drive neighborhood.

PC 156 shows that Petitioner represented to the PUC and the Vermont Supreme Court that the access road and point of interconnection for Bennington Solar/Russet Drive are located in a completely different area from the Willow Road Project. The Interconnection Map confirms the point of interconnection for CH2/Willow Road is off Willow Road, and is not in the same area as Bennington Solar's specification to interconnect next to Russet Drive according to the plan provided to the PUC and Vermont Supreme Court in 2013. Exhibit CS-BW-11

CH2/Willow Road is sharing access roads and infrastructure with AHS/Willow Road. CH2/Willow Road is not Bennington Solar/Russet Drive. AHS/Willow Road and CH2/Willow Road are one single 4 MW plant sharing common roads, control facilities, and connections to the electric grid.

3. Willow Road Project and Apple Hill Solar are one Plant according to the definition.

Pursuant to 30 V.S.A. §8002(14), a "plant" is:

an independent technical facility that generates electricity from renewable energy. A group of newly constructed facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid.

The project(s) is proposed by the same Petitioner, on the same parcel of land owned by the same person, and is proposed to be cleared, constructed, operated and maintained via the same extension of Willow Road. Petitioner's aesthetics expert shows both projects together as one plant. Exhibits AHS-MK-11, AHS-MK-12. The proposed access to both AHS/Willow Road

and CH2/Willow Road is via Willow Road from the south. Exhibit AHS-MK-12. AHS/Willow Road and CH2/Willow Road are on the same parcel of land. Exhibits CS-BW-89, CS-BW-5, CS-BW-6, CS-BW-7. The SIS identifies the plan for interconnecting both projects via the same mile long extension of GMP's electric power infrastructure, and points to numerous instances with common equipment, control facilities and connections to the electric grid. Exhibit CS-BW-9.

Petitioner submitted information to the Town of Bennington on June 7, 2017 that showed both projects combined, including a Revised Clearing Boundaries and Site Plan Exhibit MACC-AHHA-SP-4, Chelsea & Apple Hill Solar Wind Effects Analysis Exhibit MACC-AHHA-SP-5, Chelsea & Apple Hill Solar Highway Noise Analysis Exhibit MACC-AHHA-SP-6, and Chelsea and Apple Hill Solar Projects Memo re: Visual Appearance and Glare Potential Exhibit MACC-AHHA-SP-7.

By definition, the group of solar arrays known as CH2/Willow Road and AHS/Willow Road is part of the same project, uses common equipment and infrastructure, and is one plant.

4. The Vermont Supreme Court's decision to allow both contiguous projects to proceed was based on facts that have changed.

In its Brief of Oct. 2013 to the Vermont Supreme Court, appellant Ecos Energy represented to the Court that "Ecos provided clear evidence that the Apple Hill Solar project was an independent technical facility, with separate equipment, separate access roads, separate interconnection facilities and separate everything else, and that it was as separate from the Bennington solar project as a solar plant located 20 miles away." Exhibit MACC-AHHA-SP-8, pp. 2 - 3, 9. Appellant told the Vermont Supreme Court that "The only common factor between the Bennington solar plant and the Apple Hill solar plant is that they will lease land from the same landlord." Exhibit MACC-AHHA-SP-8, p. 9. Appellant repeated, "The Bennington and

Apple Hill solar projects do not use “common equipment and infrastructure such as roads, control facilities, and connections to the electric grid.” Exhibit MACC-AHHA-SP-8, p. 9.

Again, Appellant reiterates that “Each project has its own equipment...,and shares no facilities or access roads with the other.” And “There is no common equipment, no common infrastructure, no common roads, no common control facilities, and no common connections to the electric grid. Bennington solar and Apple Hill solar will be separate projects in all respects.” Exhibit MACC-AHHA-SP-8, p. 10

Intervenors agree that, as presented to the Vermont Supreme Court, Bennington Solar/Russet Drive and AHS/Willow Road appeared to be using separate access roads and did not share common points of interconnection. However, the facts upon which the Vermont Supreme Court based its decision are not the same as the facts now before the PUC in this case. CH2/Willow Road and AHS/Willow Road are a single 4 MW plant located on the same parcel of land owned by the same person, with common equipment, common infrastructure, common roads, common control facilities and common connections to the electric grid.

