

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-0249-PET

Petition of Chelsea Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility in Bennington, Vermont	
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Case No. 24-3517-PET

Petition of Apple Hill Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of a 2.0 MW solar electric generation facility located off Willow Road in Bennington, Vermont	
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Order entered: 09/23/2025

**ORDER DENYING INTERLOCUTORY REVIEW OF
ORDER REGARDING *EX PARTE* COMMUNICATION**

I. INTRODUCTION

These two cases concern petitions filed with the Vermont Public Utility Commission (“Commission”). In Case No. 23-0249-PET, Chelsea Solar LLC (“Chelsea”) filed a petition, pursuant to 30 V.S.A. § 248, for a certificate of public good for a 2 MW solar electric generation facility to be located in Bennington, Vermont. In Case No. 24-3517-PET, Apple Hill Solar LLC (“Apple Hill”) filed a petition, pursuant to 30 V.S.A. § 248, for a certificate of public good for a 2 MW solar electric generation facility to be located in Bennington, Vermont.

In this order, we deny the Petitioners’ motion for interlocutory review of the hearing officers’ order regarding *ex parte* communication.

II. PROCEDURAL HISTORY

On March 24, 2025, counsel for Chelsea and Apple Hill (together, the “Petitioners”) sent an email to the Vermont House Legislative Committee on Energy and Digital Infrastructure and the Vermont Senate Legislative Committee on Natural Resources and Energy. Counsel for the Petitioners copied the Chair of the Commission on the email.

On April 21, 2025, the Clerk of the Commission issued a memorandum seeking comments on the March 24, 2025, email communication.

On May 9, 2025, the Petitioners filed comments in response to the Clerk's memo. The Vermont Department of Public Service also filed comments.

On June 17, 2025, the hearing officers assigned to the Chelsea and Apple Hill cases jointly issued an order regarding *ex parte* communication. The order concluded that the email communication from the Petitioners' counsel constituted an *ex parte* communication in violation of Commission Rule 2.201(E)(4). The hearing officers declined to impose sanctions against counsel regarding the communication.

On July 15, 2025, the Petitioners filed a motion for interlocutory review of the hearing officers' order by the full Commission.¹

The Commission has not received any response to the Petitioners' motion.

III. DISCUSSION

As a preliminary matter, we address a procedural concern with the motion. In their motion, the Petitioners "request that the full Commission reconsider" the hearing officers' June 17, 2025, order regarding the *ex parte* communication. A hearing officer has been assigned to each case and is presiding over the respective case through the evidentiary hearing.² Thus, a motion for reconsideration would necessarily ask the hearing officers to reconsider the order they issued.³ Instead, the motion is more appropriately considered a motion for interlocutory review by the Commission of the hearing officers' order because the Petitioners request review by the full Commission.

A. Request for Interlocutory Review

The Commission does not have specific rules governing interlocutory appeal when a case is delegated to a hearing officer. Thus, we look to the law applicable to interlocutory appeals of

¹ The motion is styled as a motion for reconsideration, but as we discuss below, the motion is more appropriately viewed as motion for interlocutory review, and we do so here.

² 30 V.S.A. § 8(a) ("[A]ny officer or employee of the Commission duly appointed by the Chair of the Commission may inquire into and examine any matter within the jurisdiction of the Commission.").

³ Cf. *Trayah v. Sweetser*, Case No. 24-AP-196, 2025 WL 1913571 at *2 (Vt. July 11, 2025) ("A motion for a new hearing must be presented to the trial court, not [the Vermont Supreme Court]."); *Rock v. Rock*, 2023 VT 42, ¶ 48, 218 Vt. 292, 308 A.3d 492 (Rule 59 motions are addressed to the trial court).

a court or tribunal's determinations that come before the Vermont Supreme Court.⁴ The "decision to refuse permission for an interlocutory appeal is one committed to the discretion of the trial court."⁵

Interlocutory appeals are exceptional departures from the "normal restriction of appellate jurisdiction to the review of final judgements," and piecemeal appellate review has been recognized to cause "unnecessary delay and expense, and wastes scarce judicial resources."⁶ The Commission is disadvantaged when undertaking interlocutory review because it is forced to "decide legal questions in a vacuum, without benefit of factual findings," and without sufficient narrowing of the issues in the case afforded by a hearing officer's proposal for decision.⁷ The bar to obtaining interlocutory review by the Commission of a hearing officer's procedural rulings is therefore a high one.

