

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

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

**INTERVENORS' OPPOSITION TO
MOTION TO STAY PROCEEDINGS**

NOW COME Intervenors Apple Hill Homeowners Association (“AHHA”), Mount Anthony Country Club (“MACC”), and Libby Harris, by and through their attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby opposes the Motion for Stay filed by **Otter Creek Solar, LLC**¹ to stay the penalty phase of this proceeding pending the outcome of an appeal filed by Allco on April 2, 2021.

Allco’s request for a stay of the penalty phase merely claims, incorrectly, that the PUC has no jurisdiction over the case to proceed with the penalty phase while Allco appeals the permanent injunction order. There is no reason provided that would justify a stay of the penalty phase, nor are there any facts, law, analysis or argument provided by Allco that would support yet another delay in bringing this willful violation of the law to justice. As the Vermont Department of Public Service correctly noted and the Public Utility Commission observed, the

¹ It is not clear to the Intervenors why the motion was filed by Otter Creek Solar, LLC, another Thomas Melone-owned entity involved in the development of solar projects in Rutland, as previous filings made by the Developer in this case were by Allco Renewable Energy Limited, Chelsea Solar LLC or Apple Hill Solar LLC. The Commission has indicated Allco is the respondent in this investigation. *See* Order of 4/1/21 at fn. 5. In any event, the Intervenors will treat the motion as having been filed by the “Developer” as the related Allco entities are collectively referred to in the 4/1/2021 Order which has been appealed. *Id.* at 5. However, Intervenors note this confusion on the part of the developer itself, illuminates the difficulty in holding the appropriate entities responsible, all of which are solely owned and controlled by Thomas Melone.

developer's activities here "challenge the integrity of the Section 248 permitting process."

Moreover, as the PUC explained:

Further, the clearcutting of 27 acres or more of trees—in an area that contains rare and very rare plant species—is a “substantial” violation.⁵⁵ It also demonstrates “conscious wrongdoing.”⁵⁶ Allco was aware of the fact that it needed approval from the Commission before it could undertake site preparation, and Allco in fact sought approval for the very work it began undertaking here, but the Commission denied that approval on May 7, 2020, when we issued a final order that denied the motion to amend the petition to reflect grazing sheep at the project site.⁵⁷ Allco nevertheless went forward with that work. Further, Allco continued to do site preparation on the morning of June 27, 2021, a day after the Commission issued a TRO explicitly prohibiting that work, because, at best, Allco failed to communicate the TRO to its contractor before that work began.⁵⁸

Order Maintaining Injunction, dated April 1, 2021 at p. 26 (footnotes omitted). As further referenced in Footnote 58 of the PUC's Order: "See Findings 12-16 (explaining that the TRO was issued from the bench at 1:30 PM on June 26, 2021, with a written order following that evening, and yet Allco did not tell its contractor until the afternoon of June 27, 2021)." The importance of these facts and circumstances cannot be overstated and establish not only a substantial violation, but conscious deliberate acts involving a willful disregard of the rule of law.

Considering the totality of the circumstances, it is absolutely necessary that the penalty phase proceed without delay, in order to preserve the integrity of the PUC permitting process. These flagrant violations have been established by irrefutable evidence and now require a timely response that holds the wrongdoer responsible and assesses a level of penalty that adequately punishes this bad actor and sends the message to Thomas Melone and any other potential bad actors, that the PUC will not tolerate violations of the law and utter disregard for a PUC TRO to enjoin those unlawful activities.

While it is understandable that DPS and ANR do not object to the request given the exhaustive effect that Thomas Melone's scorched earth litigation strategy has had on the resources of government; allowing Melone to drag this case out further is against the public interest. Melone needs to be held accountable for his arrogant, belligerent behavior and severely fined for his flouting of lawful orders. If the PUC awaits an appeal to conclude, Thomas Melone may have folded up his several shell corporations by then and any fine that is issued by the PUC will be nothing more than a piece of paper with shell corporation names which have no assets to enforce against.

To illuminate the reality of this concern, Intervenors submit and incorporate herein by reference **Exhibit A – Counterclaim & Third-party Claims of Libby Harris**, which has been filed in Chittenden Superior Court in the matter of *PLH LLC v. Harris et al.*, Docket No. 331-4-19 Cncv. It details several of the corporate entities involved in the Apple Hill contract and projects that are all solely owned and controlled by Thomas Melone. It explains that PLH, LLC is no longer in existence even though Melone has continued for two years to register it as an Indiana LLC with the Vermont Secretary of State. On information and belief, the entity was terminated in Indiana and converted to a Florida LLC with a different name, PLH Vineyard Sky, LLC. However PLH Vineyard Sky, LLC is not registered with the Vermont Secretary of State's office at all. Despite the manipulation of his PLH entities, Melone has failed to substitute parties in any state or federal court case brought in the name of PLH, LLC. In fact, unbeknownst to the federal court, the effect of the recent dismissal of *ALLCO RENEWABLE ENERGY LIMITED, OTTER CREEK SOLAR LLC, CHELSEA SOLAR LLC, APPLE HILL SOLAR LLC and PLH LLC v. JAMES VOLZ, et al.*, Case 5:20-cv-00034-gwc, to the extent that it dismissed claims brought by a defunct entity, PLH, LLC, is uncertain.

The Harris Counterclaims and Third-party Claims also detail the timeline and actions of Melone related to the “Hemp Amendment” as well as the history of the false project access roads which were depicted by the developer:

- In 2013 – a **northern** access road called “Russett Dr.” which is a make-believe extension where there was/is no road was submitted on site plans to the PUC and the Supreme Court in order to procure two separate standard offer contracts, and
- In 2015 - an **eastern** access road called “Apple Hill Road” which is a make-believe extension where there is a private residential shared-driveway ROW, not a public road.
- Lastly, the developer has proposed a **southern** access road on Willow Drive, the same access road as Apple Hill Solar. The project was denied by the PUC and recently upheld by the Vermont Supreme Court.

Thus, the current state of the irrefutable evidence of deliberate conscious wrongdoing, and the history of factual misrepresentations regarding site control and access, demand that this egregious conduct be punished in a way that sends a true message of deterrence so that the cost of getting caught violating the law, is no longer just an miniscule cost of doing business. Moreover, it is only through a timely process, that the rule of law can be preserved and the proper administration of justice delivered for the public interest. Bad actors must be timely punished for this type of illegal conduct in an amount that will punish and effectively deter future bad conduct of this and other developers. Therefore, the penalty phase should continue without delay in order to have a timely and decisive deterrent effect.

As the Melones did not contact Intervenors to discuss scheduling of the events of the penalty phase, the Intervenors propose the following schedule:

05/14/2021 – Deadline for serving written discovery
06/14/2021 – Deadline for Answers to written discovery due
07/16/2021 - Depositions to be completed by
08/06/2021 - Pre-filed testimony submission deadline
08/09/21 (or later) - Evidentiary hearing