Intervenors MACC and AHHA are disturbed by the possibility that Ecos Energy knew at the time it appealed the PUC’s denial of the Standard Offer contract for AHS/Willow Road to the Vermont Supreme Court that access to Bennington Solar via Russet Drive was not possible. The worker sent to build the road was stopped by the president of AHHA in the Spring. The landowner who was approached for an easement to extend Russet Drive declined to sell or grant one. AHHA contains deed restrictions prohibiting use of Apple Hill properties for commercial activities. These facts were apparently known by Ecos Energy by the time Ecos Energy filed the Oct. 2013 appeal to the Vermont Supreme Court that presented Russet Drive as the access to Bennington Solar.

5. It is all one project on one parcel of land owned by one person

During the CH2/Willow Road evidentiary hearing, Ecos Energy project manager Brad Wilson was asked about ownership of PLH LLC. In response, he said he did not know who owned the company. Case No. 17-5024, Tr. 9/20/18 p. 264, 271-272 Mr. Wilson also stated that Chelsea Solar has no rights or control over the orchard lot owned by PLH LLC.⁷ Case No. 17-5024, Tr. 9/20/18, p. 264 lines 11-12.

Ownership of the companies involved in this case was discussed in Otter Creek Solar Docket Number 8775. An evidentiary hearing was held on April 25, 2017. Christopher Little was a witness, and Allco Renewable Energy attorney Michael Melone appeared on behalf of Otter Creek Solar. Under questioning by Michael Melone, Mr. Little disclosed that he is the Director of Development for Ecos Energy Exhibit MACC-AHHA-SP-9, p. 6.

Q. M. Melone: can you tell us who PLH LLC is?

A. PLH is a land holding company, stands for Property Land Holding. It was an affiliate the Ecos Energy and Otter Creek Solar LLC. [MACC-AHHA-SP-9, p. 10].

Q. M. Melone: who owns PLH LLC?

A. Thomas Melone.

Q. M. Melone: And who owns Allco Finance Limited?

A. Thomas Melone. [MACC-AHHA-SP-9, p. 46]

Q. M. Melone: And does Thomas Melone control all of the decisions with respect to land transfers that PLH LLC is involved in?

A. Yes. [MACC-AHHA-SP-9, p. 47]

Allco Finance, Ecos Energy, PLH, and Otter Creek Solar are owned by Thomas Melone, who is the sole owner of the single parcel upon which the single 4 MW plant is planned.

⁷ Ecos Energy's project manager's statement is curious since both projects propose to plant screening trees on the orchard lot owned by PLH LLC, and the PUC has approved the use of the orchard lot for planting screening trees for the solar project in AHS Case No. 8454.

6. “Apple Hill Solar” and “Willow Road Project” are a single plant

Petitioner’s experts evaluated both projects together as a single plant.

a. System Impact Study

The System Impact Study was conducted by Green Mountain Power for “Bennington Solar, LLC, Russet Drive, Bennington, VT 05201” on Oct. 14, 2014.⁸ Exhibit CS-BW-9 Although the SIS has the same title as the original project that bid into the standard-offer program for a contract and contains the name of the same access road presented to the Vermont Supreme Court, the text states “The Bennington Solar, LLC portion of the Project is also known as Chelsea Solar.” Russet Drive is in the title of the SIS, but the point of interconnection the SIS evaluated for Bennington/Chelsea Solar is not in the neighborhood of Russet Drive as presented to the Vermont Supreme Court, but uses Willow Road. The Executive Summary begins by stating that the SIS was conducted “for the interconnection of the Bennington Solar, LLC **and** the Apple Hill Solar, LLC” and while the cost estimates are exclusive to the Chelsea Solar project, “some **system upgrades that are jointly required** for the Apple Hill project are discussed.” [emphasis added]

