

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NO. 17-5024-PET

PETITION OF CHELSEA SOLAR LLC, PURSUANT
TO 30 V.S.A. SECTION 248, FOR A
CERTIFICATE OF PUBLIC GOOD AUTHORIZING THE
INSTALLATION AND OPERATION OF THE "CHELSEA
SOLAR PROJECT," A 2.0 MW SOLAR ELECTRIC
GENERATION FACILITY LOCATED OFF WILLOW
ROAD IN BENNINGTON, VERMONT --

March 29, 2019

10:30 a.m.

112 State Street
Montpelier, Vermont

Oral Argument held before the
Vermont Public Utility Commission, at the Susan M. Hudson
Conference Room, People's United Bank Building, 112 State
Street, Montpelier, Vermont, on March 29, 2019, beginning
at 10:30 a.m.

P R E S E N T

COMMISSION MEMBERS: Anthony Z. Roisman, Chairman
 Margaret Cheney
 Sarah Hofmann

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

A P P E A R A N C E S

SARAH ACEVES, ESQUIRE

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

VALSANGIACOMO, DETORA & McQUESTEN

Appearing for Apple Hill Homeowners Association and
Mt.

Anthony Country Club
P.O. Box 625
Barre, VT 05641

BY: L. BROOKE DINGLEDINE, ESQUIRE

PAUL, FRANK + COLLINS, P.C.

Appearing for Chelsea Solar LLC
One Church Street, P.O. Box 1307
Burlington, VT 05402-1307

BY: KIMBERLY K. HAYDEN, ESQUIRE

DONALD J. EINHORN, ESQUIRE

Appearing for Vermont Agency of Natural Resources
One National Life Drive, Davis 2
Montpelier, VT 05620-3901

ALISON MILBURY STONE, ESQUIRE

Vermont Attorney General's Office
Appearing for the Agency of Agriculture, Food &
Markets
109 State Street
Montpelier, VT 05609-1001

Also present:

Lora Block, Apple Hill Homeowners Association
Maru Leon, Mt. Anthony Country Club

1 CHAIRMAN ROISMAN: Good morning. My
2 name is Anthony Roisman. I'm Chair of the Public
3 Utility Commission. With me this morning on my left
4 is Commissioner Sarah Hofmann; and on my right,
5 Commissioner Margaret Cheney; and on my far right
6 Kyle Landis-Marinello who is our General Counsel.

7 This is an oral argument scheduled at
8 the request of Mt. Anthony Country Club and the Apple
9 Hill Homeowners Association represented today, as I
10 understand it, by counselor Brooke Dingleline;
11 correct?

12 MS. DINGLELINE: Yes, sir. Thank you.
13 I'm sorry for the late notice.

14 CHAIRMAN ROISMAN: That's okay. We are
15 always glad to have you.

16 MS. DINGLELINE: Thank you.

17 CHAIRMAN ROISMAN: And the Case No. is
18 17-5024-PET, which is a petition of Chelsea Solar,
19 LLC pursuant to 30 V.S.A. 248 for a Certificate of
20 Public Good authorizing the installation and
21 operation of the Willow Road project, a 2 megawatt
22 solar electric generation facility on Willow Road in
23 Bennington, Vermont.

24 As we stated in the order scheduling
25 this event, an oral argument is scheduled for 90

1 minutes. The interveners collectively are allowed 45
2 minutes, and Chelsea Solar and the other parties are
3 allotted the remaining 45 minutes to use as they
4 determine.

5 We will start by taking notices of
6 appearance for the interveners.

7 MS. DINGLEDINE: Brooke Dingledine.
8 I'm representing both Mt. Anthony Country Club and
9 Apple Hill Homeowners Association. Lora Block is
10 here for the Association. Maru Leon is here for the
11 Mt. Anthony Country Club. I should also mention that
12 Mr. Block is here as well, Robert; and Richard
13 Carroll is an Apple Hill neighbor, and he's attending
14 as well.

15 CHAIRMAN ROISMAN: You'll be the only
16 one arguing for the interveners; is that correct?

17 MS. DINGLEDINE: Yes, sir. That is
18 correct.

19 CHAIRMAN ROISMAN: And you have 45
20 minutes. Do you wish to reserve any time for
21 rebuttal?

22 MS. DINGLEDINE: If I could reserve 15
23 minutes, please.

24 CHAIRMAN ROISMAN: And for the
25 Applicant?

1 MS. HAYDEN: Yes. Kimberly Hayden of
2 Paul, Frank & Collins on behalf of the Applicant.
3 And I have nobody with me today.

4 CHAIRMAN ROISMAN: Okay. I'm sorry.
5 Have you entered a notice of appearance?

6 MS. HAYDEN: Yes. Yes, I have been
7 participating in the case, not since the initial
8 petition was filed, but it's been some time.

9 CHAIRMAN ROISMAN: Okay, good. And
10 have you spoken with the other parties who are on
11 your side of the case about how you wish to divide
12 your time?

13 MS. HAYDEN: Well I did speak with the
14 Department. You know, we are going to rely primarily
15 on our written pleadings. I would like to reserve
16 I'm thinking maybe 10 minutes. And I did speak to
17 the Department's counsel and advised them of that.

18 CHAIRMAN ROISMAN: Okay. All right.
19 So if they wish, there is 35 additional minutes
20 roughly.

21 MS. HAYDEN: Correct.

22 CHAIRMAN ROISMAN: All right. And for
23 the Department?

24 MS. ACEVES: Sarah Aceves, Department
25 of Public Service. I anticipate we will take less

1 than 5 minutes.

2 CHAIRMAN ROISMAN: Okay. All right.
3 And Agency of Natural Resources, I know you said
4 whatever the Department said you agree with, but are
5 you intending to speak this morning?

6 MR. EINHORN: Don Einhorn for the
7 Agency. No, I don't expect to participate.

8 CHAIRMAN ROISMAN: Okay.

9 MR. EINHORN: Unless the commission has
10 a question.

11 CHAIRMAN ROISMAN: Okay. Well if there
12 are no preliminary matters --

13 COMMISSIONER HOFMANN: Agency of
14 Agriculture.

15 CHAIRMAN ROISMAN: Oh, I'm sorry.

16 MS. STONE: No problem.

17 CHAIRMAN ROISMAN: I didn't see any
18 papers filed from you on this issue. Do you expect
19 to speak this morning?

20 MS. STONE: Alison Milbury Stone on
21 behalf of the Agency of Agriculture. I don't have
22 any at this time.

23 CHAIRMAN ROISMAN: Welcome. Thank you.
24 Ms. Dingleline, you're on.

25 MS. DINGLELINE: I'm used to standing

1 up. I'm sorry. I've come to try to talk about some
2 of the legal issues. The pro se litigants in this
3 case have filed some admirable arguments, factual
4 findings, conclusions, arguments why the proposed
5 decision should not be adopted.

6 CHAIRMAN ROISMAN: Could you speak up a
7 little bit or turn on the mic?

8 MS. BLOCK: I don't think any of the
9 mics are on.

10 MS. DINGLELINE: Does this work better?
11 I think it's green now.

12 MS. LEON: Is there a volume control?

13 COMMISSIONER HOFMANN: I think we may
14 have to turn on the system up here.

15 MR. LANDIS-MARINELLO: Try that now.

16 MS. DINGLELINE: Can you hear me now?

17 CHAIRMAN ROISMAN: Yes. All right.
18 There we go. Thank you.

19 MS. DINGLELINE: I wanted to come and
20 talk about some of the legal issues, because this is
21 a pretty complicated case, and it intertwines with
22 Apple Hill. The first thing I wanted to talk about,
23 while I understand this is the permitting portion of
24 this whole project, I don't think it can be ignored
25 that the single plan issue is being investigated, and

1 I think that there is very compelling evidence that
2 the very factors and reasons that the Supreme Court
3 said -- reversed the Public Service Board and said
4 that, in fact, it was not a single plant, the Apple
5 Hill and Chelsea Solar, all of those reasons have
6 disappeared. There have been changes to this,
7 significant changes to this project, which goes to
8 the issue of -- also of vested rights.

9 CHAIRMAN ROISMAN: Let me interrupt you
10 for a second. Am I understanding you to say that if
11 the Applicant had submitted for this project exactly
12 what was in front of the Supreme Court, there
13 wouldn't be a single plant argument to be made here?
14 They would be two separate plants; it and Apple Hill?

15 MS. DINGLEEDINE: Well if the
16 information that was filed with the Supreme Court,
17 with you folks first and then with the Supreme Court
18 were true, I would agree with you. But the problem
19 is, that they created -- and you have a map in front
20 of you as well. I made copies for everyone if you
21 can't see so far away, but the very top one here is
22 the one that went to the Supreme Court that the
23 Public Service Board actually looked at.

24 This is Chelsea where from the north
25 there is Russet Road drawn in and like falsely

1 created on this drawing. Russet Road does not exist
2 where they drew it. It does not access the site.
3 There are no rights of way, there are no -- they
4 tried to get rights of way, and the owners did not
5 allow them to do so. And they showed up and tried to
6 bulldoze the road.

7 CHAIRMAN ROISMAN: I understand that.
8 My only question was if that's what they built,
9 whether or not they would have been able to do it or
10 not, do you agree that we wouldn't have a single
11 plant issue here if they were building what they told
12 the Supreme Court they were going to build? You're
13 not asking us to disagree with the Supreme Court's
14 decision on that.

15 MS. DINGLELINE: Not at all. I'm
16 asking you to enforce the Supreme Court's position,
17 because the facts have changed, or they haven't
18 changed. They were false to begin with. Regardless,
19 they are false now, and they were never corrected,
20 and it is a single plant. It's coming off the same
21 road. They are extending the road some mileage, a
22 quarter of a mile or half a mile or something, and
23 then the driveways come off of it.

24 So and the infrastructure is shared now
25 instead of completely separate like it was before.

1 COMMISSIONER HOFMANN: So are you
2 saying -- can I ask one clarifying question?

3 CHAIRMAN ROISMAN: Yes.

4 COMMISSIONER HOFMANN: Are you saying
5 that the Supreme Court -- the facts they relied on
6 are no longer true or possibly were never true?

7 MS. DINGLELINE: They were never true
8 with regard to the road. The road does not exist.
9 There is no rights of way. They have no right to
10 build a road over personal people's property. It's
11 private property. And it does not -- they have no
12 site control, no rights, no nothing.

13 And so the drawing that they gave, they
14 knew they couldn't get a right of way when they sent
15 that to the Supreme Court and made that
16 representation. It was false.

