

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Apple Hill Solar LLC for a certificate of) Docket No. 8454
public good, pursuant to 30 V.S.A. § 248,)
authorizing the installation and operation of a 2.0)
MW solar electric generation facility at 1133)
Willow Road in Bennington, Vermont)

Petition of Chelsea Solar LLC, pursuant to 30) Case No. 17-5024-PET
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)

**APPLE HILL HOMEOWNERS ASSOCIATION,
LIBBY HARRIS & MOUNT ANTHONY COUNTRY CLUB’S
COMMENTS IN RESPONSE TO
COMMENT OF VERMONTERS FOR A CLEAN ENVIRONMENT**

NOW COME Apple Hill Homeowners Association (“AHHA”), Libby Harris & Mount Anthony Country Club (“MACC”), by and through their attorney, L. Brooke Dingledine, Esq., and hereby provides the following response to the June 19, 2020, Vermonters for a Clean Environment (“VCE”) comment filed with the Vermont Public Utility Commission (“Commission”) in both of the above captioned cases:

A. THE STANDARD OFFER CONTRACTS WERE PROCURED BY FRAUD AND SHOULD BE VOIDED BY THE PUC

1. The standard offer contracts underlying the Apple Hill and Chelsea (Willow Road) solar projects were procured by fraud when Thomas Melone falsely stated and materially misrepresented that a make-believe access road existed in order to convince the Supreme Court that the projects were two separate plants.¹

¹ Applicant argued to the Public Service Board (later renamed the Public Utility Commission) on Motion to Reconsider, that the Bennington and Apple Hill projects were “independent technical

2. The false representations of Thomas Melone, who provided the Supreme Court with a drawn-in-depiction of a make-believe road that does not exist beyond the terminus cul-de-sac of Russet Drive, were material misrepresentations which served as the basis of the Supreme Court's reversal of the PSB's determination that the projects comprised one plant which stated:

Under the plain language of the statute, then, as proposed, the Bennington and Apple Hill projects would qualify as "independent technical facilities." 30 V.S.A. § 8002(14). **The projects will not share common roads, control facilities, or connections to the electric grid.** Each of the projects will have a separate interconnection agreement with GMP and separate interconnection facilities designed and owned by GMP, which would limit the capacity of each to 2.0 MW.

In re Programmatic Changes to Standard-Offer Program, 2014 VT 29, ¶ 12, 196 Vt. 175, 180, 95 A.3d 999, 1003 (2014)(emphasis supplied).

3. Moreover, the false representations about a make-believe road from the north were made by Melone AFTER Melone's contractors were stopped from constructing a road across Earl Senecal's property, despite the fact that Earl Senecal declined to provide Melone with an easement across his property.
4. Melone is now suing the Estate of Earl Senecal, among others, in Chittenden Superior Court (Docket No. 331-4-19 Cncv), seeking a declaratory ruling that he has an implied easement over the lands of Senecal, some 6 years after actually trying to build a road on Mr. Senecal's property without permission. Melone's claim regarding

facilities" because as proposed they would connect with the electric grid through separate three-phase lines, be separated by a fence, **have separate access roads**, use separate inverters, transformers and other equipment, and have different financing parties.

In re Programmatic Changes to Standard-Offer Program, 2014 VT 29, ¶ 8, 196 Vt. 175, 178, 95 A.3d 999, 1001–02 (2014)(emphasis supplied).

- any rights to build an extension to Russett Drive has been summarily dismissed by the Honorable Judge Helen Toor, for failure to even state a claim for an implied easement under V.R.C.P. Rule 12(b)(6). So much for Thomas Melone obtaining “site control and access,” an issue Melone is ironically aggressively advancing in his attempts to upend the PUC’s awarding of five of the last six Standard Offer Program RFP’s to NextEra. Yet, Melone apparently thinks that he doesn’t have live under the same rules as everyone else.
5. Both Apple Hill and Chelsea solar projects are proposed to use Willow Road for access and Melone’s fraudulent misrepresentation that the projects would use separate access roads and infrastructure has remained uncorrected for over 6 years and has never been explained by Melone to the PUC or the Supreme Court despite his obligations now as a Vermont attorney who is subject to the requirements of V.R.C.P. Rule 11.
 6. As the Supreme Court has explained, fraudulent misrepresentation in the procurement of a contract makes the contract voidable at the election of the party harmed.²

² As the Supreme Court explained:

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

7. The contracts should be voided by the PUC, the party harmed, because they were based on the fraudulent representations of the developer (and his lawyer) who is one in the same, Thomas Melone, which will not only stop this bad actor, but it will send a message of deterrence to others who might be tempted to be less than candid with the PUC or the Supreme Court.

