

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

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Case No. 20-1611-INV

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 RESPONSE
TO RESPONDENT’S MOTION FOR HEARING**

On March 16, 2023, the Respondent Allco Renewable Energy Limited (“Allco”)¹ filed a motion with the Vermont Public Utility Commission (“Commission”) seeking to reopen the record and hold a hearing prior to a final penalty assessment. While the Department does not oppose providing an opportunity for Allco to be heard on the factors relevant to the penalty amount, there is no need to reopen the record at this stage of the investigation.

For the reasons outlined in the Department’s reply brief, filed concurrently with this motion response, the existing record provides an adequate basis to impose a penalty and ample information for the Commission to use in evaluating the factors under 30 V.S.A. § 30.² As relevant to the Department’s penalty recommendation, Allco appears to suggest that additional evidence is needed regarding (1) harm to the regulatory process and (2) the economic benefit that could have been anticipated from a knowing or intentional violation. It’s true that the economic benefit, if any, has not been established – yet this factor was not an integral part of the Department’s recommendation.³ Nor is it a key consideration for the Commission in this case, where the evaluation of other factors yields far more insight on the nature and severity of the violation.⁴ As to regulatory harm: the Commission has concluded after two evidentiary hearings that Allco commenced site preparations without a Certificate of Public Good in violation of

¹ For purposes of this proceeding, “Allco” refers to Allco Renewable Energy Limited, Chelsea Solar LLC, Apple Hill Solar LLC, PLC Vineyard Sky LLC, and PLH LLC.

² See Department’s Reply Brief on Penalty Recommendation at 2–3, Case No. 20-1611-INV, filed March 30, 2023.

³ See Department’s Recommendation of Penalty Assessment at 3–4, Case No. 20-1611-INV, filed March 2, 2023 (noting that “this factor is assigned a neutral weight”).

⁴ See 30 V.S.A. § 30(c) (stating that the Commission “may consider any” of the factors in determining the penalty amount).

30 V.S.A. § 248(a)(2)(A). This conclusion, along with its evidentiary underpinnings, provides the basis for finding harm to the integrity of the regulatory process.⁵ Therefore, the Commission is not obligated to reopen the record.

If Allco wishes to be heard prior to the imposition of a penalty, the Department does not object to an appropriately limited hearing on the existing record. Section 30 states that a respondent who violates Section 248 shall pay a civil penalty “after notice and opportunity for hearing.”⁶ To the extent this requirement has not already been satisfied, it does not require gathering additional evidence or re-litigating aspects of the violation itself, particularly where a robust record has been developed through two evidentiary hearings.⁷ Rather, it ensures that Allco has the opportunity to present its own evaluation of the relevant factors and rebut the evaluations of others before the penalty is set in stone.

Dated at Montpelier, Vermont this 30th day of March 2023.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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⁵ See Department’s Reply Brief on Penalty Recommendation at 4, Case No. 20-1611-INV (noting relevant principles and precedent on this issue).

⁶ 30 V.S.A. § 30(a)(1).