

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Chelsea Solar LLC, pursuant]	
to 30 V.S.A. § 248, for a certificate of]	
public good authorizing the installation]	
and operation of the “Chelsea Solar]	Docket No. 17-5024-PET
Project,” a 2.0 MW solar electric]	
generation facility located off Willow]	
Road in Bennington, Vermont]	

**TOWN OF BENNINGTON’S MOTION FOR LEAVE TO FILE SUR-
REPLY IN RESPONSE TO PETITIONER’S REPLY BRIEF ON
SCHEDULE AND SCOPE**

The Town of Bennington (“Town”) submits this motion for leave to file a sur-reply to the Reply Brief submitted by Petitioner on April 6, 2018, concerning the Petitioner’s Brief on Schedule and Scope.

LEGAL ARGUMENT

“When a party has raised new arguments or presented new evidence in a reply to an opposition, the court may permit the other party to counter the new arguments or evidence.” *Oregon Natural Desert Ass’n v. Cain*, 17 F. Supp.3d 1037, 1048 (D. Or. 2014) (internal quotation marks and citations omitted); see *Macri v. Cooke’s Letters, Inc.*, 446-9-12 Wmcv, 2014 WL 3798138, *1, n. 1 (Vt. Super. Ct. Jan. 10, 2014) (Wesley, J.) (court exercising discretion to consider surreply “to allow a party to respond to new issues raised in the memorandum in opposition”) (citing *New England Youth Theatre, Inc. v. Envt’l*

Compliance Servs., 128-4-12 Wmcv, 2013 WL 1866895 (Vt. Super. Ct. Feb. 26, 2013) (Carroll, J.)).

Petitioner, having had the benefit of review of the Town's legal arguments concerning the applicability of the Town Plan in effect at the time of Petitioner's new petition, now takes a completely different tack in its Reply, requesting that two new rounds of discovery on the Town be added to the schedule concerning the underlying process for enacting the Town's Mass and Scale provision.

Given that the Petitioner has now greatly expanded the scope of the original issue raised, by making a new argument to which the Town strenuously objects, the Town seeks the right to file a sur-reply addressing the new arguments.

Dated at Arlington, Vermont this 7th day of April, 2018.

/s/Merrill E. Bent, Esq.

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