

**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

**INTERVENORS' COMMENTS REGARDING
MOTION TO VACATE PRELIMINARY INJUNCTION HEARING**

NOW COME Apple Hill Homeowners Association (“AHHA”), Libby Harris, and Mount Anthony Country Club (“MACC”) by and through its attorney L. Brooke Dingedine, Esq. of the firm Valsangiacomo, Detora & McQuesten, P.C. and hereby provides the following comments to the Public Utility Commission in response to the Motion to Vacate filed on July 1, 2020 which was signed by “Thomas Melone.”

It is unclear what person or company has filed the Motion to Vacate since it appears to be filed by Allco Renewable Energy Limited (“Allco”) as attorney for Apple Hill Solar, LLC. Apparently, Allco Renewable Energy Limited is now a law firm, not a solar energy development company? Or perhaps the Motion is being filed on behalf of Allco since it is argued that Apple Hill Solar, LLC is not subject to the PUC’s jurisdiction? Only two things is clear: 1) all of the Melone entities are the alter-ego of Thomas Melone; and 2) they are being used in a shell game of hiding the peanut in order to argue that the PUC is without jurisdiction. Therefore, Intervenors request a clarification as to who Thomas Melone is posing as today.

Regardless of which entity or entities filed the Motion to Vacate, it seeks to vacate the Public Utility Commission’s (“PUC’s”) preliminary injunction hearing which was scheduled for July 9, 2020, arguing that the PUC is without jurisdictional authority to issue a preliminary or

permanent injunction because Title 30 of the Vermont Statutes does not authorize it to do so and because the companies listed in the PUC's Order Granting Temporary Restraining Order ("TRO") are not "companies" as defined in Title 30, over which the Commission has jurisdiction. Intervenors submit that the Commission has the authority to grant injunctive relief and that such is extraordinary relief is warranted and necessary in this case.

Title 30 of the Vermont Statutes provides the PUC with "the powers of a court of record" regarding matters over which it has jurisdiction, and that "it may render judgments, make orders and decrees, and enforce the same by any suitable process issuable by courts in this state." 30 V.S.A. § 9. The jurisdiction of the PUC is provided by statute which states in relevant part:

§ 209. Jurisdiction; general scope

(a) General jurisdiction. On due notice, the Commission shall have jurisdiction to hear, determine, render judgment, and make orders and decrees in all matters provided for in the charter or articles of any corporation owning or operating any plant, line, or property subject to supervision under this chapter, and shall have like jurisdiction in all matters respecting:

...

(6) to restrain any company subject to supervision under this chapter from violations of law, unjust discriminations, usurpation, or extortion;

Vt. Stat. Ann. tit. 30, § 209 (West)

Courts of record have the authority to issue temporary restraining orders and preliminary and permanent injunctions pursuant to V.R.C.P. Rule 65; therefore, since the PUC has been granted "the powers of a court of record," pursuant to 30 V.S.A. §9, and because it has been granted equity jurisdiction under section 209, to restrain violations of law by companies under its jurisdiction, there is no doubt that the PUC has authority to enjoin the unlawful activities of the Melone entities.

Moreover, to remove any doubt, the PUC, in promulgating its Rules, explicitly stated that the Vermont Rules of Civil Procedure shall apply to proceedings before the PUC.¹

¹ **2.103 Vermont Rules of Civil Procedure**

The Vermont Rules of Civil Procedure, whether specifically adopted herein by reference or whether made applicable by Rule 2.105, below, shall, subject to Rule 2.104, below, apply in the form in which they exist on June 1, 1982 and as they may thereafter from time to time be amended. References in such rules to any judge or to any trial court shall be deemed to be a reference to the Commission; references to the clerk of the court shall be deemed to be references to the clerk of the Commission; references to trials shall be deemed to be references to hearings; references to complaints shall be deemed to be references to petitions, applications or complaints; and references to actions shall be deemed to be references to proceedings before the Commission. Where less than the whole of any rule of the Vermont Rules of Civil Procedures is specifically adopted by reference, the provisions of the remainder thereof shall not apply except by specific order of the Commission issued pursuant to Rule 2.107.

2.104 Conflicting Authority

In the event of any conflict between the provisions of any other Rule or General Order of the Commission and these rules, the former shall prevail. In the event of any conflict between otherwise applicable provisions of the Vermont Rules of Civil Procedure and any Rule or General Order of the Commission, including any provision of these rules, the latter shall prevail.

2.105 Procedures Not Specifically Governed

Procedures not specifically governed herein shall be governed by the Vermont Rules of Civil Procedure, by any applicable Rule or General Order, or by any applicable statute.

2.106 Construction

These rules shall be liberally construed to secure the just and timely determination of all issues presented to the Commission.