17 CHAIRMAN ROISMAN: Will you -- I think
18 you're going to get to this, but if you're not going
19 to get to it very soon, maybe you could do it now.

20 MS. HAYDEN: Sure.

21 CHAIRMAN ROISMAN: Identify every
22 aspect of the current plan that you believe is
23 different than what was in front of the Supreme Court
24 that bears on the single plant question. I know
25 there is some other changes physically, might be a

1 little different in size. But --

2 MS. DINGLELINE: No. I'm not -- I've
3 read, I looked at the information that was presented
4 to you folks in that -- in that phase of this where
5 you wanted information about it. But my
6 understanding is the roads, you know, the Supreme
7 Court said it's not a shared road. They are using
8 two different roads. And the other factors were all
9 the shared infrastructure.

10 I do not know all the minutia of the
11 shared infrastructure, but I think if you review what
12 those folks presented to you about this very issue in
13 that pleading, it is very comprehensive, and it has
14 information from the landowners who saw the bulldozer
15 coming and everything else.

16 I'm sorry that I can't speak to that.
17 I would be bumbling and fumbling. But if I have time
18 on rebuttal, I can see if I can find that on my
19 computer and pick out the important aspects of it for
20 you.

21 CHAIRMAN ROISMAN: So let me ask you
22 one question about the road. In the current
23 configuration, the road that is going to connect each
24 of these two facilities to move equipment in, do
25 maintenance and so forth, is Willow Road; correct?

1 MS. DINGLELINE: I think that's a
2 question for the Applicant. Because they have tried
3 to use different roads. First they said the pretend
4 Russet Road. Then said the Apple Hill Road that
5 comes in from the east which goes over the
6 Association lots that are not allowed to have any
7 commercial use on them.

8 And in fact, we have in testimony under
9 oath during the September 2, 2018 hearing, and I have
10 copies for you to reference.

11 MS. LEON: Pass these around.

12 MS. DINGLELINE: On page 264 of that
13 transcript the question was asked: Well it's fair to
14 say that then that lot is owned or controlled by the
15 Petitioner or not? And they are talking about the
16 orchard lot where they were going to drive over and
17 create a road.

18 And the answer was: No. The
19 Petitioner is Chelsea Solar, LLC, and currently
20 Chelsea Solar, LLC has no rights or control over the
21 orchard lot.

22 Now I don't know enough about this case
23 to know when this Apple Hill Road was, you know, not
24 going to be the road we don't think. But now it's
25 all coming from the south on Willow Road. And they

1 have to extend Willow Road a quarter of a mile at
2 least, between a quarter and a half I think, and then
3 they have driveways going off of them into each of
4 the solar arrays. If that's not a shared road, I
5 don't know what is.

6 CHAIRMAN ROISMAN: Is it your -- is the
7 shared road that you're focusing on for purposes of
8 this single plant, the extension of Willow Road or
9 all of Willow Road?

10 MS. DINGLEEDINE: Well it's all of
11 Willow Road, but it's even more of a significant
12 sharing because they have to build the road to get to
13 these two facilities. It's the same road that they
14 are actually building. It's not like something
15 public road where, okay, there is a curb cut over
16 here that VTrans did, you know, a curb cut half a
17 mile down the road.

18 This is being built in conjunction with
19 these two things. So we feel that this is the whole
20 foundation of this, and the foundation has crumbled.
21 There's been false information, and we don't know how
22 a permit can be built on top of a foundation that
23 will crumble.

24 CHAIRMAN ROISMAN: And let me be clear.
25 The portion of the road that is Willow Road extended,

1 what you call extended, that is a town road?

2 MS. DINGLELINE: No. I don't believe
3 so. The road ends, and then they are extending it
4 on, you know, they are extending it. I believe that
5 the town road ends where the road ends at this point.

6 CHAIRMAN ROISMAN: Is there a place in
7 the record where we can see that?

8 MS. DINGLELINE: I will have to look at
9 that. I don't want to get too bogged down because
10 there is a lot of other things I want to talk about.
11 Maybe on rebuttal I can find some information and get
12 that for you.

13 Next thing I want to talk about is
14 vested rights. You guys made a decision that the
15 2010 plan that has criteria for the ARCON district
16 that says you can't have it on a prominent hillside,
17 that okay, you decided it was vested rights, instead
18 of the 2016 plan, and the 2016 plan would prohibit
19 anything that's cumulatively 10 acres or more. So
20 these two side by side obviously exceed 10 acres.

21 Okay, you didn't go that way. But
22 here's the thing. If you're going to give them
23 vested rights, then you're stuck with the 2010 plan,
24 you've already made a decision about this. This is
25 one of the most important things I want to try to

1 talk to you about. It's clear written community
2 standard. It was decided in Chelsea I. Chelsea I
3 was the case that went up to the Supreme Court on
4 appeal. I couldn't even like read all of them there
5 were so many motions filed to vacate your decision,
6 to vacate the Supreme Court decision. You guys got
7 all these motions filed to you when you didn't have
8 jurisdiction over the case. It was on appeal. They
9 asked the Supreme Court to vacate. They wouldn't.
10 You know, all these motions to reconsider,
11 blah-blah-blah.

12 So you were left in a situation where
13 you said we don't have jurisdiction to decide any of
14 these motions. Go away. Then there was this but if
15 you want to start over, we might, you know, we would
16 consider extending the standard offer contract. And
17 so what happened was Chelsea Solar decided to
18 withdraw their appeal, and that allowed your first
19 decision to become final. It's like it was never
20 appealed, or it was like it was appealed and they
21 lost. It's done. There is finality to that
22 decision.

23 They had every opportunity and
24 certainly took it, with dozens of motions to litigate
25 this. It was fairly and fully litigated. These are

1 the exact same parties. It's not the same people,
2 but different LLC names like Apple Hill and Chelsea
3 Hill. We have appealed this issue to the Supreme
4 Court, and we think that you folks were wrong about
5 it. Especially in light of the fact that you're
6 giving them vested rights on a new application back
7 to the 2010 plan. If you're going to do that, you
8 can't have it both ways. You've got to hold their
9 feet to the fire on the 2010 plan. Your decision --
10 a collateral estoppel, a res judicata in this case,
11 because it's the same case according to certainly the
12 Applicant arguing that, that this isn't a different
13 proceeding, but it is, and in fact, everybody put it
14 on the record that they understood when they came to
15 the status conference on the new Chelsea case,
16 everybody acknowledged it was a new case. Even the
17 Applicant said no, no, no, we are not even relying on
18 our old evidence. We are putting all of our new
19 testimony, experts, everything into evidence
20 separately. We are not saying go look at the other
21 record.

22 These are two separate things. Now if
23 there was an intention to sort of treat it like Apple
24 Hill where they changed it, and it was the same
25 docket, and it didn't go up on appeal, that's a

1 different circumstance. Here the decision was made.
2 And the decision that you guys need to recognize is
3 that there is a clear written community standard in
4 the Town Plan in the ARCON district. That's all that
5 we are asking. That you have decided what the law
6 is.

7 CHAIRMAN ROISMAN: Let me just stop you
8 one second. You've made these arguments to the
9 Supreme Court in Apple Hill; correct?

10 MS. DINGLELINE: Well I have, but this
11 is different, because this is the exact same case
12 according to people that wanted to be treated as the
13 same case. But it is obviously Chelsea II. It's
14 similar. They shrunk it. And now they have changed
15 the roads and where they are accessing it from.

16 But when you have made a legal decision
17 that there is a clear written community standard in
18 that Town Plan, that's the -- that's either the law
19 of the case if it's not a new decision and it's not a
20 finality in a separate case, or it's res judicata
21 because it's the exact same parties, the exact same
22 issues. And so all we are asking, it's not for you
23 folks to say you can't do Chelsea II in the ARCON
24 district, because you can't. We don't recognize our
25 previous decision. The previous decision was these

1 words, plain language in this ordinance, create a
2 clear written community standard.

3 Then we, as the PUC, have to look at
4 that clear written community standard and apply it to
5 whatever projects are proposed. We are not asking
6 for, oh, we win. Chelsea II can't happen there.
7 Chelsea II has to be analyzed. Is it on -- is it
8 something in those standards of the 2010 plan that it
9 violates? Is it on a prominent hillside?

10 Now you folks also focused on the
11 selective enforcement of the town. The town is not a
12 regulatory body. The whole conversation, and I've
13 done zoning for 25 years. Zoning I think has been a
14 little misunderstood. The town is preempted from
15 regulating these facilities. That's in state
16 statute. That's what you do. You guys decide this,
17 not the town. And this notion that somehow the town
18 with -- setting up the Town Plan that has some
19 standards for that district, so what? Their position
20 -- their opinion that either gets due consideration
21 or substantial deference, is just their opinion. You
22 have to give it either due consideration or
23 substantial deference. In this case, you're going
24 with 2010, so it's due consideration.

25 But this notion that it was selectively

1 enforced, they are not -- they don't have
2 jurisdiction or authority to enforce anything through
3 the PUC and, you know, the 248 process. They get to
4 express an opinion. And if you think that they have
5 been inconsistent in expressing that opinion about
6 other proposed projects that have been permitted in
7 that district, so what? I mean if you think they are
8 inconsistent, then ignore their opinion. But you
9 don't say, well the Town Plan is invalidated, or we
10 don't think the plain language exists anymore.

11 You have two jobs looking at a Town
12 Plan. You have to look at the plain language of the
13 plan. You have to decide separate and apart from any
14 opinion, is there clear written community standard
15 language? And that's when all the towns had to go
16 from should to shall, and you know, nobody was
17 enforcing should because -- which makes no sense
18 because it's an aspirational document -- but the law
19 has changed it into some kind of thing that you folks
20 use to regulate this, not the town. And people are
21 giving the town way too much, you know, authority
22 here.

23 CHAIRMAN ROISMAN: So let me be clear.
24 You believe that the town writes a Town Plan, but the
25 town's opinion as to what the Town Plan means is not

1 relevant to our decision as to what the Town Plan
2 means. Is that your position?

3 MS. DINGLELINE: No. I think that you
4 have to decide how much due consideration that you
5 give them. If you think that they are crackpots and
6 are making some crazy decision, then don't listen to
7 them. Why would you? I mean --

8 CHAIRMAN ROISMAN: So in deciding
9 whether to give due consideration, are you saying we
10 shouldn't consider whether or not they have
11 consistently interpreted the language that is now
12 alleged to be clear and unequivocal statements?