To seek interlocutory review under V.R.A.P. 5(b), a party must file a motion "within 14 days after the entry of the order or ruling appealed from."⁸ Under V.R.A.P. 5(b)(1), a court "must permit an appeal from an interlocutory order or ruling if the court finds that: (A) the order or ruling involves a controlling question of law about which there exists substantial ground for

⁴ See *Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the alleged failure of Vermont Gas Systems, Inc. to comply with the certificate of public good in Docket 7970*, Case No. 18-0395-PET, Order of 4/30/21 (denying motion seeking interlocutory review of a liability order issued by the hearing officer for failure to meet legal standards for interlocutory review); *Investigation into New England Telephone and Telegraph Company's tariff filing re: Open Network Architecture*, Docket No. 5713, Order of 6/4/99 (denying request for interlocutory review of the hearing officer's procedural order scheduling further proceedings); *Petition of Portland Street Solar LLC*, Case No. 19-2484-NMP, Order of 8/19/20 (looking to Vermont Rules of Appellate Procedure 5(b) and 5.1(a) when determining whether to conduct interlocutory review and denying request for interlocutory review of the hearing officer's order denying a motion for summary judgment).

⁵ *State v. McCann*, 149 Vt. 147, 151, 541 A.2d 75, 77 (1987).

⁶ *In re Pyramid Co. of Burlington*, 141 Vt. 294, 300, 449 A.2d 915, 918 (1982).

⁷ *Id.*

⁸ V.R.A.P. 5(b)(5)(A).

difference of opinion; and (B) an immediate appeal may materially advance the termination of the litigation.”⁹ Failure to satisfy any of the criteria precludes interlocutory appellate review.¹⁰

V.R.A.P. 5.1(a) further instructs that interlocutory review may be permitted if the order appealed qualifies as a “collateral final order.” A collateral final order: “(A) conclusively determines a disputed question; (B) resolves an important issue completely separate from the merits of the action; and (C) will be effectively unreviewable on appeal from a final judgement.”¹¹

The Petitioners’ motion is untimely. By analogy, V.R.A.P. 5(b)(5) requires that a request for interlocutory appeal must be filed within 14 days of the order from which an appeal is sought. We issued our order on June 17, 2025. The Petitioners filed their motion seeking Commission review of this decision on July 15, 2025, 28 days after the order issued.

Even assuming the request was filed in time, we would not otherwise grant interlocutory review. The Petitioners have not cited the relevant standards for granting interlocutory review, much less plead how they meet those standards. The motion does not explain how the order at issue involves a controlling question of law, how Commission review of the order would materially advance the termination of this case, or how the order qualifies as a collateral final order. We therefore deny the Petitioners’ request for interlocutory review by the Commission because the request is untimely and the Petitioners have not plead any basis for us to grant the motion.

⁹ See *In re Pyramid Co. of Burlington*, 141 Vt. at 301-02, 449 A.2d at 918 (“The rule’s criteria do not draw bright lines: the definitions of “controlling questions of law,” ‘substantial grounds for difference of opinion,’ and ‘material advancement of litigation’s termination’ are not self-evident. This vagueness is deliberate as it furthers the goals of the interlocutory appeal mechanism: ‘The statutory purpose to inject an element of flexibility into the technical rules of appellate jurisdiction established for final judgment appeals . . . and for [other] interlocutory appeals . . . , counsels that so long as the [trial] court has made an order, the remaining elements be treated as guiding criteria rather than jurisdictional requisites. The three factors should be viewed together as the statutory language equivalent of a direction to consider the probable gains and losses of immediate appeal.’” (internal citations omitted)).

