

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2)) **Case No. 20-1611-INV**

MOTION FOR CLARIFICATION OF APPLE HILL SOLAR LLC

On June 24, 2020, this matter was opened up by the Vermont Public Utility Commission (the “Commission”) in response to a complaint by Annette Smith filed in docket 8454. Apple Hill Solar LLC (“AHS”) is the “petitioner” in docket 8454. On June 26, 2020, the Vermont Public Utility Commission (the “Commission”) issued a temporary restraining order (the “TRO”) in the above-captioned matter.

AHS requests the following clarifications of the TRO.

AHS requests clarification regarding Ordering paragraph 1

Ordering paragraph 1 states: “Allco and its affiliates and contractors shall immediately cease all tree clearing on the Apple Hill site.” *See*, TRO at 7. Page one of the TRO defines “Allco” as: “Allco Renewable Energy Limited, PLH Apple Hill Solar LLC, and PLH Chelsea Solar LLC, and its affiliates, subsidiaries, and contractors” Page one of the TRO defines “the Apple Hill site” as “the property for the proposed projects identified in any Certificate of Public Good (‘CPG’) applications and any property identified in those applications as intended to be part of the projects, including any amendments to those applications that have been approved by the Commission, in the Apple Hill area in Bennington, Vermont”.

AHS requests clarification as to the scope of ordering paragraph 1 and its applicability.

Specifically, “PLH Apple Hill Solar LLC” and “PLH Chelsea Solar LLC” are not entities. V.R.C.P. 65(d) states that a temporary restraining order “is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” Allco Renewable Energy Limited is not a party to docket 8454. The landowner is similarly not a party to docket 8454 as the Commission denied the landowner’s intervention.

AHS requests clarification as to the entities to which the TRO applies.

AHS also requests clarification of the statutory definition of “affiliates” as used in the TRO.

AHS also requests clarification as to the definition of the “Apple Hill site.” The definition of “Apple Hill site” is vague. It does not specify (1) “the property for the proposed projects identified in any Certificate of Public Good (‘CPG’) applications”, (2) what CPG applications the TRO refers to, nor (3) what is meant by “any property identified in those applications as intended to be part of the projects.”

On March 23, 2020, pursuant to Commission Rule 2.204(G), AHS filed an amendment (the “Amendment”) to its petition for a certificate of public good in docket 8454.¹ In accordance with Rule 5.406 and 5.407 and 30 V.S.A. § 248(a)(4), AHS requested a public hearing on the petition as amended and provided the required notice of the Amendment to persons entitled to such notice.

AHS interprets the TRO to exclude the separate parcel referred to in the Amendment as the “Orchard Lot.” The Orchard Lot is not “part of the projects,” no rare plants species have been

¹ Commission Rule 2.204(G)(1) provides: “Proposed amendments may be filed at any time.”

identified on that parcel, and the Orchard Lot is planned to be converted from an apple orchard to a hemp farm.

AHS requests clarification regarding Factual Finding #4

Factual finding #4 states:

There are several areas outside the conservation areas where the rare plant species are located. These would be harmed by the proposed site-clearing activities. Popp testimony of June 26, 2020 and ANR Exhibits.

AHS requests that the Commission clarify which part of the Popp testimony and ANR Exhibits support the finding that the proposed site-clearing activities *would cause* irreparable harm to rare plant species, particularly in light of the fact that the Commission issued the TRO without reviewing a clearing plan, and the Agency of Natural Resources' rule of thumb that a certain percentage of such a plant population can be removed without an undue adverse effect.

AHS requests clarification regarding Factual Finding #5

Factual finding #5 states:

The sheep grazing is being done "primarily" to control vegetative growth at the petitioner's planned solar projects at the site. Melone Testimony of June 26, 2020.

AHS requests that the Commission clarify which part of the Melone testimony supports the finding that "sheep grazing is being done 'primarily' to control vegetative growth at the petitioner's planned solar projects at the [Apple Hill] site."

AHS requests clarification regarding the Commission's Definition of Farming

At page 4 of the TRO, the Commission states:

The petitioner's activities constitute site preparation without a CPG in violation of 30 V.S.A. § 248(a)(2). The petitioner's claim in his affidavit that his activities are solely for farming purposes is not credible. The Vermont Agency of Agriculture, Food and Markets defines a farm as land that is "devoted primarily to farming." The petitioner testified in this proceeding that, although the sheep may end up being

used for some farming purposes, he was putting the sheep in this location “primarily” to serve the proposed solar projects. This does not qualify as farming. Further, the petitioner testified that the clearing activities are a prerequisite to building the solar projects that have not received CPGs. This violates 30 V.S.A. § 248(a)(2).

The AAFM web page cited by the Commission provides the following definition of farming, which definition follows 10 V.S.A. § 6001(22):

Section 2.16 of the Required Agricultural Practices (RAPs) states that “farming” means:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops; or
- (b) the raising, feeding, or management of livestock, poultry, fish, or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or
- (f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or
- (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.²

AHS requests clarification regarding the Commission’s basis for concluding that the landowner’s activities of raising, feeding and management of sheep does not fit squarely with clause (b) above.

AHS requests clarification regarding the Commission’s basis for concluding that the landowner’s activities of selling lambs and wool does not fit squarely with clause (e) above.

² <https://agriculture.vermont.gov/water-quality/regulations/farm-definitions-and-determinations>

AHS requests clarification regarding the Commission's basis for concluding that the landowner's activities of growing, storing and processing hemp does not fit squarely with clauses (a) and (e) above.

AHS requests clarification regarding the Commission's Definition of a Farm

As noted above at page 4 of the TRO, the Commission states: "The Vermont Agency of Agriculture, Food and Markets defines a farm as land that is 'devoted primarily to farming.'" AHS requests clarification regarding the relevance of the definition of a Farm, and the meaning of primarily. That definition of farm appears in Vermont statutes in only two places and only for very limited purposes. *See, e.g.*, 10 V.S.A. § 6001(31) ("Farm," for purposes of subdivisions (3)(D)(vii)(V) and (VI) of this section, means a parcel of land devoted primarily to farming) and 10 V.S.A. § 6001(3)(D)(vii).

Dated: June 29, 2020

Respectfully submitted,

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