

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

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Case No. 20-1611-INV

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| 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) |  |
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**VERMONT DEPARTMENT OF PUBLIC SERVICE'S  
RECOMMENDATION OF PENALTY ASSESSMENT**

On June 24, 2020, the Vermont Public Utility Commission (“Commission”) opened this investigation into whether Allco Renewable Energy Limited, Apple Hill Solar LLC, Chelsea Solar LLC, PLC Vineyard Sky LLC, PLH LLC, and their affiliates, subsidiaries, and contractors (together, “Allco”) commenced site preparations at Apple Hill in Bennington, Vermont (“the site”), without a Certificate of Public Good (“CPG”) in violation of 30 V.S.A. § 248(a)(2). The Commission has conducted two evidentiary hearings in this proceeding. After the first hearing, held on June 26, 2020, the Commission issued a temporary restraining order (“TRO”) requiring Allco to cease all clearing at the site. After the second hearing, held on December 4, 2020, the Commission concluded that Allco had violated Section 248(a)(2) and enjoined Allco from further site preparation without a CPG.

As the nature of the violation has already been determined, this phase of the proceeding concerns the appropriate civil penalty for Allco’s conduct pursuant to 30 V.S.A. § 30.<sup>1</sup>

Subsection (b) of Section 30 provides, in relevant part:

The Commission may impose a civil penalty under subsection (a) of this section of not more than \$85,000.00, in addition to any financial benefit to the violator resulting from the violation. In the case of a continuing violation, an additional fine of not more than \$42,500.00 per day may be imposed.

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<sup>1</sup> 30 V.S.A. § 30(a)(1) states:

A person, company, or corporation subject to the supervision of the Commission or the Department of Public Service . . . who violates a provision of chapter 2, 7, 75, or 89 of this title, or a provision of section 231 or 248 of this title, or a rule of the Commission, shall be required to pay a civil penalty as provided in subsection (b) of this section after notice and opportunity for hearing.

When imposing a penalty, the Commission may consider eight factors laid out in Section 30(c):

- (1) the extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers;
- (2) whether the respondent knew or had reason to know the violation existed and whether the violation was intentional;
- (3) the economic benefit, if any, that could have been anticipated from an intentional or knowing violation;
- (4) the length of time that the violation existed;
- (5) the deterrent effect of the penalty;
- (6) the economic resources of the respondent;
- (7) the respondent's record of compliance; and
- (8) any other aggravating or mitigating circumstance.

The Department has analyzed these factors below, based on the record and the findings of the Commission thus far.

1. The extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers.

In addition to the actual and potential harms addressed by the Vermont Agency of Natural Resources ("ANR"),<sup>2</sup> Allco's site clearing activities without a CPG resulted in harm to the regulatory oversight process itself. The Commission has held that failure to comply with regulatory obligations, which exist to protect both utility customers and the public at large, "harms the integrity and credibility of the regulatory process."<sup>3</sup> In this case, Allco's violation undercuts a core principle of the permitting scheme under Section 248: that a Certificate of Public Good, issued after the necessary findings by the Commission, is required prior to site preparation or construction for a generation facility. This factor weighs in favor of assessing a penalty.

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<sup>2</sup> The Department defers to ANR as to harms relevant to the environmental criteria of 30 V.S.A. § 248(b)(5).

<sup>3</sup> See, e.g., *Investigation into potential violations of the Public Utility Commission's March 23, 2021, Order in Case No. 20-2570-PET*, Case No. 21-2501-INV, Order of 10/07/21 at 5.

**2. Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional.**

As noted by the Commission, Allco understood that clearing was necessary to prepare the site for solar, and that it needed to obtain approval for that work through a CPG.<sup>4</sup> As part of its petition for the Apple Hill Solar facility, Allco sought approval for 9.67 acres of clear cutting.<sup>5</sup> In May of 2020, the Commission denied both the CPG for the Apple Hill Solar facility and a request to amend the petition to account for clearing associated with sheep grazing.<sup>6</sup> Allco continued pursuing approval, filing a motion for reconsideration on June 4, 2020.<sup>7</sup> That same month, despite the denials and while the motion for reconsideration was still pending, Allco began site preparation activities.<sup>8</sup> These facts speak to a knowing and intentional violation by an actor familiar with the regulatory process and its obligations.

