

**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 PROPOSED SCHEDULE

On December 14, 2022, the Vermont Public Utility Commission (the “Commission”) requested that the Vermont Agency of Natural Resources (“ANR”) confer with the other parties and file a proposed schedule for the penalty phase of this proceeding by December 29, 2022. On December 21, 2022, ANR filed a motion requesting an extension of that filing deadline to January 13, 2023. On December 22, 2022, the Commission granted ANR’s motion to extend and requested that ANR file a proposed schedule for the penalty phase of this proceeding by no later than the close of business on Friday, January 13, 2023. ANR and the Vermont Department of Public Service (“DPS”) presented a proposed schedule to Allco Renewable Energy Limited (“Allco”) on January 12, 2023, which was substantially different than the schedule that Allco had originally proposed to ANR on November 3, 2022, in that, among other things, it did not include any dates for discovery or a hearing.

It is Allco’s understanding that ANR has a formula by which it determines penalties in these types of cases. Without knowing that formula or the basis of ANR’s calculation of a proposed penalty, Allco is unable to agree to ANR’s proposed schedule. In addition, to the extent that any component of ANR’s penalty calculation is attributable to a purported impact on rare plants, Allco intends to challenge ANR’s jurisdiction to protect such rare plants in these proceedings. See ¶17 of the Vermont Supreme Court Order, dated December 2, 2022, in case No. 22-AP-048, which order was filed by Annette Smith in these proceedings

as a public comment. If ANR does not have the authority to regulate plants in Vermont outside of the Endangered Species Law, as Allco has been arguing, then, obviously, any component of a penalty in this case which is based on a purported impact to rare plants would be invalid.

In addition, ANR's proposed schedule does not allow for sufficient time to assess any potential impact on the rare plants that ANR has claimed were impacted. ANR's own Section 248 guidelines allow for up to a 10% impact of the local population of rare plants ranked S1. Thus, to the extent that ANR's penalty calculation includes a component based on a purported impact to any S1 species of plant, Allco intends to demonstrate to the Commission that at no time was there any potential that Allco's activities in question would impact more than 10% of the local population.

As an alternative to ANR's proposed schedule, Allco proposes the following:

2/15/23: ANR presents its penalty analysis to Allco.

3/15/23: ANR, DPS and Allco file a stipulation or ANR and DPS file a Penalty Recommendation.

5/15/23: Allco to complete discovery regarding the Penalty Recommendation (including document production/interrogatories/depositions).

6/17/23: Allco to file a Response and/or Testimony with respect to the Penalty Recommendation.

7/17/23: ANR and DPS to file Reply to Allco's Response.

Record to remain open until 9/30/23 for submissions regarding status of the rare plants as of summer 2023 (i.e. the only time in which the applicable plants are identifiable).

Oct 2023: Technical hearing.

11/30/23: Post hearing briefs

1/5/24: Reply briefs

Respectfully submitted on January 13, 2023,

ALLCO RENEWABLE ENERGY LIMITED

By:

A handwritten signature in black ink, appearing to read 'M Melone', is placed over a light gray rectangular background.

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