

**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
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RESPONSE TO COMMISSION’S QUESTIONS BY 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 Commission issued a temporary restraining order (the “TRO”) in the above-captioned matter. On June 29, 2020, the Commission issued an order requesting a response to certain questions.

AHS provides its responses.

1. *Question:*

Was there any activity in the Apple Hill area in Bennington, Vermont, by your contractor¹, Robert Kobelia, or anyone else after 1:30 p.m. on June 26, 2020, when the Commission announced that it was issuing a temporary restraining order?

Answer:

Yes.

Question:

If so, when did that activity occur and what was the nature of that activity?

Answer:

¹ Although the responses provided herein are from AHS, to be clear, Mr. Kobelia is not a contractor of AHS. As Mr. Kobelia stated in the hearing on June 26, 2020, he was engaged by the landowner.

AHS only has information related to Mr. Kobelia. According to Mr. Kobelia after leaving Albany, New York, on June 26, 2020, around 1pm EDT, he drove back to Bennington, picked up his wife and drove to the end of Willow Road around 4:00pm to secure his bulldozer with padlocks to avoid vandalism to the machine. He then drove to the Berkshires for a Friday night dinner.

On Saturday, June 27, 2020, Mr. Kobelia's work was not to plow the ground, it was to smooth out the area previously cleared. The potholes from the root balls were back bladed with the loose dirt to give the ground a smooth appearance and eliminate any holes in the ground that could be a safety hazard for those that might legally or illegally walk on the property.

2. *Question:*

When, if ever, was the June 26, 2020, temporary restraining order communicated to Mr. Kobelia?

Answer:

Chris Little of Ecos Energy LLC communicated the issuance of the temporary restraining order to Mr. Kobelia at 1:30pm EDT on June 27, 2020, and asked him to cease all activity. According to Mr. Kobelia, shortly thereafter a member of the Bennington police served on Mr. Kobelia a copy of the temporary restraining order. According to Mr. Kobelia he told the officer that he would move his machine out of the work area after he finished his soda which he did five minutes later. Mr. Kobelia then serviced his machine and then smoothed holes in the unpaved access road that could be a safety hazard for those that might legally or illegally walk on the property to the blacktop portion of Willow Road.

Question:

If it was not communicated immediately after 1:30 p.m. on June 26, 2020, what is the explanation for the delay?

Answer:

The temporary restraining order was not issued at 1:30 p.m. on June 26, 2020. At the end of the hearing on June 26, 2020, Chairman Roisman stated that the Commission would be issuing a temporary restraining order. A temporary restraining order is not effective unless and until it complies with V.C.R.P. 65,² which requires, *inter alia*, a statement of the reasons therefor. In any case, the undersigned told Chris Little of Ecos Energy LLC to tell Mr. Kobelia to cease all tree-clearing activity once the written order was issued. Mr. Little had thought he had subscribed to case 20-1611-INV in ePUC so that he would be informed of the issuance of the order. The undersigned was asleep at the time the order was issued in ePUC during the night of June 26, 2020. Apparently, Mr. Little's subscription request did not take effect so he was not made aware of the issuance of the temporary restraining order until after 1pm EDT on June 27, 2020.

Dated: June 30, 2020

Respectfully submitted,

/s/Thomas Melone

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²V.R.C.P. 65(d) clearly states: “(d) Form and Scope of Restraining Order or Injunction. -- Every restraining order and every order granting a preliminary or permanent injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and 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.”