Allco's actions following the evidentiary hearing on June 26, 2020, further demonstrated its disregard for the process and the Commission's authority. In the face of an investigation into violations related to its site-clearing work, after a hearing to consider a TRO, and after the TRO was issued, clearing activities continued at the site.<sup>9</sup> Considering all of the facts and circumstances, the Department can only conclude that Allco knowingly and intentionally violated Section 248, and maintains that this factor weighs in favor of a substantial penalty.

**3. The economic benefit, if any, that could have been anticipated from an intentional or knowing violation.**

The violation in this case has not resulted in a clear economic benefit. However, at the time Allco initiated the site clearing it could have anticipated significant benefits. Allco intended to clear most of the site and did not self-report the violation.<sup>10</sup> If the violation was not discovered and the work continued, Allco stood to gain by preparing the site for construction in anticipation of a CPG. If a CPG was granted, this would have expedited the construction process and

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<sup>4</sup> See *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, Order of 4/1/21 at 25-26; see also Tr. 6/26/20 at 65-66 (Melone) ("If there are trees on the site, you need to clear the trees to put solar.").

<sup>5</sup> *Petition of Apple Hill Solar LLC*, Docket 8454, Order of 5/7/20 at 5.

<sup>6</sup> See *id.* at 25, 50 (denying the petition for a CPG and the proposed amendment); see also Case No. 20-1611-INV, Order of 4/1/21 at 25-26.

<sup>7</sup> See Docket No. 8454, Order of 7/31/20 at 1.

<sup>8</sup> See Tr. 6/26/20 at 22, 24 (Lowkes); Lowkes affidavit 6/24/20 at ¶ 5; see also Case No. 20-1611-INV, Order of 4/1/21 at Finding 1.

<sup>9</sup> See Case No. 20-1611-INV, Order of 4/1/21 at Findings 12-16.

<sup>10</sup> See Tr. 6/26/20 at 123, 126-127 (Kobelia); see also Case No. 20-1611-INV, Order of 4/1/21 at Finding 2.

therefore the timeline for commissioning the facility. The Department is unable to quantify that potential economic benefit, and in any event no solar facilities have been permitted at the site to date. Therefore, this factor is assigned a neutral weight in the Department's analysis.

**4. The length of time that the violation existed.**

Though the record does not reflect when the site preparations began, the contract for Allco's forester was dated June 8, 2020.<sup>11</sup> Site clearing work was underway by June 16, 2020, and by June 26 approximately three acres had been cleared.<sup>12</sup> Additional clearing at the site continued on June 27, 2020, the day after the Commission issued a TRO requiring that Allco cease site-clearing work.<sup>13</sup> This information suggests that site preparation activities were underway for at least twelve days, perhaps more. The length of time is not fully established or particularly significant in this context, and therefore is a neutral factor in the Department's analysis.

**5. The deterrent effect of the penalty.**

Allco's knowing violation of the prohibition on site preparation and persistent disregard for the Commission's orders challenge the integrity of the Section 248 permitting process and the Commission's regulatory authority. An appropriate penalty should discourage Allco from committing this type of violation in the future, as well as deter others from following suit, by attaching meaningful consequences. The circumstances of Allco's violation and the importance of deterring this type of activity, which undermines the foundational elements of Title 30, weigh strongly in favor of a substantial penalty.

**6. The economic resources of the respondent.**

Allco Renewable Energy Limited is a private corporation with multiple affiliated entities operating in Vermont.<sup>14</sup> The procedural history underlying this investigation shows that Allco has the economic resources to pursue the development of multiple large-scale solar facilities simultaneously, including the Apple Hill Solar and Chelsea Solar/Willow Road facilities, and consequently to sustain the costs associated with developing those projects. This is further illustrated by Allco's payment of \$850,000 to Green Mountain Power for the construction of a

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<sup>11</sup> Tr. 06/26/20 at 127 (Kobelia).

<sup>12</sup> See Case No. 20-1611-INV, Order of 4/1/21 at Findings 1, 11; Tr. 6/26/20 at 121 (Kobelia).

<sup>13</sup> Case No. 20-1611-INV, Order of 4/1/21 at Findings 15–16; see also Tr. 12/4/20 at 39–44 (Kobelia).

<sup>14</sup> See Case No. 20-1611-INV, Order of 4/1/21 at 2.

line extension to Apple Hill that would serve the facilities proposed at the site.<sup>15</sup> Based on the above, the Department finds it reasonable to conclude that Allco has adequate resources to pay a substantial penalty.