13 MS. DINGLELINE: I agree with that. I
14 agree with that. That's absolutely relevant.

15 CHAIRMAN ROISMAN: Relevant or --

16 MS. DINGLELINE: The weight you give to
17 their opinion about what's expressed in their Town
18 Plan. There are towns out there that are teeny weeny
19 who have nobody that has any kind of background or
20 experience in land use and planning. And then there
21 are towns that have people that are very competent;
22 lawyers, land planners, et cetera.

23 So are you supposed to give the exact
24 same deference to, you know, somebody that knows what
25 they are talking about and gives legal analysis and

1 is a compelling opinion versus something that's like,
2 what? Now but here's the thing. You guys had all of
3 the information about these other sites and the
4 selective enforcement argument before you made your
5 decision that there was a clear written community
6 standard. It's in the record. We have showed it to
7 the Supreme Court. There are photographs of all of
8 them. And there are all these flat, level areas.
9 They are not on prominent hillsides. I don't think
10 that the town was inconsistent when you actually look
11 at the pictures of what was in the record.

12 But -- and then I get this idea that
13 you guys are now saying, oh well, now that we know
14 there was selective enforcement, which is a misnomer,
15 I mean whatever opinion they had, it wasn't on a
16 prominent hillside or whatever the statutory or the
17 ordinance standards were, apparently didn't meet it,
18 or it did meet it.

19 But that goes back to the issue of we
20 are not saying that res judicata is Chelsea can't
21 ever build a thing here. What we are saying is there
22 is a clear written community standard, and you have
23 to decide these facts; how this is configured, where
24 it's located, is it prominent, is it in a gateway
25 area. All of these things under the ordinance you

1 have to make an independent analysis of. You can't
2 just say we are not, you know, agreeing with what our
3 prior thing was because of how the town is behaving.

4 And the other issue about the town is,
5 you know, they left this litigation and five or six
6 other litigations in terms of other proposed solar
7 arrays, even ones that are future, which is crazy.
8 The town has sold out on this. But understanding
9 that they were \$200,000 in the hole, they had to get
10 out. And to somehow --

11 CHAIRMAN ROISMAN: Do you have any
12 evidence of their motivation in the record? As to
13 why they did what they did?

14 MS. DINGLEEDINE: Well there is a
15 Settlement Agreement and --

16 CHAIRMAN ROISMAN: But does the
17 Settlement Agreement say we're reaching this
18 agreement because we can't afford to go on?

19 MS. DINGLEEDINE: I doubt it. But
20 here's the thing. They said that at the public
21 meeting.

22 CHAIRMAN ROISMAN: Is that in the
23 record?

24 MS. DINGLEEDINE: I don't know, but
25 here's the thing.

1 MS. LEON: The public meeting. There's
2 a video of it.

3 MR. BRABANT: There is a video.

4 CHAIRMAN ROISMAN: Is it in the record
5 is the question I'm asking.

6 MS. DINGLELINE: I'm not sure, but
7 here's the thing. So what that they are not taking a
8 position anymore, or they are not opposing it,
9 whatever language that you used. In other words,
10 they are not giving you an opinion. So why would you
11 give any credence to the town not being involved.

12 There are tons of towns that don't get
13 involved in this. I have met with many towns saying
14 how much money you got? You got 50, a hundred
15 thousand dollars that you want to dump on this? It
16 could be twice that. That's a reality. And I don't
17 think you can ascribe any value to it, because you
18 know it was from the fact that they were getting, you
19 know, sued in all these different forums, and this
20 was resolving all of the issues.

21 But let me move on.

22 MR. LANDIS-MARINELLO: But doesn't it
23 go to whether it's a clear written community
24 standard, how it gets implemented? I mean if it's
25 clear, shouldn't --

1 MS. DINGLELINE: But they are not the
2 implementers. That's what is not being understood
3 here. The notion of this is quasi-zoning document,
4 and they can do variances. I don't know what the
5 heck that is all talking about. It makes no sense to
6 me. I've done zoning for 25 years. Variances are
7 very, very difficult to get if they are done
8 illegally. And are they passed out like lollipops at
9 certain towns? Absolutely. And unless somebody
10 takes it up to the Environmental Court, you get your
11 variance. But that has nothing to do with this case.

12 The town is preempted. They are not a
13 regulatory body. They have no authority, and so when
14 you say how they have enforced it, they don't
15 enforce. They don't have jurisdiction to enforce
16 anything. They get to come here and say this is what
17 we think. Period.

18 And separate from their opinion of
19 their Town Plan, you have to look at the Town Plan
20 and the plain language. And you as lawyers need to
21 figure out what the Town Plan means, and if it is in
22 fact a clear written community standard or not.

23 Now in terms of -- so selective
24 enforcement argument it doesn't invalidate a plan.
25 It invalidates or takes away the umph, the value that

1 you should attribute to somebody's opinion i.e., the
2 town.

3 Now in terms of -- I want to briefly
4 jump to orderly development in terms -- we have been
5 talking about the Town Plan, obviously that dovetails
6 into orderly development, but there is also an
7 economic impact that we are very concerned. None of
8 the evidence was even discussed in the opinion. And
9 the Country Club, you know, put on a lot of
10 information about how this is going to impact on
11 people coming to their public course. And they come,
12 you know, for the views and all of these, you know,
13 pro-business things. And this is a very important
14 resource to the community.

15 And this is the vista that people have
16 in the backs of their wedding photos; when they are
17 playing on the course. That's why this is so
18 important. And it is a -- it is a public facility.
19 Now it may not be owned by the state or the town or
20 something. It's a privately-owned business, but it
21 is open to the public and many, many people dine
22 there all year round, and they play golf and have
23 weddings and so forth.

24 So the thing that I wanted to point out
25 to you is the third page of the big documents that I

1 provided.

2 COMMISSIONER HOFMANN: I don't think I
3 got a copy of those documents.

4 MS. DINGLELINE: I'm sorry.

5 COMMISSIONER HOFMANN: I did not get a
6 copy of those documents.

7 MS. DINGLELINE: This is the chart to
8 just compare two cases, the pilot case and Peck
9 Electric, and this one. And what we wanted to point
10 out is Mt. Philo was an aesthetics case, but it
11 pertained to 9K public investments, because this was
12 a state park, and tons and tons of people went there.
13 And so factually Mt. Philo was a 144 kilowatt
14 project. Willow Road is 4,000 kilowatts if you do
15 the math for two megawatts. So Willow Road is 27
16 times the size of Mt. Philo.

17 Now let's talk about the distance that
18 you're viewing these two things from. In Mt. Philo
19 -- the view of the Mt. Philo was 8/10ths of a mile,
20 just under a mile away. So you had 144 kilowatts
21 8/10ths of a mile away. In this case, in Willow
22 Road, Mt. Anthony Country Club is one mile away from
23 4,000 kilowatts. What does that mean? It means that
24 Willow Road is 27 times the size of Mt. Philo. And
25 it's approximately the same distance only point --

1 only 2/10ths of a mile difference in terms of the
2 distance. How in the world --

3 COMMISSIONER HOFMANN: But you would
4 agree that Mt. Philo is a state park.

5 MS. DINGLELINE: I do.

6 COMMISSIONER HOFMANN: And the golf
7 course is not. You've already talked about how
8 things are similar, but they are different. Would
9 you agree with that?

10 MS. DINGLELINE: Mt. Philo was based on
11 what it did to the aesthetic view shed. That was the
12 underlying reason that it was unduly adversely
13 affecting the public -- the 9K public resource.

14 COMMISSIONER CHENEY: Well it was
15 actually --

16 MS. DINGLELINE: It wasn't -- it stood
17 on aesthetics grounds, because that was what was
18 being harmed.

19 So we just wanted to really point that
20 out to you because we think that's very inconsistent
21 and maybe selective enforcement.

22 So but going back to this issue of
23 there was no evidence. That was talked about,
24 analyzed, even disregarded in the decision. And so,
25 for example, Mt. Anthony put in these professional

1 photographs of the beautiful views. And then they
2 did a, you know, simulation of the solar arrays.

3 This is evidence. Why wasn't it talked
4 about? There is a notion now that in other cases I
5 understand where folks are like, we don't think that
6 the Applicant's done an adequate simulation and that
7 kind of thing. Here there was evidence of that, and
8 I think that we are entitled to have that information
9 analyzed, and at least if you're going to disregard
10 it, say why you're disregarding it.

11 CHAIRMAN ROISMAN: Let me ask, could
12 you put up the picture? Yes, the first one. What is
13 that that's sort of in the center of the picture? It
14 looks a little white. Right there.

15 MS. BLOCK: That's Libby Harris's home.
16 That's the hill -- that's Apple Hill.

17 CHAIRMAN ROISMAN: Right.

18 MS. DINGLELINE: From the Country Club.

19 CHAIRMAN ROISMAN: And that's a cleared
20 area where the home is?

21 MS. DINGLELINE: Yes.

22 MS. BLOCK: It's a forested area. And
23 the house just -- I mean that's the only area you
24 look at.

25 MS. DINGLELINE: Act 250 permit

1 requires just the building envelope area. They
2 aren't allowed to clear large areas, et cetera.

3 MS. HAYDEN: Chairman Roisman, may I be
4 heard briefly?

5 CHAIRMAN ROISMAN: When it's your turn.

6 MS. HAYDEN: Okay. Thank you.

7 COMMISSIONER HOFMANN: What is the
8 Exhibit Number for this? In the record?

9 MS. DINGLELINE: We will have to look
10 back in the record.

11 COMMISSIONER HOFMANN: I would want the
12 Exhibit Number for both of them. It's a little hard
13 to have the transcript make any sense if we don't
14 know what the exhibit numbers are.

15 MS. DINGLELINE: I'll get that for you
16 on our rebuttal; figure out what number that was.

17 So the other thing -- a couple things
18 just to kind of clean up here, because I do want to
19 make sure that -- my time is four minutes. Okay.

20 All right. Southern Vermont College
21 you may have heard in the news is closing. But you
22 may also have heard in the news that there are --
23 these conservation easements are -- run with the
24 land, and those don't go away. So the evidence that
25 was put before you of all these hiking trails and

1 everything, that hasn't gone away. It wasn't talked
2 about in the hearing officer's decision. Again, it's
3 like well if you're not going to think that's
4 important, at least tell us why. But I just want to
5 be sure that there was no assumption that because the
6 college is closing that it will not still be used as
7 a public facility, because absolutely those are land
8 trust easements that run with the land and can't be
9 upended.

