
**IN THE SUPREME COURT
OF THE
STATE OF VERMONT**

Docket No. 2019-226

**IN RE PETITION OF CHELSEA SOLAR LLC, PURSUANT TO
30 V.S.A. § 248, FOR A CERTIFICATE OF PUBLIC
GOOD AUTHORIZING THE INSTALLATION AND
OPERATION OF THE “WILLOW ROAD PROJECT,” A
2.0 MW SOLAR ELECTRIC GENERATION FACILITY
ON WILLOW ROAD IN BENNINGTON, VERMONT**

Appeal From:

Public Utility Commission
CASE NO. 17-5024-PET

**SUPPLEMENTAL PRINTED CASE OF APPELLANT
CHELSEA SOLAR LLC**

Thomas Melone
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STATE OF VERMONT
BEFORE THE
PUBLIC UTILITY COMMISSION

PETITION OF APPLE HILL SOLAR LLC
for a Certificate of Public Good,
authorizing the installation and
operation of a 2.0 MW solar
electric generation facility at 1133
Willow Road, Bennington, Vermont

DEPOSITION

-of-

DANIEL MONKS

held on Friday, September 29, 2017, at the law
offices of Witten, Woolmington, Campbell & Bernal,
4900 Main Street, Manchester, Vermont, commencing at
a.m.

APPEARANCES:

THOMAS MELONE, ESQUIRE

Allco Renewable Energy

1745 Broadway, 17th Floor

New York, New York 10019

On behalf of Apple Hill Solar LLC;

ROBERT WOOLMINGTON, ESQUIRE

Witten, Woolmington, Campbell & Bernal, P.C.

4900 Main Street

Manchester Center, Vermont 05255

On behalf of the Town of Bennington.

Also Present: Mary Doud, Videographer

BARRY COHEN, RPR - DEPOSITION REPORTER

O'BRIEN REPORTING SERVICES, INC.

223 Killington Avenue

Rutland, VT 05701

STIPULATIONS

It is hereby stipulated and agreed by and
between the attorneys of record for the respective
parties hereto, as follows:

1. THAT the testimony of DANIEL MONKS may
be taken and treated as if taken pursuant to notice
and order to take deposition and that all
formalities of notice and order are waived by the
parties and the signatures to this stipulation are
in like manner waived.

2. THAT all objections, except as to
matters of form and motions to strike, are reserved
until the deposition or any part thereof is offered
in evidence.

3. THAT the deposition may be signed by
the said DANIEL MONKS before any Notary Public.

4. THAT all exhibits offered for
identification are reserved by counsel until the
time of trial.

INDEX

		Page	
DEPONENT: DANIEL MONKS			
EXAMINATION BY ATTORNEY MELONE	4		
EXAMINATION BY ATTORNEY WOOLMINGTON		58	
EXAMINATION BY ATTORNEY MELONE	61		

EXHIBITS

Exhibit No.	Exhibit Description	Page
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1	notice	4
2	town plan	4
3	group of simulations	15
4	2015 town plan	25
5	solar screen bylaw	30
6	photograph	33
7	photograph	35
8	letter 10/13/16	38
9	amendment	38
10	land use regulations	53
11	site plan	62
12	site plan	63

(Note: Exhibits 2-5, and 8-12 retained by Attorney
Melone. Other exhibits attached to original and
electronic copies.)

DANIEL MONKS,

having been duly sworn by the Notary to tell
the truth, the whole truth and nothing but the
truth, deposes and says as follows:

EXAMINATION BY ATTORNEY MELONE

Q. Good morning, Dan.

A. Good morning. I just want to mark the
deposition notice as Exhibit 1, so you know
what we're going to be going over. I'm sure
Rob has gone over that with you.

(Exhibit No. 1 was marked for
identification.)

Q. If I ask any questions which aren't clear,
please let me know.

A. Okay.

Q. So we'll just get right into it. I'm going to
hand you Exhibit 2, which is Bennington Town
Plan dated October 11th, 2010.

(Exhibit No. 2 was marked for
identification.)

Q. You're familiar with the Bennington Town Plan
as of 2010?

A. Yes, I am.

- 1 Q. So my first questions relates to development
2 in what's called the rural conservation
3 district.
4 A. Okay.
5 Q. The town plan describes that district on page
6 25. Is there anything in this town plan which
7 prevents the development of commercial scale
8 solar facilities in a rural conservation
9 district?
10 ATTORNEY WOOLMINGTON: Objection as
11 to form.
12 A. I'm happy to answer with regard to the
13 specific project, if that's what you're
14 looking for. It would be hard for me to make
15 a comment regarding any project.
16 Q. I'm not asking you to make a comment regarding
17 any project in the sense that we know there is
18 the screening ordinance and other things that
19 apply right now. But the basic question right
20 now is, is there anything that would not allow
21 the development of a commercial scale solar
22 facility, in general?
23 A. I'm not trying to be evasive, it's just that
24 it depends on the particular project, there
25 are many criteria to review. If you're saying

- 1 is it automatically excluded, the answer is
2 no.
3 Q. That's basically the question.
4 A. Okay. I just want to make -- be clear about
5 that.
6 Q. And the criteria that you're referring to
7 would be what?
8 A. Well, specifically with regard to the rural
9 conservation zone there are several criteria:
10 Cannot be sited in prominently visible
11 locations on hillsides or ridge lines; shall
12 utilize earth tone colors and nonreflective
13 materials on exterior surfaces of all
14 structures; and must minimize clearing of
15 natural vegetation. Those are the criteria
16 that are explicit in the rural conservation
17 zone. There are other criteria in other
18 sections in the natural scenic resources
19 section, for instance. Ah, so those are the
20 types of criteria that we would look at for
21 any project, including a solar site.
22 Q. Right, the King project, including a solar
23 project?
24 A. Right, it's not just solar sites, that's
25 correct.