B. THE PETITIONER HAS ENGAGED IN SITE PREPARATION IN VIOLATION OF THE MADATORY REQUIREMENTS OF 30 V.S.A. § 248; THEREFORE, THE PUC SHOULD DECLARE THE PETITIONS WITHDRAWN OR ABANDONED

8. ANR has confirmed that site preparation work, including clearing of trees, is being performed by Melone's contractor in violation of 30 V.S.A. § 248(a)(2) with no protection for the RTE plant species on site.
9. Melone claims that he is entitled to use the subject property for an agricultural use and has basically thumbed his nose at the PUC and ANR, justifying his actions of revenge and retribution as not being under the PUC or ANR's jurisdiction.

115, 121, 411 A.2d 1338, 1342 (1980)(noting distinction between the elements for an action in fraud and deceit, and fraudulent misrepresentation, providing grounds for rescission of a contract).

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

Sarvis v. Vt. State Colleges, 172 Vt. 76, 80-81, 772 A.2d 494, 498, 2001 Vt. LEXIS 9, *7-9, 81 Empl. Prac. Dec. (CCH) P40,666.

10. Mr. Melone's agricultural use assertion has an insurmountable problem. By filing the Apple Hill Solar and Chelsea Solar Petitions for CPG's, he has subjected his land to the jurisdiction of the PUC and is prohibited by statute to perform site preparation on that land. If Melone wants to become a sheep farmer, then he must withdraw his petitions for his solar projects. Since he has not done so, the actions of site preparation should be viewed by the PUC as a withdrawal or abandonment of Melone's projects, since he has failed to comply with the statutory prohibition contained in 30 V.S.A. § 248(a)(2).
11. Just as the PUC deems an application incomplete for failure to comply with the statutory requirements for filing a petition before the PUC, if the Petitioner intentionally violates the statutory prohibition governing the application process, the PUC should decline to process the application, especially when the violation is knowing, intentional, and for a bad motive, as here.
12. Moreover, Melone's entire agricultural use claim is so absurd and such an obvious pretext, as to not even thinly-veil Melone's blatant bad faith assault on the neighbors seeking retribution and revenge on those who stand in his way.
13. Unfortunately, this behavior is merely the latest in a 6 year-long concerted vendetta to eliminate all opposition to these solar projects. The pattern that has emerged is that when Thomas Melone doesn't get what he wants, he files frivolous lawsuits against countless individuals in his "scorched earth" litigation strategy. It actually appears now that the Melone is no longer in the business of developing solar arrays, he is instead in the litigation business, suing anyone and everyone who doesn't cave into his bullying. Now that we know he stands to profit \$25,000,000.00 from each solar

- project, it makes sense why anyone who gets in the way of the Melones and their profits, is bulldozed (literally and/or figuratively) out of the way.
14. Lastly, undersigned counsel strenuously objects to Attorney Thomas Melone's personal attack on Annette Smith of VCE and for the slanderous and disparaging comments made about her. Annette Smith is one of Vermont's greatest treasures and there is no need to recount to the PUC, her lifetime of stupendous accomplishments in protecting Vermont's environment. It is understandable why Mr. Melone doesn't like being watchdogged by VCE, but Melone would be better served trying to explain his outrageous and egregious behavior to the PUC, rather than shooting the messenger.
15. Moreover, if Melone is permitted to continue his attacks on Ms. Smith, it will have a chilling effect on the willingness of Vermonters to report violations that they observe. Consequently, it is time for the PUC to stop Thomas Melone's high-jacking and utter abuse of the PUC permitting process and attempts to eliminate anyone who steps in front of his bulldozer.
16. Lastly:

"If there really is such a thing as turning in one's grave, Shakespeare must get a lot of exercise." — **George Orwell.**

"Never be afraid to raise your voice for honesty and truth and compassion against injustice and lying and greed. If people all over the world...would do this, it would change the earth." — **William Faulkner**

WHEREFORE, the PUC should investigate and hold an evidentiary hearing on the matters for Melone to show cause as to why his contracts should not be voided and why his permit petitions should not be deemed withdrawn or abandoned.

DATED AT Randolph, County of Orange and State of Vermont this 24th day of June, 2020.

APPLE HILL HOMEOWNERS ASSOCIATION,
MOUNT ANTHONY COUNTRY CLUB and
LIBBY HARRIS, Intervenors

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