10 I wanted to -- I pointed out no legal
11 control over the orchard lot. I think we passed that
12 transcript out. One thing we want to correct, again
13 because it's very frustrating that -- this is like
14 watching fake news on TV where we keep hearing the
15 Applicant say: We are going to plant these trees
16 because that's what Libby Harris wants. That's what
17 the Homeowners Association wants. Isn't that great
18 that we are going to screen all this.

19 Well no. Libby Harris does not want
20 this. The Homeowners Association does not want this,
21 because they are -- this is part of the project, the
22 screening, and that is a commercial use. It is not
23 allowed on the orchard lot or any lot within the
24 Homeowners Association.

25 I know that you don't -- you're not a

1 declaratory ruling superior court, and you don't
2 decide rights and interests of parties like a
3 declaratory ruling. But I think it's incumbent upon
4 this tribunal to require every applicant who comes
5 before them to demonstrate that they have control
6 and/or ownership or the rights over the land that
7 they are proposing. Just like Russet Road. Make --
8 I mean that's terrible. They pretended something,
9 and now we are hearing over and over: Don't worry
10 about it violating covenants, we want to do this
11 because they want us to do it. That is not true.
12 And we wish the Applicant would stop saying that,
13 because it is very upsetting to Ms. Harris who had to
14 withdraw from this because of the stress of the case.

15 CHAIRMAN ROISMAN: Let me make sure I
16 understand your position. If we were to approve the
17 project, are you urging us to disallow the plan for
18 mitigation?

19 MS. DINGLELINE: No. They need to come
20 up with a mitigation plan on property that they have
21 the rights to put screening up for the commercial
22 use.

23 CHAIRMAN ROISMAN: The mitigation that
24 they proposed here. Are you asking us to reject that
25 even if we approve the plan? Are you asking us to

1 remove that from -- as you know, we put in an order,
2 we write conditions. Usually the condition says:
3 You will do what you said you were going to do. So
4 if we approved this plan, this project, do you want
5 us to disapprove what they proposed to do for
6 mitigation with regard to the screenings?

7 MS. DINGLELINE: It certainly would
8 save another lawsuit in superior court to enforce the
9 covenants and prevent them getting an injunction and
10 preventing them from doing what they are supposed to
11 be doing.

12 However, we still think that it is
13 incumbent and required that this commercial project
14 on commercially usable land, needs to be screened,
15 and not just with some wall of black stuff on a chain
16 link fence that is a worse marring of the viewscape
17 than the actual array itself. We -- obviously black
18 is not a color that is neutral and earth tones. And
19 it will contrast for how many months every year?
20 Nine months a year it feels like when there is snow
21 on the ground this year. We just think that that's
22 wrong. They should not be allowed to do that. They
23 do need to screen it properly. And --

24 COMMISSIONER HOFMANN: But the trees
25 that are proposed, you're indicating those should not

1 be put in place?

2 MS. DINGLELINE: It cannot be on
3 Association land. Correct. And it also completely
4 blocks Libby's view. I mean, yeah okay, it blocks
5 the view of the array, but it blocks her view of the
6 monument as well.

7 One last thing we want to talk about
8 before I stop is we need a condition, if you allow
9 this, that there can be no burning of this forest
10 that is going to be cut down. There is currently a
11 situation going on in Rutland where they were
12 supposed to be chipping, and we have PFOA in this
13 soil that's been sucked up by these trees. Those
14 trees, if they are cut down --

15 CHAIRMAN ROISMAN: I'm sorry. Is that
16 in this record that there is PFOA on this land?

17 MS. DINGLELINE: Yes --

18 CHAIRMAN ROISMAN: We know there is
19 PFOA in the Bennington area.

20 MS. DINGLELINE: Okay. They have done
21 some testing in small areas, and there was PFOA on
22 the land that the Applicant -- in the soil on the
23 land that the Applicant is talking about.

24 CHAIRMAN ROISMAN: And is that in the
25 record?

1 MS. DINGLELINE: It is. It is.

2 CHAIRMAN ROISMAN: Good. Thank you.

3 COMMISSIONER HOFMANN: Is the burning
4 in the record though? I don't remember burning being
5 part of the plan.

6 MS. DINGLELINE: No. We are talking
7 about what's going on in Rutland right now with the
8 very same developer who isn't supposed to be burning.
9 And it's burning, and the Public Service Department's
10 been asked to look into it. And it's been like two
11 months and nothing is happening except the burning
12 continues. And it was supposed to be chipped wood.

13 Here it's essential that there is no
14 burning, because if they burn logs of trees that have
15 sucked up PFOA, it's going to send it back into the
16 atmosphere, and it will just deposit it wherever it
17 deposits it. That's a really serious issue, and
18 because they have proven time and time again they do
19 not follow conditions of the permits, we would ask
20 you to speed up that investigation, but please take
21 note of that. I know it's not in the record. But it
22 would be too late for this neighborhood if somebody
23 was allowed or wasn't allowed to burn and they did
24 anyway.

25 So I'm going to stop there, and

1 hopefully I've reserved some time.

2 CHAIRMAN ROISMAN: Yes. I think you've
3 reserved 15 minutes.

4 MS. DINGLEEDINE: Thank you. Ms.
5 Hayden.

6 MS. HAYDEN: Thank you. I want to
7 first object to some of the statements that have been
8 made about false statements by my client to the
9 Supreme Court. There is no proof of that. I think
10 it's improper that those allegations have been made.
11 Just as some of these most recent statements about
12 activities that are alleged to have occurred in a
13 completely different project. I think that the tone
14 is inappropriate for oral argument, and the content
15 is inappropriate. It should not be even presented to
16 this commission.

17 This case goes back to 2013, when
18 Chelsea, then Bennington, it was actually the Apple
19 Hill project, was denied a CPG. And the Supreme
20 Court reversed that ruling in 2014 in re:
21 Programmatic Changes. The -- Chelsea then filed --
22 the Bennington Solar project was filed as Chelsea
23 Solar under the name Bennington Solar. In 2014 the
24 case was fully litigated. Ultimately the commission
25 denied the order, the CPG in that case. Chelsea

1 appealed, and the commission in October of 2017
2 issued an order that encouraged Chelsea to withdraw
3 its appeal and stated: To promote judicial
4 efficiency, the commission encourages Chelsea to
5 withdraw its appeal with the Vermont Supreme Court
6 and file a new petition reflecting the proposed
7 Willow Road project.

8 So -- and that's exactly what Chelsea
9 did. On November 17, it filed a new amended
10 petition, a substantially smaller project. That case
11 was fully litigated. Hearings were held in 2000 --
12 September of 2018. We received a proposal for
13 decision, a favorable ruling in January of this year.
14 So it's now been five years since the initial project
15 was planned to proceed, and here we are litigating
16 over a -- the same plant issue, meaning the same
17 plant question, that the court ruled on in 2014.

18 I think what's critical about the
19 court's decision in 2014 is that it did not even
20 mention Willow Road. It did not mention Apple Hill
21 Road. It did not mention any public road. And in
22 fact, Willow Road is a public road. It's a Class 4
23 town road. What the court's --

24 CHAIRMAN ROISMAN: Ms. Hayden, can you
25 answer the question that I had asked Ms. Dingledine?

1 The portion of the road that apparently is going to
2 be extended --

3 MS. HAYDEN: Yes.

4 CHAIRMAN ROISMAN: -- in order to reach
5 these two projects, is that going to be a public road
6 or a private road?

7 MS. HAYDEN: There was questioning in
8 the record below. That would be a class 4 public
9 road that would be extended. So the town, and I'm
10 certain that this is in the record, the town has been
11 requested to extend that public road. It's a class 4
12 road. There is a process for landowners to request
13 extensions. So the evidence before the hearing
14 officer below did not contemplate a private access
15 road extension from the end of the current Willow
16 Road where the terminus -- and I think we have
17 visited the site when the hearing officer
18 -- when the commission went to the site visit last
19 year. So there is a request to extend that as a
20 public road.

21 COMMISSIONER CHENEY: Who requested?

22 MS. HAYDEN: I'm sorry.

23 COMMISSIONER CHENEY: Who made that
24 request?

25 MS. HAYDEN: The Applicant did. And

1 that's a separate proceeding. That's a separate
2 process that happens through the town. But the
3 current proposal in this proceeding is not that a
4 private access would be constructed from the current
5 terminus of Willow Road.

6 MR. LANDIS-MARINELLO: When did it
7 become a private access? So it's going -- what's
8 there now is going to be extended, and then it splits
9 at some point; is that right?

10 MS. HAYDEN: When you say it splits.

11 MR. LANDIS-MARINELLO: The road.
12 Willow Road with what's proposed here is an extension
13 of what's there, and then a forking of it to go to
14 the separate projects.

15 MS. HAYDEN: So to clarify. It is
16 currently a public access. It's just -- it's not as
17 improved as we saw at the site visit. It's not --
18 it's not really even currently gravel now. It's
19 really a dirt road. But it's not as improved leading
20 up to the access.

21 My client owns the property. The
22 property boundary is reflected on Exhibit 28 of Brad
23 Smith's prefiled testimony. And my client does not
24 own that access where Willow Road would be improved.
25 So it's the extension of the improvement that we are

1 talking about, the extension of upgrading that so
2 that it's passable as a class 4 road, that the town
3 would undertake. But it's not -- so that path
4 leading from the current terminus of the improved
5 portion of Willow Road is not owned by my client.
6 The boundary is very well reflected on the site plan.

7 MR. LANDIS-MARINELLO: There is a
8 portion that's being added that's going to benefit
9 both of these projects.

10 MS. HAYDEN: The access is currently
11 owned by the town. It's not being added in the sense
12 of a new road. It's being improved -- further
13 improved so that it's more passable.

14 COMMISSIONER CHENEY: So earlier you
15 used the word extended. It would be extended.

16 MS. HAYDEN: I shouldn't have used that
17 word. Let me clarify that. When I'm talking about
18 extending -- it needs to have -- there needs to be
19 gravel put down and to make it more passable. And
20 that's a process that happens with class 4 roads
21 frequently. So this has not been -- it hasn't been
22 upgraded to the same degree where we stood at the
23 site visit which was adjacent to a landowner's house.
24 It hasn't been upgraded from that point up to the
25 project. But it's still a public class 4 road. It's

1 just the town hasn't kept it up.

2 CHAIRMAN ROISMAN: And is your client
3 paying for the improvement?

4 MS. HAYDEN: I don't know the answer to
5 that. And I don't know if that was in the record
6 below.

7 CHAIRMAN ROISMAN: Okay. All right.

8 COMMISSIONER HOFMANN: But in the
9 record is that the Willow Road plus the part that
10 hasn't been improved as much, is all town road?