**7. The respondent's record of compliance.**

The Department is not aware of prior penalties issued to Allco Renewable Energy Limited or its affiliates or subsidiaries for violations of Title 30 in Vermont.

**8. Any other aggravating or mitigating circumstance.**

A lower penalty may be appropriate when there are mitigating circumstances, such as when the respondent self-reports the violation in a timely manner or initiates corrective steps. There are no mitigating circumstances here, however, as Allco did not report the violation nor engage in any other behavior that could be reasonably found to weigh against the severity of the violation.

To the contrary: beyond its failure to report the violation,<sup>16</sup> Allco has demonstrated conscious disregard for its obligations while actively resisting compliance with the regulatory scheme and the Commission's efforts to enforce it. This uncooperative and unrepentant approach is most clearly seen in Allco's failure to ensure that site-clearing work ceased following the TRO that the Commission issued from the bench in the early afternoon of June 26, 2020.<sup>17</sup> The Department considers this conduct, particularly the violation of the Commission's TRO, to be an aggravating factor weighing in favor of a substantial penalty.

The Department is aware that ANR recommends a penalty assessment of \$39,125. ANR's recommendation speaks to many of the relevant factors under 30 V.S.A. § 30, however, the Department maintains that any penalty must account for impacts to the execution of the laws under Title 30 and the process set forth under Section 248. The factors weighing in favor of a

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<sup>15</sup> *Id.* at Finding 9; Tr. 06/26/20 at 69-70 (Melone).

<sup>16</sup> Significant penalties have been assessed when a violation is not promptly reported. *See, e.g., Investigation pursuant to 30 V.S.A. §§ 30 and 209 into alleged violation of Newbury GLC Solar, LLC's certificate of public good issued in Case # 17-4721-NMP*, Case No. 19-0734-INV, Order of 8/1/19 (assessed \$8,000 penalty for untimely disclosure and encouraging PUC to act on false information); *Investigation into alleged violation by Vermont Gas Systems, Inc., of Public Service Board Rule 5.409*, Docket No. 8328, Order of 7/31/15 (VGS knowingly waited nearly 6 months to disclose a cost estimate increase greater than 20% and was fined \$100,000). Failure to self-report a violation also warrants a significant penalty. *See, e.g., Investigation pursuant to 30 V.S.A. §§ 30 and 209 into potential violations of Coolidge Solar I, LLC's certificate of public good issued in Docket 8685*, Case No. 19-3671-INV, Order of 07/24/20 (certain violations not self-reported, certain violations only reported after investigation began).

<sup>17</sup> *See* Case No. 20-1611-INV, Order of 4/1/21 at Findings 12–16.

substantial penalty include (1) Allco's knowing and intentional violation, (2) the importance of deterring future violations and preserving the integrity of the regulatory process, (3) Allco's economic resources, and (4) Allco's conduct in this proceeding, particularly its violation of the TRO issued on June 26, 2020. Taking into account the neutral or countervailing factors and the amount recommended by ANR, the Department views the facts on record as justifying an additional penalty assessment of \$5,000.00 for regulatory harm. This amount is based on the Department's analysis of 30 V.S.A. § 30(c) and a review of previous penalties, considering the substantial and conscious nature of the violation in this case.<sup>18</sup>

Based on the foregoing, the Department respectfully recommends that the Commission impose civil penalty in the total amount of \$44,125.00.

Dated in Montpelier, Vermont on this 2<sup>nd</sup> day of March 2023.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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<sup>18</sup> For example, in the *Charlotte Solar* case the Hearing Officer assessed a penalty of \$20,000 (half the statutory maximum at the time) after considering the respondent's "substantial disregard for its obligations." *See Investigation pursuant to 30 V.S.A. §§ 30, 209, and 248 regarding the 2.2MW solar plant owned by Charlotte Solar, LLC*, Docket No. 8638, Order of 10/23/2017 at 14. Significant factors in the assessment included: (1) the knowing and intentional nature of the violations, where instead of reporting or mitigating the issue the respondent "proceeded as if it had no responsibility," (2) the importance of deterrence given that the respondent "continued its troubling pattern" of violations even during the investigation, and (3) the fact that the respondent's conduct "prolonged and complicated efforts to bring the Project into compliance," requiring the parties and the Commission to expend considerable resources in the process. *See id.* at 15, 17–18. While the Commission ultimately imposed a \$30,000 penalty based on the terms of a memorandum of understanding, the amount incorporated the \$20,000 recommendation of the Hearing Officer. *See id.* at 27.