The SIS goes on to describe the two projects, stating that “**both will be connecting** to the MS50 circuit on Line 2136. **Both projects** are using similar components. For these reasons, **this system impact study will combine the individual and collective impacts** to Green Mountain Power’s electric power system.” SIS at p. 5 [emphasis added]

The SIS reviews “the facilities” together. “Three phase line extensions will be required for **the facilities** to interconnect.” [emphasis added] “A three-phase line extension will be

⁸ The title of the SIS is consistent with PC 156 as presented to the Vermont Supreme Court in Oct. 2013. The date of the SIS is Oct. 2014, after the Petition was filed for Chelsea Solar in June 2014, which proposed the access road through Apple Hill Road and the deed-restricted PLH LLC orchard lot with grid interconnection via Willow Road.

required to connect **the PV Facilities.**” SIS at p. 6 [emphasis added] The evidence in the SIS is that AHS/Willow Road and CH2/Willow Road share interconnection infrastructure and are one facility in terms of interconnection to GMP’s electric power system.

The Introduction to the SIS states, “Apple Hill Solar, LLC and Bennington Solar, LLC have requested a Distributed Generation Interconnection for two (2) – 2,000kW Photovoltaic System to **a distribution feeder** in the Company’s EPS.” “The two facilities under review are located on adjacent properties and **connect on a common branch** of the area EPS.” “As mentioned in the Executive Summary, **a new three phase distribution line along Hewitt Drive is required for the interconnection of either or both project(s).**” SIS at p. 8 [emphasis added] Petitioner’s System Impact Study evaluates interconnecting a single 4 MW plant to the same electric power infrastructure. This is not the project that was presented to the Vermont Supreme Court in PC 156.

The SIS treats the two projects as one, with one exception. “The design of the two facilities **is identical** beyond the PCC.” SIS p. 9 [emphasis added] The SIS goes on to describe the shared equipment used by the two projects combined. The exception is noted in the last paragraph of 2.1: “There will be a GMP owned PCC recloser for each project’s point of interconnection. **Adequate protection could be provided by a single recloser for the combined projects** and GMP recommended grouping of facilities to minimize costs as permitted by PSB Rule 5.507(G)(6). [emphasis added] The Customer has requested individual reclosers for each facility to maintain separation.” SIS at p. 9 [emphasis added] Indeed, in the Executive Summary, the SIS states that “At the Point of Interconnection, one recloser, one set of disconnect switches and one primary metering rack will be required.” SIS at p. 6. The two projects share interconnection infrastructure. Petitioner is paying extra for two reclosers to artificially separate

the two projects using a technical gimmick in order to pretend they are two 2 MW projects instead of a single 4 MW plant. Two reclosers is not “least cost”.

The SIS further discusses the two projects, noting that existing infrastructure does not support the projects, and “instead, constructing a primary voltage three phase connecting line along Hewitt Drive is being pursued.” SIS at pp. 11-12. The new three phase connecting line is to serve a single 4 MW plant.

The SIS evaluated the possibility of “this interconnection” causing reverse power flow. The SIS says “When the generating systems are at peak export, excess generation from the **Combined** Apple Hill Solar and Bennington Solar projects will flow back through...” [emphasis added] and “ControlPoint performed a protection review of **Combined** Apple Hill Solar and Bennington Solar LLC...” SIS at p. 32 [emphasis added] The SIS says “The effect of the 2 – 2MVA generation, at the Apple Hill Solar and Bennington solar sites, was analyzed for its effect on available fault current.” 4.3 refers to “The Facilities.” SIS at p. 34 For purposes of interconnecting to the grid, the two projects were evaluated as a single 4 MW plant, which is substantially different from what Petitioner presented to the Vermont Supreme Court in its appeal of the PUC’s denial of one of the two standard-offer contracts in 2013.