11 MS. HAYDEN: I believe that that's all
12 in the record.

13 CHAIRMAN ROISMAN: And then each of the
14 sites has, for lack of a better term, a driveway that
15 goes from Willow Road to the site itself?

16 MS. HAYDEN: That is -- each site has a
17 separate access road from Willow Road. They are at
18 separate points along Willow Road.

19 CHAIRMAN ROISMAN: So your position is
20 that they are not sharing any access that is not --
21 any different than if they were both coming off of
22 Route 7.

23 MS. HAYDEN: That's correct. And the
24 commission has held that previously in the
25 application of Westman GLC Solar and Cambridge GLC

1 Solar, which was CPG Number 6045 and 6046. And we
2 briefed this. The commission held that public roads
3 are not shared roads, that they are -- the sharing of
4 a public road is not sharing common infrastructure.

5 MR. LANDIS-MARINELLO: But neither of
6 those cases involved improvements to the existing
7 public road. Did they?

8 MS. HAYDEN: They didn't. And there
9 are no standards that suggest if a class 4 road is
10 improved and upgraded to become more passable it
11 somehow doesn't become a public road.

12 MR. LANDIS-MARINELLO: But the question
13 before us isn't whether it's a public road
14 necessarily. It can be whether there is shared
15 infrastructure. And that's ultimately what the
16 statute is asking us to look at.

17 MS. HAYDEN: I think ultimately the
18 commission's ruling in the Westman GLC Solar case was
19 exactly right, that the sharing of a public road is
20 not sharing of common infrastructure. So I think the
21 -- whether it's a public road or not, does matter.
22 My client has no -- it will not have any ownership
23 rights over this access. You know, so it's not
24 common infrastructure to the project itself.

25 What the court relied upon in its 2007

1 -- or 2014 decision is paragraph 12. It focused on
2 the independent technical facilities language of the
3 statute. And that portion of the statute even though
4 it's been amended has not really been modified. It's
5 now 30 V.S.A Section 802 (18) and at that time it was
6 30 V.S.A. Section 802 (14). The court held that the
7 projects will not share common roads, control
8 facilities or connections to the electric grid. Each
9 project will have a separate interconnection
10 agreement with GMP, separate interconnection
11 facilities designed and owned by GMP, which would
12 limit the capacity of each to two megawatts.

13 And that was really what the court was
14 relying on in that decision. The court also at
15 paragraph 7 acknowledged that this commission's
16 acknowledgment that the interconnection facilities
17 were close to each other, that did not impact the
18 court's decision. I think what's implicit in some of
19 the argument that's been presented to this commission
20 about what was presented to the court is this notion
21 that my client did not give accurate information to
22 the court. That's absolutely not true. What was
23 presented to the court, and the printed case pages
24 that the commission has asked us to address, are the
25 standard offer application documents that were

1 submitted for those two standard offer projects at
2 that time. And it's not uncommon for projects to be
3 modified over time. And in fact, in this case the
4 reason that Willow Road was chosen over Apple Hill
5 Road and -- it was because the Homeowners Association
6 objected to the use of entry through Apple Hill.

7 CHAIRMAN ROISMAN: I want to talk for a
8 minute about the interconnection question. In the
9 two exhibits that we located from the 2014 record,
10 those two show that there is a separate line for
11 interconnecting. One that goes from what was then
12 the -- I'll call them the northern project and the
13 southern project. One that went north out of that
14 project and connected up at Green Mountain Power, and
15 one that went south out of the other project and
16 connected up with Green Mountain Power. And they
17 were two lines that went to the Green Mountain Power.

18 The current plan which is shown on the
19 exhibits that are in the record in this case, shows
20 that there is one line that runs alongside the two
21 projects, and that each project connects with that
22 line as it passes by. And my question to you is, is
23 that new line a shared infrastructure?

24 MS. HAYDEN: No. It's not. That is a
25 GMP distribution circuit. It's not technical

1 facilities that are owned or controlled by the -- by
2 either project. The point of interconnect, and this
3 was fully briefed in our response, the point of
4 interconnect for each project will be at riser poles
5 that GMP will own outside of the project facilities,
6 on riser pole 22 and riser pole 21.

7 COMMISSIONER HOFMANN: Did the
8 Applicant pay for what you're calling the
9 distribution line?

10 MS. HAYDEN: Under Rule 5.500, an
11 interconnecting generation resource pays for its own
12 interconnection upgrades as well as those that the
13 utility passes on for upgrading its facilities. But
14 these -- they are independent technical facilities
15 from the utility, and the reason that that's also
16 very clear under Rule 5.500, 5.500 defines
17 interconnecting facilities as sole-use facilities
18 which do not include system upgrades. System
19 upgrades are then defined under Rule 5.502 part 32,
20 as additions, modifications, upgrades to the
21 distribution system, beyond the point of
22 interconnection. System upgrades do not include
23 interconnection facilities.

24 So there is a bright line under the
25 Rule 5.500 between what is owned by the utility and

1 what is -- and what is interconnecting facilities.

2 MR. LANDIS-MARINELLO: Do you agree
3 that the Vermont Supreme Court didn't address that
4 issue because what was presented to them was one line
5 going north of one project and another line going in
6 a southeasterly direction from the other project?

7 MS. HAYDEN: What the court's order
8 says is that they were focused on independent
9 technical facilities. And again, paragraph 12, each
10 project will have a separate interconnection
11 agreement. They didn't address the fact -- they said
12 -- what they said at paragraph 7, was that they
13 referred to the commission's order and said that they
14 acknowledged that they would have similar
15 interconnection points. And this is actually
16 paragraph 7.

17 So the court seemed to, even though
18 they were more separate than they are now,
19 acknowledged that there were similar interconnection
20 points. That was not relevant. What was relevant
21 they said in paragraph 12 was that they would have
22 separate interconnection facilities designed and
23 owned by GMP which would limit the capacity of each
24 project to two megawatts. And that's true.

25 MR. LANDIS-MARINELLO: But there wasn't

1 a new shared line in what was before the Vermont
2 Supreme Court the way there is in the proposal we
3 have in front of us.

4 MS. HAYDEN: That's correct. It was --
5 previously it would have been -- the circuit would
6 have extended down to the project from the north,
7 whereas now it will extend along Willow Road.

8 But those are GMP facilities. They are
9 not project facilities. And they will have
10 independent technical connections and be limited to
11 two megawatts each.

12 CHAIRMAN ROISMAN: And the line that is
13 now the one that they are going to interconnect to in
14 the current formulation, was that a preexisting line
15 that has been upgraded to allow for the
16 interconnection? Or is it to some extent a new line
17 that didn't exist before?

18 MS. HAYDEN: Can you clarify your
19 question? Which line are you referring to?

20 CHAIRMAN ROISMAN: The line that runs
21 along Willow Road, not the line that is the -- from
22 the interconnection into the plant. But from the
23 point that's now shown on the map to be the
24 interconnection point, there is a line that basically
25 follows Willow Road.

1 And my question is, was that line
2 always there or was it -- is it newly constructed?

3 MS. HAYDEN: Well Willow Road extends
4 for quite a distance. There will be an extension of
5 the circuit along Willow Road. I don't know which
6 portion you're referring to. But there is an
7 existing circuit on Willow Road, and it will be
8 extended.

9 CHAIRMAN ROISMAN: Right. So it will
10 go beyond where it now is.

11 MS. HAYDEN: Exactly. And again,
12 that's very common with interconnecting new
13 generation resources, that the distribution utility
14 circuit is extended.

15 CHAIRMAN ROISMAN: Right. And that
16 extension to allow for the interconnection of the two
17 facilities, although it's owned by GMP, is going to
18 be paid for by the Applicant; is that correct?

19 MS. HAYDEN: That's correct. Under
20 Rule 5.500 the Applicant pays for system upgrades as
21 well as its own interconnection facilities.

22 CHAIRMAN ROISMAN: And your position is
23 that the fact that it is being extended just to
24 accommodate these plants, and that it's being paid
25 for by the Applicant, doesn't make it shared

1 infrastructure. That the infrastructure definition
2 ends at the point where the interconnection is.

3 MS. HAYDEN: The technical definition
4 is independent technical facilities. And so they are
5 not common -- my client does not own the road. My
6 client will not own GMP's poles.

7 The point of interconnection is where
8 my client's property rights end and the town road and
9 the interconnection facilities of GMP begin.

10 CHAIRMAN ROISMAN: Okay. So in this
11 new configuration, the one that is now before us as
12 opposed to the one that was in front of the Supreme
13 Court, the fact that it may be economically more
14 advantageous to the Applicant to have the one line,
15 namely the Willow Road line extended, isn't relevant
16 for our determination about whether it's a single
17 plant or not.

18 MS. HAYDEN: There was no evidence in
19 the record that this decision was made for economic
20 reasons. This was made because the homeowners
21 objected to having traffic through the Apple Hill
22 Road.

23 COMMISSIONER HOFMANN: Is that in the
24 record? I'm sorry.

25 MS. HAYDEN: Yes. It's in the

1 supplemental testimony proposing this alternative
2 route. It was in the -- it was in the amendment
3 filing for this project.

4 CHAIRMAN ROISMAN: The route you're
5 talking about is the road route. I'm talking about
6 the interconnection route.

7 MS. HAYDEN: Well the interconnection
8 route would have to -- the circuit would have to come
9 in from the north, so it would be a different GMP
10 circuit.

11 Now the -- I really want to highlight
12 the fact that part of the reason I think we are all
13 struggling is that the commission has introduced two
14 documents that are not in the record below. They
15 were not addressed in the record below. None of the
16 original standard offer proceeding evidence was
17 discussed below.

18 And we are now -- and frankly, my
19 client has not had the opportunity as required by 3
20 V.S.A. Section 810 to address that evidence. I think
21 we are all confused about some of the details because
22 this wasn't brought up below. The record is now
23 closed. I don't think the commission can on its own
24 introduce an exhibit that is not in the record. And
25 nor can we presume to guess about what the Supreme

1 Court was thinking when it made its decision.

2 I wasn't at the oral argument for that
3 case. I didn't read the briefs for that case. I
4 don't know what the court found compelling about the
5 definition, but their decision is pretty clear on its
6 face. And I think as well, Rule 5.500 is very clear
7 that there is a very bright line between facilities
8 that are owned by a project and those that are not
9 owned by a project.