- 1 Q. Right. So solar in that sense is treated the
2 same as any other type development, they would
3 have to meet these criteria?
4 A. That is correct, yeah.
5 Q. Now, the sentence you just read talks about
6 hillsides or ridge lines. Is there a
7 definition in the town plan of a hill site?
8 A. Not to my knowledge, not a specific definition
9 as a term of art or anything like that, no.
10 Q. Is there a definition of ridge line in the
11 town plan?
12 A. Not to my knowledge.
13 Q. So how do you decide what's a hillside?
14 A. You just use the common understanding of what
15 a hillside or a ridge line is.
16 Q. So based on the slope or is it not based on
17 any kind of specific --
18 A. It's not based on any kind of specific
19 criteria. Like I said, it's not defined, so
20 it's not like if it's a twenty percent slope
21 or a ten percent slope, and that's a hillside.
22 Q. So if you were to try to determine if
23 something was a hillside, what would you do?
24 A. I would see if there's any kind of -- mostly I
25 would refer to visibility, you know, is it

- 1 visible from a valley or from a lower point,
2 and is there a slope of some significance.
3 Q. Okay. But you'd have to be able to see the
4 slope of some kind?
5 A. When you're considering aesthetics, then you
6 would have to see it, yes, because they're
7 talking about prominent visibility.
8 Q. Correct, right. So that brings up the other
9 question on that sentence, which is, is there
10 a definition in the town plan of "prominently
11 visible location"?
12 A. No explicit definition, no.
13 Q. So what does that mean to you?
14 A. It means to me is it visible from public areas
15 and from adjacent properties would be how I
16 would interpret it.
17 Q. So you would interpret that as just being
18 visible from neighboring properties or the
19 public roads?
20 A. Well, they use the qualifier "prominently
21 visible."
22 Q. Right. So how would you define --
23 A. So is it clearly visible from those locations.
24 Q. Okay.
25 A. Can you determine what it is, you know,

Page 9 1 features of it, that sort of thing, versus 2 being fully screened? 3 Q. Okay. So at least to your knowledge, the Town 4 of Bennington has always followed this 5 guideline in terms of solar projects in the 6 rural conservation zone? 7 A. I guess I don't know if I could answer that. 8 It's obviously the guidelines that they should 9 follow, yes. 10 Q. Okay. But you can't say if they actually did 11 follow them? 12 A. In every instance? I don't know. 13 Q. Okay. Another part of that sentence that you 14 read is "Development in the rural conservation 15 zone must minimize coloring of natural 16 vegetation." Is there a specific definition 17 of what that phrase means, "minimize clearing 18 of natural vegetation"? 19 A. No specific definition. 20 Q. So how has that been applied as far as 21 development? 22 A. In the past what the Planning Commission has 23 done when they've applied this criteria, 24 they've looked to see what is necessary for 25 the type of development proposed. For	Page 11 1 sentence there refers to another part of the 2 town plan? 3 A. No, it refers to the land use and development 4 regulation. 5 Q. Okay. The land use and development 6 regulation? 7 A. Yes. 8 Q. Right. 9 A. Which are -- what we -- most people call the 10 zoning bylaws, but we call them the land use 11 and development regulations. 12 Q. And in the land use and development 13 regulations that govern the rural conservation 14 zone, are there specific guidelines as to what 15 the development should be? 16 A. Yes, in the rural conservation zone, yes. 17 Q. When the town plan was written with this 18 sentence that referred to specific design 19 standards, did those guidelines exist at the 20 time? 21 A. I don't recall; I'd have to look at the date. 22 I don't recall. I think they were adopted in 23 2006, so I believe there were but I don't 24 recall -- 25 Q. They were adopted in 2006.
Page 10 1 instance, if you're building a home, are you 2 clearing more vegetation than you need to 3 actually construct the structure and have a 4 reasonable lot or are you clearing more so you 5 can have a view for yourself, those sorts of 6 things; what is necessary for the construction 7 of the project versus other types of 8 objectives, like a view or having a large lawn 9 or something like that. 10 Q. Okay. Now, if you could go back to that page 11 26, the first sentence in the last paragraph 12 in the rural conservation district, it says, 13 "Specific design standards shall apply in new 14 development rural conservation districts." 15 What are those design standards? 16 Are those only the design standards in the 17 last sentence that you read? 18 A. No. With regard to something that's not 19 exempt from review by the Planning 20 Commission -- or the Development Review Board, 21 excuse me -- it would involve the scenic 22 resource protection regulations for the rural 23 conservation zone and the land use and 24 development regulation. 25 Q. Okay. So you're saying that the first	Page 12 1 A. So the answer is yes. 2 Q. Was it always -- so this sentence, though, in 3 the town plan wasn't imposing specific 4 standards, it was referring to these other 5 guidelines -- 6 A. That is correct, yes. 7 Q. -- that either existed or would be amended 8 from time to time? 9 A. Right, yes. 10 Q. And those specific standards in the land use 11 regulations, did they also specifically 12 address the issues that you just went over in 13 the last sentence, the development -- being 14 the development can't be prominently visible 15 on hillsides? 16 A. Yes, I would say that, I would say it's fair 17 to characterize that they expand upon those 18 criteria. 19 Q. So when the town looks at any kind of 20 development, do they try to interpret what 21 this last sentence means in the town plan or 22 did they look only to the specific standards 23 in the land use regulations? 24 A. Um, well, it depends on the development. So 25 if it's something that is subject to the land