The SIS lists the modifications and additions necessary for interconnection, and identifies the projects’ shared costs. SIS at p. 39. If AHS/Willow Road and CH2/Willow Road are separate projects, the projects would not share a SIS or share interconnection costs.

The maps in the SIS further support that the projects share interconnection infrastructure, as the SIS identifies the points of interconnection as sharing the same power line extension from Hewitt Drive to Willow Road. SIS at pp. 42 and 44. The SIS further confirms that all 4 MW could interconnect using one recloser, so it is effectively a single 4 MW plant which Petitioner is

artificially attempting to claim are two separate projects by paying extra for a second recloser.

For the purposes of evaluating the System Impact, the Study reviewed a single 4 MW plant. The SIS did not review Bennington Solar interconnecting near Russet Drive as presented to the PUC in May 2013 and the Vermont Supreme Court in Oct. 2013.

b. Wind Speed Analysis

The Wind Speed Analysis in the record in AHS/Willow Road reviews both projects as one. See “2. Introduction” which says “The proposed Apple Hill Solar Project and Chelsea Solar project (together the “Project”) are expected to be located on a portion of a 27.3-acre parcel...” Exhibit AHS-SR-2 at p. 3. The Wind Speed Analysis contains Figures showing both projects together, and Model the two projects “Combined.” Exhibit AHS-SR-2 at pp. 5, 9 and 10.

For the purposes of evaluating wind issues, the expert review evaluated a single 4 MW plant.

c. Highway Noise Analyses

The Highway Noise Analyses attempt to separate the two projects, but if read side by side, the text and graphics show that the evaluation of each supposedly separate project was conducted at the same time, with sound level monitoring taking place “between Monday, April 3 and Wednesday, April 12” for each project, with sound monitors in the same location for each project, and identical data collected. Exhibits CS-RH-3, AHS-RH-2. The Highway Noise Analysis reports submitted in each case are almost identical, with a few minor differences.

For the purposes of evaluating highway noise impacts, the expert review evaluated a single 4 MW plant.

d. Aesthetic Analyses

The Aesthetic and Orderly Development Report, Aug. 9, 2018, for CH2/Willow Road

shows both projects together on the map as part of the Description of the Project, Project Site, and Surrounding Area. Exhibit CS-MB-2, p. 3

Petitioner's other aesthetics expert, Mark Kane, submitted a 3D Overview Plan showing both projects together as one 4 MW array. Exhibit AHS-MK-9. "Revised Visual Simulations" combines the review of both projects as one, with the identifying label at the bottom of each page, "Chelsea & Apple Hill Solar Project." Exhibit AHS-MK-7.

For the purposes of evaluating the aesthetic impacts, the experts who reviewed the projects evaluated a single 4 MW plant.

7. Whether the changes between what was proposed in the 2014 standard-offer Vermont Supreme Court case and what was proposed in this Section 248 case are so significant as to require an amendment to the standard-offer contract.

In response to the PUC's Feb. 14, 2019 Order, Intervenor reviewed the Vermont Supreme Court Docket No. 2013-308 record including 2 Briefs, 1 Printed Case and 1 Reply Brief. Intervenor also reviewed the original bids submitted to the standard-offer administrator in 2013, the standard offer contracts signed by Petitioner in 2013 for Bennington Solar and in 2014 for Apple Hill Solar, and the PUC's Orders re RFP Selection.

Based on information found during Intervenor's review of the facts presented in 2013 to the standard-offer program, the PUC, and the Vermont Supreme Court, Intervenor recommends that the PUC open an investigation into the Bennington Solar and Apple Hill Solar standard-offer contracts.

