

WOOLMINGTON, CAMPBELL, BENT & STASNY, P.C
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April 9, 2018

Mrs. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street
Drawer 20
Montpelier, VT 05620

Re: Chelsea Solar Petition for CPG
PUC Case # 17-5024-PET

Dear Ms. Whitney:

The Town of Bennington submits its opposition to Petitioner's Motion to Amend the Schedule, dated April 8, 2018.

As always, please notify us of any questions and/or concerns.

Sincerely,

/s/Merrill E. Bent

ROBERT E. WOOLMINGTON EDGAR T. CAMPBELL MERRILL E. BENT JOHN D. STASNY

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 OPPOSITION TO CHELSEA’S MOTION TO
AMEND SCHEDULE AND ALTERNATIVE PROPOSED SCHEDULE**

The Town of Bennington (“Town”) submits this opposition to Chelsea’s Motion to Amend Schedule and also withdraws its motion for leave to file sur-reply to Chelsea’s Reply Brief, the issues being adequately addressed in this opposition.

LEGAL ARGUMENT

Chelsea asserts that “the Town has raised the defense of the applicability of the Town Plan in effect in 2017,” entitling Chelsea to discovery on this Town Plan. This is incorrect for the following reasons. (Chelsea Motion to Amend Schedule, at 1).

The applicability of the Town Plan is not a “defense” raised by the Town. It’s a threshold legal issue, which was *raised by Chelsea*, in seeking to have a prior version of the Town Plan applied to its proposed Project, rather than the version in place at the time of its November 29, 2017 petition under § 248.

As requested by the Hearing Officer, the Town briefed the issues Chelsea raised. Rather than simply address the Town’s legal arguments so the matter can be decided, Chelsea--presumably displeased that the law does not favor its argument regarding vested rights—now requests discovery on the Town. Given that the discovery requested has no bearing on the legal inquiry applicable in determining which version of the Town Plan is at issue, the request appears characteristic of Chelsea’s protracted campaign (along with its various affiliates) to litigate the Town into submission on issues of concern to the Town.¹

As spelled out in greater detail in the Town’s March 30, 2018 Response to Petitioner’s Brief on Schedule and Scope, the only issue relevant to resolving the question of which version of the Town Plan applies are the circumstances of the disposition of Chelsea’s previous petition. (*See* Town’s Response to Brief on Schedule and Scope, at 5–10). This is the law according to the very case law that Chelsea cited in its Brief on Schedule and Scope. *See In re Jolley*, 2006 VT 132, ¶ 16 (“[D]enial of a[n] . . . application requires that the applicant file a new application that substantially revises its proposal to ‘address[] all concerns that prevented approval of the prior application.’ *The newly filed application is then subject to the bylaws in effect at the time of its filing.*” (emphasis added)). Because the uncontested records establishes that Chelsea litigated the prior petition to its conclusion (and in fact, well beyond its conclusion), that the PUC’s determination became final and binding upon dismissal of Chelsea’s appeal, and

¹ This campaign has now resulted in litigation in *three different courts* outside of this proceeding (the Chittenden County Civil Division, the United States District Court for the District of Vermont, and the Environmental Division of the Vermont Superior Court).

that Chelsea's request for remand was denied, further inquiry is unnecessary to reach a legal conclusion as to the issue of vested rights. Accordingly, Chelsea's request for discovery should be precluded as irrelevant and far exceeding the needs of the case.

In the event discovery is nonetheless permitted with respect to the Town Plan then, in the alternative, the Town submits that a determination on this threshold issue must be had before the parties can engage in the discovery process with respect to the proposed Project. The parties cannot prepare discovery on Petitioner without first knowing which version of the Town Plan applies. Thus, should Chelsea's request for discovery on the threshold Town Plan issue be granted, the Town requests that it be limited to one round, and that the schedule be amended per the attached Exhibit A to allow for a resolution of the threshold legal issue raised by Chelsea before the parties are required to formulate their requests for discovery.

CONCLUSION

Chelsea's motion to amend the schedule should be denied, and the Town Plan issue should be decided on the briefs already submitted by the various parties. In the alternative, the schedule should be amended to allow the discovery and briefing and resolution of the threshold issue to occur before the parties are required to engage in discovery on the Project as a whole.

The Town withdraws its motion for leave to file a sur reply to Chelsea's Reply Brief on Schedule and Scope.

Dated at Manchester, Vermont this 9th day of April, 2018.

/s/Merrill E. Bent, Esq.

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EXHIBIT A

Date	Event
April 24, 2018 (or another date of mutual convenience to the parties)	Site Visit, Information Session, and Public Hearing
April 27, 2018	Motions to intervene due
May 4, 2018	Responses to motion to intervene due
May 4, 2018	Deadline for Discovery on the Town by the Petitioner concerning threshold issue only
May 18, 2018	Deadline for Town to respond to discovery on threshold issue
June 1, 2018	Deadline for Petitioner to file motion regarding which version of the Town Plan applies
June 22, 2018	Deadline for parties to file response to Petitioner's Motion regarding which version of the Town Plan applies
July 6, 2018	Deadline for Round I discovery on Petitioner by intervenor(s) (assuming that threshold issue of applicable Town Plan has been decided)
July 20, 2018	Deadline for Petitioner to respond to Round I discovery by intervenors.
August 3, 2018	Deadline for Round II discovery on Petitioner by all parties
August 17, 2018	Deadline for Petitioner to respond to Round II discovery from other parties

If matter is not contested:

August 31, 2018	Petitioner files stipulations, if any
September 7, 2018	Evidentiary Hearing
September 21, 2018	Petitioner files proposed findings of fact and order

If matter is contested:

August 31, 2018	Non-petitioner parties file direct testimony
September 7, 2018	Deadline for discovery by Petitioner on non-petitioner parties.
September 28, 2018	Deadline for non-Petitioner parties to respond to discovery
October 5, 2018	Petitioner files rebuttal testimony
October 19, 2018	Deadline for motions concerning issue preclusion/preclusive effect
October 19, 2018	Non-petitioner parties file discovery on Petitioner's rebuttal
October 26, 2018	Deadline for Petitioner to respond to discovery
November 9, 2018	Non-Petitioner parties file sur-rebuttal
November 16, 2018	Deadline for discovery by Petitioner on non-petitioner parties sur-rebuttal
November 23, 2018	Evidentiary Hearing
December 7, 2018	Parties file post-hearing briefs with proposed findings of fact and order
December 21, 2018	Parties file post-hearing reply briefs