10 MR. LANDIS-MARINELLO: I think we
11 routinely see two projects that are proposed with
12 parallel infrastructure being built. Why are
13 Applicants doing that if you're allowed to share
14 infrastructure to the same project?

15 MS. HAYDEN: Well what the court did
16 recognize in paragraph 14 is that there can be some
17 efficiencies, and in fact, what they said is that
18 it's consistent with our Section 807 of Title 30,
19 that you have distributed generation projects in
20 proximity to each other. In this case they are on
21 the same parcel of land that is owned by my client.

22 I think the commission has also, and I
23 can think of the Vermont Gas ruling, and several
24 other cases, where the commission encourages
25 collocation. The commission -- it's efficient not to

1 have to build out additional roads and
2 infrastructure, if necessary. People don't like to
3 see poles and wires. And it's costly. And in this
4 case, the town, you know, I don't know whether it
5 would be more expensive or not for the town to extend
6 Willow Road or go from a route from the north. But
7 the facts here are that that decision was made for
8 the amended project; that that access was made
9 because of the concerns the landowners had.

10 My client is fully willing to go back
11 to the original application. All the evidence is in
12 the record. But it doesn't seem that that would be
13 appropriate at this juncture either. But going back
14 to my point, I think it's really, really important
15 that the commission seriously consider the fact that
16 we are looking at two documents from well over six
17 years ago that are not in the record in this case.
18 And none of us know what the court had in mind or
19 whether they even looked at those two printed case
20 pages. They didn't mention any road in their
21 decision. Nor did they highlight the fact of where
22 the points of interconnect would be.

23 MR. LANDIS-MARINELLO: So on paragraph
24 13 of the Vermont Supreme Court's decision, do you
25 have that in front of you?

1 MS. HAYDEN: I do.

2 MR. LANDIS-MARINELLO: Sentence that
3 starts with although. It says: Although it was
4 economically feasible for Applicant to install
5 separate roads, equipment, and infrastructure.

6 And then it goes on from there. That
7 seems to indicate to me that what the Supreme Court
8 had in front of it was an application that showed
9 separate roads for the separate projects, and
10 separate infrastructure, including the
11 interconnection lines for those projects.

12 And this seems different, wouldn't you
13 agree?

14 MS. HAYDEN: Well I think -- I would
15 read that paragraph in its entirety. I think the
16 point that they are making is that as long as you
17 have technically -- independent technical facilities,
18 that you can have -- you can have shared roads. I
19 mean, and in this case they also did not speak to the
20 public road aspect of the facilities that were
21 involved there. But they go on to say that the
22 requirement that each project -- it's really
23 paragraph 14. They seem to be making this point to
24 emphasize that the legislature intended that we
25 develop renewable energy projects in a distributed

1 fashion, and therefore, it was perfectly reasonable
2 that these projects be collocated side -- next to
3 each other.

4 CHAIRMAN ROISMAN: I want to go to your
5 question about the two exhibits.

6 MS. HAYDEN: Yes.

7 CHAIRMAN ROISMAN: I take it you're not
8 saying that we are not authorized to take
9 administrative notice of something that's in a public
10 record in a case that appeared in front of us. Your
11 complaint is that your client didn't have an
12 opportunity to put on counter evidence or explanatory
13 evidence.

14 MS. HAYDEN: Well actually I don't
15 think the commission can even take judicial notice
16 because -- or administrative notice because you first
17 have to notify the parties and give them an
18 opportunity before you take official notice.

19 CHAIRMAN ROISMAN: Well and we have
20 done that. We issued an order. We attached that.

21 Did anyone from the Applicant file
22 something with us and indicate that we should not
23 look at that without giving them an opportunity to
24 present some contrary evidence or explanatory
25 evidence with regard to those two exhibits?

1 MS. HAYDEN: I don't believe that my
2 client did file a brief objecting on the basis of
3 judicial notice. So that's a fair point. I can say
4 having conferred with my client, they don't want more
5 process. What they want is a final determination.

6 CHAIRMAN ROISMAN: That's what I --

7 MS. HAYDEN: We are now in round three
8 of this case, and this new issue that has come up
9 after the evidence is closed. You know, to the
10 extent that there is some now new confusion created,
11 it would only force there to be more process and
12 time, and this -- we are going back again to a
13 project that was -- received a standard offer
14 contract in 2013.

15 We believe that the court made a pretty
16 clear ruling on what -- whether or not -- what it
17 meant by or I should say the legislature meant by
18 independent technical facilities. Again, this
19 commission has in the GLC -- Westman GLC Solar and
20 the Orchard GLC Solar addressed these very issues,
21 and the commission again addressed the issue of
22 single plant in its 2017 order regarding programmatic
23 changes.

24 I think, you know, it's impossible for
25 any of us to assume -- well let me stop there.

1 COMMISSIONER HOFMANN: But you would
2 agree --

3 CHAIRMAN ROISMAN: So you would rather
4 that we go ahead, look at those two documents, draw
5 whatever conclusions we think we should draw from
6 them, than give your client the opportunity to offer
7 some evidence and conceivably reopen the hearing if
8 it looks like it's necessary to consider what either
9 weight or meaning we should attach to those two
10 documents. Is that fair?

11 MS. HAYDEN: I think it's fair that
12 it's -- under Section 810 of Title 3, it's fair to
13 say that it's improper for the commission to rely on
14 evidence if it has not afforded a party an
15 opportunity to challenge that evidence, and that did
16 not occur. And we are now at the oral argument phase
17 following the full -- the close of the evidentiary
18 record, and the commission itself is introducing new
19 evidence and putting my client in the position of
20 suggesting that either they have to continue and
21 reopen the record to evaluate that, or else the
22 commission may rely on that evidence and rule against
23 it.

24 I think at this point we are just
25 preserving our objection that the commission even

1 consider this evidence.

2 MR. LANDIS-MARINELLO: But you're not
3 disagreeing that we can -- we actually interpret the
4 Vermont Supreme Court decision and what the Vermont
5 Supreme Court was looking at, what project it was
6 looking at, that's an appropriate thing for us to
7 consider.

8 MS. HAYDEN: I think that the evidence
9 that the Vermont Supreme Court considered was
10 evidence in that case. It's not evidence in this
11 case. And if there were to be a full exploration of
12 that, there would have to be, you know, the full
13 record would need to be consolidated with this one or
14 somehow brought to evaluate both what was presented
15 to the Supreme Court and then what, you know, I think
16 the oral argument, you know, what they considered to
17 be relevant.

18 MR. LANDIS-MARINELLO: And that's
19 because this project has a different access road in,
20 different interconnection than what was previously
21 presented.

22 MS. HAYDEN: Yeah. And let me just be
23 clear about that too. In the -- these printed case
24 materials were in the record, and then part of the
25 appeal record apparently that went to the Vermont

1 Supreme Court. I'm presuming. I actually had to ask
2 -- I didn't see that these pages were even at the end
3 of the board's order initially. And I had to ask my
4 client to find it.

5 So I don't know -- I assume that these
6 are printed case materials that were transmitted up
7 to the Supreme Court. I don't know what else was
8 transmitted to the Supreme Court, what they looked
9 at, what they found to be important about those --
10 either the access point or the roads.

11 Again, my client has made it very clear
12 that they are willing to build the project as
13 previously designed which would have had the Apple
14 Hill interconnection point.

15 CHAIRMAN ROISMAN: Ms. Hayden, before
16 you run out of time, I know we have gone a little
17 over your 10 minutes, but we don't mind that. Do you
18 want to speak at all to the question raised by Ms.
19 Dingleline regarding whether or not the earlier
20 Chelsea decision is res judicata or maybe more
21 accurately collateral estoppel on the issue of the
22 Town Plan?

23 MS. HAYDEN: No. I think we will rely
24 on our written filing on that. I think we have
25 exhaustively addressed that, and it's also currently

1 on appeal in another case. So I think we will stand
2 on our written pleadings.

3 CHAIRMAN ROISMAN: Okay. Any other?

4 COMMISSIONER CHENEY: I had one
5 clarification. You talked about the Supreme Court
6 considering that case and this case. In considering
7 that case, were they understanding or -- that the
8 access would be via the so-called Russet Drive or
9 Road?

10 MS. HAYDEN: I don't know what the
11 court was considering. Again, the record -- the full
12 record was transmitted up to the Supreme Court. I
13 will say that the standard offer agreement itself
14 does not require any detail in terms of where your
15 point of interconnection is or your private access.
16 It doesn't require even that you mention public
17 access roads.

18 So I don't know what the court --
19 whether this, because it was part of the record and
20 just transmitted, whether the court even looked at
21 that issue.

22 COMMISSIONER CHENEY: And yet it's
23 relevant to the shared, you know, separate technical
24 facilities decision.

25 MS. HAYDEN: Again, the separate

1 technical facilities are facilities up to the point
2 of interconnection. And so system upgrades as
3 defined under Rule 5.500.

4 COMMISSIONER CHENEY: I'm not talking
5 about the utility interconnection. I'm talking about
6 access roads.

7 MS. HAYDEN: The access roads? The
8 access road here is a public right of way. It
9 currently is.

10 COMMISSIONER CHENEY: And could you --
11 I realize that you talked about the extension of
12 Willow Road in that regard. But I'm talking about
13 the Russet Road. It looks like Russet Drive
14 possibly.

15 MS. HAYDEN: I don't know what the
16 court considered around that -- around that specific
17 document.

18 COMMISSIONER CHENEY: Okay. Thanks.

19 MS. HAYDEN: Again, access is not
20 required under the standard offer contract
21 requirements to even be included on a plan. So I
22 don't know.

23 CHAIRMAN ROISMAN: Since you're not as
24 familiar with that record, just so you know, most of
25 this information, including those two exhibits, were

1 part of a motion for reconsideration that was filed
2 by your client pro se in the 2014 proceeding.

3 MS. HAYDEN: In Chelsea I.

4 CHAIRMAN ROISMAN: Right. So it was
5 after the standard offer information was put in, and
6 it was submitted to the commission after the issue
7 arose as to whether it was one plant or two plants,
8 so that's where it shows up.

9 MS. HAYDEN: Okay.

10 CHAIRMAN ROISMAN: That's why you're
11 not seeing, and wouldn't expect to see it, in the
12 standard offer contract application.

13 MS. HAYDEN: I'm not sure that I
14 understand the latter point.

15 CHAIRMAN ROISMAN: The standard offer
16 contract itself didn't have this information in it.
17 It was filed with us in a motion for reconsideration
18 of an order that we issued --

19 MS. HAYDEN: Oh.

20 CHAIRMAN ROISMAN: -- adopting what the
21 standard offer facilitator had concluded was that
22 these were one plant, not two.