¹⁰ *Id.*, 141 Vt. at 302, 449 A.2d at 919. The test is conjunctive based on the use of “and” between the three factors. Failure on one factor is, therefore, dispositive.

¹¹ V.R.A.P. 5.1(a)(1).

B. Request for Reconsideration

While evaluating the motion as a request for interlocutory review is correct given the relief requested by the Petitioners, we would otherwise deny the motion even when reviewed under the standard for a motion for reconsideration.

The Commission reviews motions to reconsider pursuant to Commission Rule 2.221, which incorporates the language of Vermont Rule of Civil Procedure 59 without modification. Reconsideration under Commission Rule 2.221 is appropriate only to avoid an unjust result due to “mistake or inadvertence of the [Commission], and not the fault or neglect of a party.”¹² The disposition of a reconsideration motion rests with the discretion of the Commission.¹³

Granting reconsideration is an extraordinary remedy to be used with great caution.¹⁴ Commission Rule 2.221 does not permit parties to relitigate issues or correct previous tactical decisions.¹⁵ It is not a vehicle to introduce new evidence or advance arguments that could have been made previously.¹⁶ The Commission also retains “discretion to deny consideration of discrete issues not raised prior to entry of judgment.”¹⁷

The Petitioners’ motion provides no evidence of mistake or inadvertence by the hearing officers in the order regarding *ex parte* communications. The Petitioners instead repeat three arguments that they made in their comments filed on May 9, 2025, related to the applicability of Commission Rules 2.201(E)(1) and (E)(4) to the communication in question, Chair McNamara’s ability to participate in deciding these cases, and an alleged violation of the Petitioners’ First Amendment rights. Commission Rule 2.221 does not allow the Petitioners to relitigate those issues on a motion for reconsideration.

¹² *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588, 674 A.2d 782 (1996) (citing *In re Kostenblatt*, 161 Vt. 292, 302, 620 A.2d 39, 45 (1994)).

¹³ *Alden v. Alden*, 2010 VT 3, ¶ 7, 187 Vt. 591, 992 A.2d 298.

¹⁴ *Petition of Vermont Gas Systems, Inc.*, Docket No. 8643, Order of 11/3/16 at 2.

¹⁵ *Id.*

¹⁶ *See, e.g., In re B.K.*, 2017 VT 105, ¶ 13, 206 Vt. 110, 179 A.3d 758 (“While the trial court has broad power under Rule 59(e) to reconsider issues previously presented, the rule does not contemplate reopening the evidence or creating a new record.”).

¹⁷ *Everbank v. Marini*, 2015 VT 131, ¶ 34, 200 Vt. 490, 134 A.3d 189; *see also* 11C. Wright, Miller & Kane, Federal Practice and procedure § 2810.1 (3d ed.) (2022 Update) (“The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.”).

The Petitioners also raise a new argument that a jury trial is required in instances such as this where “civil penalties and/or other substantial economic penalties can be imposed against a person.”¹⁸ Again, this argument cannot be taken up on a motion for reconsideration because it could have been raised previously by the Petitioners. Therefore, pursuant to Commission Rule 2.221(B)(2), the Petitioners’ motion for reconsideration is denied.

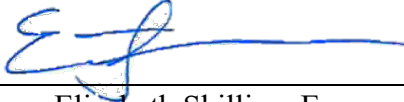
IV. CONCLUSION

The Petitioners motion is deficient when reviewed either as a request for interlocutory review or as a motion for reconsideration. The motion is denied.

SO ORDERED.

¹⁸ Petitioners’ Motion for Reconsideration of Order Regarding *Ex Parte* Communication (7/15/25) at 5.

Dated at Montpelier, Vermont, this 23rd day of September, 2025.



Elizabeth Shilling, Esq.
Hearing Officer



Aaron Kisicki, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: September 23, 2025

Attest: 
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 23-0249-PET - SERVICE LIST

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*Notice of appearance to be filed.