Intervenor believes that the record will show that Petitioner presented Russet Drive as the access road for Bennington Solar to the PUC in its Motion to Reconsider on May 21, 2013; however, Petitioner did not present Russet Drive as the location of Bennington Solar in Attachment A of the standard-offer contract signed by Petitioner on June 17, 2013. Rather,

petitioner stated the project would be located at “1033 Willow Road.” Petitioner then appealed the PUC’s denial of AHS/Willow Road to the Vermont Supreme Court on Oct. 18, 2013 and included Petitioner’s Motion to Reconsider with PC 155 and 156 in the Printed Case showing Russet Drive as the access road and point of interconnection for Bennington Solar, and Willow Road as the access road and point of interconnection for Apple Hill Solar.

Intervenors are troubled by Petitioner’s misrepresentation of the facts regarding the access road and area of interconnection for Bennington Solar in its appeal to the Vermont Supreme Court. Four months after signing the standard-offer contract with Attachment A stating the Bennington Solar project would be located “at 1033 Willow Road,” Petitioner represented to the Vermont Supreme Court that the Bennington Solar project would be accessed via a new extension of Russet Drive as shown on PC 156 and interconnected to the electric grid in the area of Russet Drive.

Because the documents upon which the above facts are taken are not in evidence in this proceeding, Intervenors believe it is most appropriate for the PUC to open a separate investigation into the validity of the Petitioner’s standard-offer contracts for Bennington Solar and Apple Hill Solar. Further arguments about price and other issues related to the definition of a “single plant” can be advanced through a new Investigation. It is suggested that the PUC request that the Vermont Supreme Court remand the AHS/Willow Road case on appeal since both cases are tainted by the material representations of fact and/or fraud.

Intervenors believe that the investigation will reveal that Petitioner misrepresented the facts to the Vermont Supreme Court in order to overturn the PUC’s denial of one of the two standard-offer contracts. The appropriate result of such an investigation should be to declare the standard-offer contract for Bennington Solar null and void, and not applicable to CH2/Willow

Road. The PUC should further investigate whether the issuance of the standard-offer contract for Apple Hill Solar resulted from Petitioner's material misrepresentations of fact to the Vermont Supreme Court and also be declared null and void.

8. Conclusion

CH2/Willow Road has taken a long and twisted route to get to this point in the process. Beginning with the standard-offer RFP in March 2013 and bid from Bennington Solar/Russet Drive and AHS/Willow Road, continuing through one Vermont Supreme Court case which overruled the PUC in 2014, a petition for Chelsea Solar proposing to use Apple Hill Road and the orchard parcel as the access road in 2014 which was denied by the PUC in 2016 and appealed to the Vermont Supreme Court and subsequently withdrawn in 2017, followed by a new petition for Chelsea Solar 2 proposing to use Willow Road as the access road in 2017 which the PUC has renamed the Willow Road Project in 2019, after four evidentiary hearings on two different versions of each project, this case is now ready for decision after oral argument is heard by the full PUC.

CH2/Willow Road is substantially and materially different from the original project for which the standard-offer contract was issued for Bennington Solar/Russet Drive. Whatever it is called and however it is configured, CH2/Willow Road is located on a prominent forested hillside at a gateway area of the Town of Bennington visible from important historic and economic vantage points, next to a high traffic highway interchange and residential community that is already experiencing high volumes of traffic noise and high winds. The location of a 4 MW solar plant at this site violates the clear written community standard contained in the Bennington Town Plan and Rural Conservation District standards intended to preserve the natural scenic beauty of the area, and therefore should be denied. A 4 MW solar plant at this

location would create an undue adverse aesthetic impact and therefore should be denied. A 4 MW solar plant also violates the 2.2 MW capacity cap for standard-offer projects, and therefore CH2/Willow Road should be denied.

In addition to denying CH2/Willow Road for the above reasons, it is suggested that the PUC request that the Vermont Supreme Court remand the AHS/Willow Road case on appeal and open an investigation into the standard-offer contracts since both cases are tainted by the material representations of fact and/or fraud.

Dated at Bennington, Vermont this 1st day of March, 2019.

Respectfully submitted,



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