23 MS. HAYDEN: Well and I really
24 appreciate that clarification. So that it means that
25 these were -- were these documents even before the

1 Supreme Court then?

2 CHAIRMAN ROISMAN: Yes, they were.
3 They were made part of the --

4 MS. HAYDEN: In the original 2013
5 proceeding is what you're saying?

6 CHAIRMAN ROISMAN: Yes. Part of the
7 printed case.

8 MS. HAYDEN: Again, what the court --
9 what relevance the court gave to those facts, it's --
10 we don't know.

11 CHAIRMAN ROISMAN: Does the Department
12 wish to have anything to say? There is still 10
13 minutes left.

14 MS. ACEVES: Very briefly just want to
15 say that we primarily rely on our briefings in this
16 matter, including the single plant issue that was
17 brought by the commission. And would just like to
18 highlight the fact that throughout this proceeding,
19 as well as in prior proceedings, the Willow Road
20 project and the Apple Hill project have been treated
21 as separate projects, and we do not see a reason to
22 adopt a different approach here.

23 And regarding the question of whether
24 the town Settlement Agreement is in the record, it is
25 not.

1 CHAIRMAN ROISMAN: And does the
2 Department have any position on the question of
3 whether or not the point raised by Ms. Dingledine,
4 namely whether or not the Town Plan, having a clear
5 and written community standard, is a correct decision
6 either originally or now in the current decision?
7 Any position on that issue?

8 MS. ACEVES: We will stand by our prior
9 responses with regard to that question.

10 CHAIRMAN ROISMAN: Okay.

11 MR. LANDIS-MARINELLO: So when in the
12 Department's view, when would there be a single
13 plant? What kind of situation would you have a
14 single plant when there are two separate proposals,
15 but how much -- if any amount, of shared
16 infrastructure would be enough to tip it into being a
17 single plant?

18 MS. ACEVES: I think we touch on that
19 in our briefings a bit. But we relied on them being
20 separate plants where they have different access
21 roads, where they have different points of
22 interconnection. I would think if they have the same
23 access road or the same point of interconnection,
24 that would possibly qualify as a single plant. But I
25 have not conducted that analysis. So that's not

1 something I can stand by at this point.

2 MR. LANDIS-MARINELLO: And could you
3 have a series of say 10 wind turbines, and instead of
4 them all coming in and connecting in one spot, you
5 send one line there, and then you send 10 different
6 interconnections. Would those be 10 separate plants?

7 MS. ACEVES: It's possible. But again,
8 I have not conducted such an analysis. So --

9 MR. LANDIS-MARINELLO: Because it does
10 seem that that's -- the single plant issue is trying
11 to prevent that scenario. Would you agree with that?

12 MS. ACEVES: I cannot say.

13 MR. LANDIS-MARINELLO: Okay.

14 CHAIRMAN ROISMAN: ANR? Anything
15 happen that makes you want to speak?

16 MR. EINHORN: No. Thank you, though.

17 CHAIRMAN ROISMAN: Agriculture?

18 MS. STONE: No thank you.

19 CHAIRMAN ROISMAN: All right. Ms.
20 Hayden, anything further?

21 (No response).

22 CHAIRMAN ROISMAN: Ms. Dingledine,
23 you've got about 15 minutes.

24 MS. DINGLELINE: Well I have been
25 struggling to get on your Internet to try to find --

1 CHAIRMAN ROISMAN: We apologize for
2 that. The hearing room is in the process of getting
3 electronically updated. Unfortunately not yet.

4 MS. DINGLELINE: Okay. So I'm not able
5 to look back, but Ms. Leon believes that the
6 photographs that she provided are in her aesthetic
7 analysis which is Exhibit MACC-ML-1. But I can't
8 pull it up to verify it.

9 CHAIRMAN ROISMAN: We can check that.

10 MS. DINGLELINE: Thank you.

11 CHAIRMAN ROISMAN: ML-1. Okay. We
12 will look for it there.

13 MS. DINGLELINE: And she brought the
14 two big ones with her.

15 CHAIRMAN ROISMAN: That's fine.

16 MS. DINGLELINE: It should be in the
17 record -- was talked about and testified with. But I
18 can't look at that to verify.

19 CHAIRMAN ROISMAN: All right. Thank
20 you.

21 MS. DINGLELINE: So the other thing I
22 did unfortunately was I closed the brief that was
23 filed by these folks about your -- the issue of the
24 one plant. So I don't have it on my thing right now.
25 But that document is -- has a huge amount of

1 information. There was a heck of a lot of research
2 that went into going back through all these
3 representations. It's very frustrating for my
4 clients to have been through years and years of this,
5 and then we are sort of hearing crying foul about the
6 underlying basis for them to even be allowed to apply
7 for a permit is that they have to have a standard
8 offer contract. And they are upset because people
9 have found out that the information is incorrect.

10 We have presented information in that
11 filing to you folks in response to your memo asking
12 for information. It talks about not only the roads,
13 and I am correct they are extending it a mile, which
14 I'm surprised I wasn't corrected by the Applicant's
15 attorney on that. They are actually building a mile
16 extension on that road. The notion --

17 CHAIRMAN ROISMAN: That road meaning
18 Willow Road?

19 MS. DINGLELINE: Willow Road. Yes.
20 I'm sorry.

21 CHAIRMAN ROISMAN: And that extension
22 will be a town road.

23 MS. DINGLELINE: Who knows. This is --
24 I am shocked that a Vermont lawyer would try to
25 represent that somehow they have control over this

1 road. There is a whole process that one has to go
2 through in order to get the town to take over a road.
3 They have to build it to certain specifications and
4 then 50 feet wide, the whole bit. So who are the
5 people that are giving the town the requisite width
6 that is now required to -- for towns to accept roads?
7 Because they don't go with the 3 rods anymore, 2 rods
8 like in the olden days. And so the fact is, even if
9 they had the rights of way to build this and then to
10 go to the town select board and ask them through the
11 statutory process will you consider taking over my
12 road --

13 MS. BLOCK: And maintaining it.

14 COMMISSIONER HOFMANN: Can you just --
15 I'm a little hung up on the terminology. When you
16 say the extension of Willow Road, is there anything
17 there now, or nothing? Is there no road, not even a
18 cart path?

19 MS. DINGLELINE: Okay. There is two
20 things. There is what is the physical status or on
21 the ground.

22 COMMISSIONER HOFMANN: Yes, I get that.

23 MS. DINGLELINE: And there is what is
24 the legal definition. We understand that the mile
25 extension is not a road. It is not on the town road

1 maps. It's not at VTrans. It is not mileage that
2 gets reimbursed by the state for care by the town.
3 None of that.

4 So what Ms. Hayden is talking about is
5 they are going to have to build a road, and they
6 haven't given any evidence as to whether or not they
7 have the rights of way and easement, whatever, to go
8 through there and build that road. And this is the
9 same issue that the single plant issue was about.
10 They just let everybody think because they drew it on
11 a map that Rustic Road -- Russet Drive actually, they
12 created a fiction and said there is a road there, at
13 a time based on the evidence that was presented with
14 affidavits of the landowners and the son of the other
15 landowner who said they came, asked my dad for a
16 right of way, and he said get the heck out of here.

17 Then the Association president was
18 brought in by the other landowner who is like, hey,
19 there is a guy who is about to bulldoze and excavate
20 a road here over my property. This is how these
21 folks operate. And so the notion that A, you
22 shouldn't be looking at the single plant issue and
23 looking at this evidence. What kind of response is
24 required, or what kind of process is required when
25 these are -- were all representations that were made

1 by these folks that are now, oh gee, we want more
2 process or we don't want more process, we think you
3 should ignore this issue. That's basically what
4 you're being told.

5 CHAIRMAN ROISMAN: Is it your position
6 that this record in front of us in this case does not
7 establish whether Willow Road in the extended area is
8 or is not a town road, and is or is not controlled by
9 the town? Is that your position? That this record
10 is devoid of evidence on that?

11 MS. DINGLELINE: It's a hard question
12 for me to answer because I'm just not familiar enough
13 with this information. I'm representing these folks
14 pro bono and doing the best that I can, but I'm sure
15 you can understand the daunting task of knowing what
16 the evidence is. I do not know -- I don't think that
17 they have demonstrated to this tribunal that they
18 have rights to build a road. They certainly -- based
19 on what we have heard today -- have no -- the town
20 has not taken over this road. And some question is
21 going to be asked, and they will go through a
22 process. That is different than getting a decision
23 from the town that, okay, great. It's like going to
24 get a lease on a property. And then they come to you
25 and say I'm leasing this property, and now I would

1 like a permit to build something on it.

2 It's the same thing with the town road.
3 Are they just intending on putting it there and then,
4 oh gee, shucks, later is the town going to have a
5 problem with it or not? Towns have to go through a
6 process, and they have to be willing, and they can
7 say no. Nobody can force them to take over a road
8 even if it's built to specifications for VTrans. So
9 --

10 CHAIRMAN ROISMAN: And just so I'm
11 clear, a portion of Willow Road that is going to have
12 to be extended or improved, as the case may be, how
13 much of that is on land that is already owned by the
14 Applicants as opposed to on land that is not owned by
15 the Applicants?

16 MS. DINGLELINE: I believe a mile is
17 not on their land. Then it gets to their land, and
18 they do their driveways off of that extension once it
19 gets on their property.

20 COMMISSIONER CHENEY: You mentioned two
21 issues related to the road. One was what you have
22 gone into now. Could you address the physical
23 condition?

24 MS. DINGLELINE: Yes. Yes. I was
25 thinking in the back of my mind we need to get back

1 to that. It's like a foot path, as I understand. So
2 it would need to be built.

3 COMMISSIONER CHENEY: A foot path
4 through -- I remember my first site visit there --
5 through what is currently wooded?

6 MS. BLOCK: Couldn't hear you. I'm
7 sorry. Oh, yeah it's all wood there.

8 COMMISSIONER CHENEY: I just wanted to
9 confirm that.

10 MS. DINGLELINE: I'm sorry. I'm not
11 familiar.

12 CHAIRMAN ROISMAN: That's okay. Don't
13 worry about it. You're ably assisted by your
14 clients.

15 MS. DINGLELINE: For sure. They have
16 been doing an admirable job.

17 Just a couple questions. And I don't
18 understand the whole ball of wax here, but first of
19 all, I'm not sure whether it's public or private,
20 whether that necessarily matters. But when you were
21 asking about the interconnections and all that stuff,
22 which Applicant is paying for the connection if it's
23 a shared connection? And how is -- and then is Apple
24 Hill going to reimburse Chelsea? I mean clearly this
25 is -- by just saying, oh, you know, we are going to

1 pay for the connection, who are they talking about?

