

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 17-5024-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 the “Chelsea Solar Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont	
---	--

Order entered: 06/05/2018

ORDER RE: HARRIS/AHHA OBJECTION TO ADMISSIBILITY

I. INTRODUCTION AND BACKGROUND

On April 17, 2018, Libby Harris and the Apple Hill Homeowners Association (the “AHHA”) filed with the Vermont Public Utility Commission (“Commission”) an objection (the “Harris/AHHA Objection”) to the admissibility of certain portions of the prefiled testimony of Brad Wilson filed on behalf of Chelsea Solar LLC (“Chelsea”) on February 15, 2018. The Harris/AHHA Objection was framed as a motion to strike and will be treated as an objection to admissibility of prefiled testimony.¹

On April 25, 2018, Chelsea filed its response to the Harris/AHHA Objection.

No other parties filed any responses.

In this Order, I overrule the objection because it is both untimely and unsubstantiated. My ruling here does not in any manner limit the proper use of rebuttal testimony or cross-examination by Ms. Harris and the AHHA to impeach Mr. Wilson by challenging the accuracy of the testimony at issue.

II. LEGAL STANDARD

The admissibility of prefiled testimony is guided by Commission Rule 2.216(C), which states:

¹ See, e.g., *Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Vermont Electric Power Company, Inc., for a certificate of public good*, Docket 7628, Order of 1/20/11 (finding that a motion to strike is actually an objection to the admissibility of prefiled testimony).

Procedure with respect to prefiled testimony and exhibits. Prefiled testimony, if admitted into evidence, shall be included in the transcript. Objections to the admissibility of prefiled testimony or exhibits shall be filed in writing not more than thirty days after such evidence has been prefiled or five days before the date on which such evidence is to be offered, whichever is earlier.

In ruling on an objection to the admissibility of testimony, the Commission does not decide the persuasive weight to be accorded to that testimony; rather, the Commission decides the more narrow question of whether that testimony may be admitted into the evidentiary record pursuant to the Vermont Rules of Evidence and 3 V.S.A. § 810(1), which allows evidence not admissible under the Rules of Evidence to be admitted “if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs” and is not “reasonably susceptible of proof” under the Rules of Evidence.

III. DISCUSSION

The specific testimony objected to by Ms. Harris and the AHHA relates to Chelsea’s development of an alternative access for the Chelsea Project. Mr. Wilson states that the alternative access was developed in response to a statement made by Ms. Harris in case #17-4695-PET, in which the operational deadline was extended in Chelsea’s standard-offer contract. The basis for the objection was Ms. Harris’s concern that her statement² was being mischaracterized by Chelsea as an objection rather than a legal question.³

Chelsea argues that the Harris/AHHA Objection is untimely and “entirely inappropriate” since Ms. Harris may provide testimony to rebut Mr. Wilson’s statement.

I agree with Chelsea and overrule the objection.

The Harris/AHHA Objection was filed more than thirty days after the second supplemental prefiled testimony of Brad Wilson was filed by Chelsea on February 15, 2018. The Harris/AHHA Objection is therefore untimely per Commission Rule 2.216(C).

² In case #17-4695-PET, Ms. Harris filed a comment stating that Willow Road would serve as a shared, common access route for both the Chelsea and Apple Hill standard-offer solar projects, which Ms. Harris argued did not comply with the standard-offer program as determined by the Vermont Supreme Court in *In re Programmatic Changes to the Standard-Offer Program and Investigation into the Establishment of Standard-Offer Prices*, 196 Vt. 175 (2014)

³ Harris/AHHA Objection at 2.

The Harris/AHHA Objection also does not address whether Mr. Wilson's testimony is inconsistent with the standards set by the Rules of Evidence or 3 V.S.A. § 810(1). Rather, the motion seeks to reduce the weight to be accorded that testimony. The proper avenues for this are cross-examination, rebuttal testimony, or persuasive argument.

SO ORDERED.

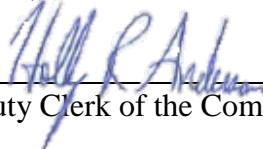
Dated at Montpelier, Vermont, this 5th day of June, 2018 .



Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: June 5, 2018

Attest: 
Deputy 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. 17-5024-PET - SERVICE LIST

Parties:

*Anson Tebbetts, Secretary
Vermont Agency of Agriculture, Food and
Markets
AGR.Notice@vermont.gov
(for Vermont Agency of Agriculture, Food and
Markets)

Merrill E Bent
Woolmington, Campbell, Bernal & Bent, P.C.
PO Box 2748
Manchester Center, VT 05255
merrill@greenmtlaw.com
(for Town of Bennington)

Lora Block
AppleHill Homeowners Association
34 McIntosh La
Bennington, VT 05201
lblock@sover.net
(for Apple Hill Homeowners Assoc)

^Roberta J. Caslin, *pro se*
685 Willow Road
Bennington, VT 05201
toodamncold@gmail.com

Jake Clark, Esq.
Vermont Department of Public Service
Vermont Public Service Department
112 State Street
Montpelier, VT 05620-2601
jake.clark@vermont.gov
(for Vermont Department of Public Service)

Donald J. Einhorn, Esq.
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
donald.einhorn@vermont.gov
(for Vermont Agency of Natural Resources)

Libby Harris, *pro se*
531 APPLE HILL ROAD
Bennington, VT 05201
libbyharris@comcast.net

Kimberly K. Hayden, Esq.
(for Chelsea Solar LLC)

Paul Frank + Collins PC
One Church Street 05402
P.O. Box 1307
Burlington, VT 05401
khayden@pfclaw.com

^Maru Leon
Mt. Anthony Country Club
180 Country Club Rd
Bennington, VT 05201
maru@mtanthonycc.com

(for Mt. Anthony Country Club)

^Caroline McEver, *pro se*
132 Monument Ave
Bennington, VT 05201
caroline@mceverdesign.com

Michael Melone, Esq.
Allco Renewable Energy Limited
1745 Broadway
17th floor
New York, NY 10019
mjmelone@allcous.com

(for Chelsea Solar LLC)

Thomas Melone, Esq.
Allco Renewable Energy Limited
1745 Broadway
17th floor
New York, NJ 10019
thomas.melone@gmail.com

(for Chelsea Solar LLC)

James Porter, Esq.
Vermont Department of Public Service
Vermont Public Service Department
112 State St
Montpelier, VT 05620
james.porter@vermont.gov

(for Vermont Department of Public Service)

Robert E. Woolmington, Esq.
Woolmington, Campbell, Bernal & Bent, P.C.
P.O. Box 2748
4900 Main Street
Manchester Center, VT 05255
rob@greenmtlaw.com

(for Town of Bennington)