2 If you go back to that document that
3 was filed in response to the single plant issue,
4 there are -- there is tons of information in there,
5 and it talks about the notion that there is literally
6 just one apparatus that is just being inserted so
7 that they have -- do you remember the name of the
8 thing? I can't remember the name of the actual piece
9 of machinery or equipment. But pages 9 through 14
10 has very detailed information, as does the entire
11 presentation of facts. There is affidavits, all of
12 that.

13 So you know, if it walks like a duck
14 and it quacks like a duck, you know, we are concerned
15 here. Is this form over substance? People change
16 what they are going to do. I understand that. And
17 things morph over time, and certainly there are good
18 reasons for it. But again, we are hearing, oh, we
19 did this because, oh gosh, everybody objected to
20 Apple Hill. Libby and the homeowners didn't want
21 Apple Hill Road being used.

22 Well there is no road, again another
23 example of this pattern of theirs, and they have no
24 ownership control or rights to use that. So now we
25 are hearing, oh, well we will go back to Apple Hill

1 Road. That will work. It won't work. And it should
2 have been denied if that was the road because they
3 can't demonstrate to you that they have site control
4 to build that road, to use that road for any
5 commercial purpose, period. They haven't even showed
6 that they have any corridor over which they could
7 actually traverse, just like with the road from the
8 north. The Russet Drive.

9 So you have a pattern here of an
10 Applicant saying things that either are not true or
11 become untrue, and then they are not corrected. That
12 is the foundation that this house of cards is built
13 on. And it is incumbent upon these folks if they
14 change something so significantly that it goes to the
15 very heart of the Supreme Court decision and the very
16 factors that are articulated in that. This is not
17 rocket science. This is something that is rather
18 troubling that an Applicant who has so many of these
19 projects, and they are here regularly, they would not
20 have taken the opportunity to say, hey, we are not
21 coming from the north. And we are not coming from
22 the east. We are now coming on the same road from
23 the south. And present it to you and say, this is
24 what the reality of the situation is. We have had to
25 morph. There are reasons why we want to do this. Is

1 that okay with you? Instead they violated the
2 Supreme Court decision. They did exactly what the
3 Supreme Court said would be a single plant, and
4 represented things that were false. And I don't know
5 how you reward that when, you know, those kinds of
6 -- you have to depend and rely on the people that
7 come before you.

8 There is way too much information that
9 you have to cull through in order to determine what
10 are the appropriate conditions to protect the people
11 in the area from, you know, choking on smoke and
12 PFOAs falling back down in the soils. All of these
13 things. If you can't rely on these people not to
14 burn when they don't have the right to burn, then why
15 are you giving -- why would you consider giving them
16 a permit in a case where they have told incorrect
17 information?

18 And I think ultimately, the evidence,
19 if you look at it very carefully, will demonstrate
20 that that road they tried bulldoze, all of that
21 happened before they represented to the Supreme Court
22 that map, and that map that I showed you that we gave
23 you is the printed case. It has the printed Case No.
24 on it from the Supreme Court record that we got from
25 the folks across the street.

1 I just want to go back and circle back
2 to one more thing since I'm not quite out of time
3 yet. And that is the vested rights. Vested rights
4 there's been an interesting argument in Orchard Road
5 that was just filed by Cindy Hill, and it goes
6 through many, many pages of analysis on vested
7 rights, and that it, in fact, is a land use, zoning
8 kind of issue, for developing property. And that it
9 has no application, and she has case cites, et
10 cetera, about why it doesn't even apply in this
11 setting.

12 It's certainly something that should be
13 determined and looked at because it doesn't sound
14 like there's been a definitive decision in this arena
15 at least, but that is an additional consideration.
16 But whether it's 2010 and they have to comply with
17 those criteria that you recognized and saw as a clear
18 written community standard, we ask that it be
19 analyzed against that standard, not throw the baby
20 out with the bath water. You don't say just because
21 we think the town wasn't doing the right thing here,
22 we are going to ignore plain language in an actual
23 law. It is the ordinance. It's what it says. We
24 think that's just so essentially important.

25 Now, if you hadn't given them vested

1 rights and understood that this was a completely
2 separate proceeding, and maybe vested rights were
3 still okay, even if it is -- there was a final
4 decision now, this is version 2 and it's a brand new
5 case, maybe there would be a consideration that, you
6 know what, this isn't so much different than the last
7 time around. And we are going to allow you since it
8 has been some sort of continuous process to avail
9 yourself of vested rights. But then you can't say
10 but then we are not going to impose the law that we
11 are claiming that -- or that you're claiming you have
12 the vested rights in.

13 So if that's the decision that you've
14 made, you have to apply the language in that
15 ordinance to this project. And if it's like the
16 other ones that the select board said okay to or
17 didn't oppose because they were on flat areas, not on
18 these prominent hillsides, or near a gateway area,
19 and you think Chelsea Solar is okay, that's what your
20 job is. It's to say we looked at the law, and it's
21 very clear, and it's okay. We don't think that that
22 hill is prominent. Or, you know, I think it was an
23 Apple Hill, I don't know which one, but it's not a
24 hill. I mean that was an argument that was made by
25 the other side. And I remember talking about the

1 slope and the run and rise and all that other stuff.

2 CHAIRMAN ROISMAN: Ms. Dingleline,
3 you've just got another minute or so.

4 MS. DINGLELINE: I would just raise one
5 other thing, and that is I'm if -- I'm corrected
6 about -- I know in one of these cases that there was
7 the actual Bennington agreement that was done by the
8 select board. It was put into evidence. Perhaps
9 that was Apple Hill. I'm positive that was put into
10 evidence in one of these cases. And if that is in
11 this case, I would ask you to look at it or take
12 administrative notice from Apple Hill. Because if
13 you're interested in what that document accomplished,
14 think about the fact that it obligates the town not
15 to oppose a bunch of future projects that have not
16 even been filed for an application. No petition has
17 been filed. And so they just signed off, we won't do
18 anything. We won't oppose you on these projects.
19 Well I think that if you're reading this, I think
20 that it's appropriate to surmise from that that if
21 you're giving up your rights to have your say, your
22 due consideration, or now your substantial deference
23 under the new 2016 plan, why are you -- you haven't
24 even seen an application. Why would you give up your
25 rights to say yea or nay, or give your opinion to

1 this body? Why would you do that?

2 I mean they are opening themselves up
3 to lawsuits. Lack of due process. Now nobody
4 appealed that, which was unfortunate, because they
5 made a decision about all these other projects
6 without notifying anybody else that this was about
7 anything other than Chelsea Solar and Apple Hill
8 Solar, and all of these other cases where they were
9 sued in federal court and state court and, you know,
10 everything was dropped, including the town's future
11 right to protect their Town Plan, to have an opinion
12 about their Town Plan, and to protect the people who
13 live around these or who will be unduly adversely
14 impacted by them. That's what you need to look at,
15 because you have the right to infer from evidence
16 that you are provided, intent or other conclusions
17 about the information that you're looking at. And
18 that issue is paramount in terms of why in the world
19 would a town do that. The town did it because they
20 were getting -- they were hemorrhaging money. They
21 were \$200,000 in the hole. Look at the amount of
22 money that was paid to them and why it was paid to
23 them. It was for administrative and the legal fees.
24 And that didn't even pay all of the out-of-pocket
25 amounts.

1 It was appropriate for the select board
2 to figure out once they lost vested rights, and then
3 they lost the res judicata law of the case thing,
4 they said enough is enough. We are going to have to
5 fight this in the Supreme Court. We think that the
6 PUC is wrong on this, but enough is enough. We have
7 a responsibility to everyone in this town not to
8 raise taxes and to waste money that ought not to be
9 wasted, because the litigation will never end. That
10 has been demonstrated.

11 CHAIRMAN ROISMAN: Ms. Dingleline --

12 MS. DINGLELINE: Am I out of time?

13 CHAIRMAN ROISMAN: -- this oral
14 argument does end. It ends now.

15 Thank you. Thank you both. Ms.
16 Hayden, I just have one request for you. You don't
17 have to do it here. There is a piece of paper
18 attached to the brief that was filed, and it doesn't
19 identify it as an exhibit or tell us its source.

20 MS. HAYDEN: It's not. I asked that
21 question. That is not an exhibit in the case. This
22 was -- it's the interconnection plan provided by
23 Green Mountain Power Corporation.

24 CHAIRMAN ROISMAN: Okay. All right.
25 So I assume under your earlier position on looking at

1 things that are not in the record, we shouldn't be
2 relying on that.

3 MS. HAYDEN: Well we -- again the
4 commission raised this issue after the evidence
5 closed. And so this was not something that was even
6 raised below. Either the commission considers
7 everything or none of it.

8 CHAIRMAN ROISMAN: So are you asking us
9 to include it?

10 MS. HAYDEN: The evidence -- I think
11 the evidence in the record is very clear that there
12 is a separate point of interconnection --

13 CHAIRMAN ROISMAN: That's not my
14 question.

15 MS. HAYDEN: I'm just thinking out
16 loud. You don't need to rely on that to make a
17 decision in this case.

18 CHAIRMAN ROISMAN: Okay. All right.
19 Then we won't.

20 All right. Thank you all very much.
21 That has been very helpful. Very informative.
22 Appreciate all your time. And we will take this
23 under advisement.

24 (Whereupon, the proceeding was
25 adjourned at 12:12 p.m.)

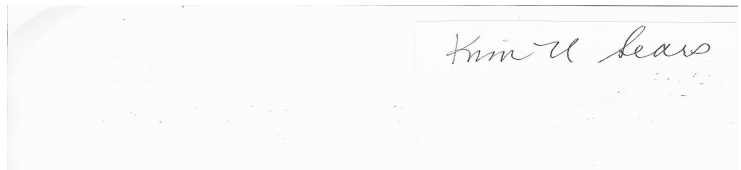
C E R T I F I C A T E

I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Oral Argument re: Case No. 17-5024-PET, at the Susan M. Hudson Hearing Room, People's United Bank Building, 112 State Street, Montpelier, Vermont, on March 29, 2019, beginning at 10:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 79 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

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

Dated at Williston, Vermont, this 30th day of March, 2019.

A rectangular box containing a handwritten signature in cursive script that reads "Kim U. Sears". The signature is written in dark ink on a light-colored background.

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