

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 SUPPLEMENT TO MOTION FOR PROTECTIVE ORDER

On June 27, 2018, the Town of Bennington (“Town”) filed a motion for a protective order pursuant to V.R.C.P. 26(c) to preclude Chelsea Solar LLC from taking the deposition of every individual member of the Town of Bennington Selectboard, and requiring Chelsea Solar to conform to V.R.C.P. 30(b)(6) in seeking testimony on behalf of a municipal entity as to the matters on which the Town has offered evidence. Chelsea thereafter filed nine notices of deposition for Town employees/volunteers. In light of these notices, the Town supplements its Motion to request relief *in the alternative*—that if the depositions are permitted to proceed, Chelsea Solar should be required to pay the Town’s expenses relating thereto, including its attorneys’ fees.

SUPPLEMENT TO LEGAL MEMORANDUM

Two days after the Town filed its Motion for a Protective Order, Chelsea Solar served notices of deposition on two full-time Town of Bennington employees (Stu Hurd and Dan Monks) and on all seven Selectboard members (Jeanne Connor, Thomas

Jacobs, Donald Campbell, Jeannie Jenkins, Jim Carroll, Carson Thurber, and Chad Gordon). No 30(b)(6) notices have been filed, meaning that Chelsea does not seek *any* institutional depositions from the Town.

As relevant here, Rule 26(c) of the Vermont Rules of Civil Procedure provides that:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: . . . (2) that the discovery may be had only on specified terms and conditions, *including a designation of the time or place or the allocation of expenses. . . .*

V.R.C.P. 26(c) (emphasis added). The provisions of V.R.C.P. 26 apply in the context of this proceeding pursuant to PUC Rule 2.214(A).

The notices of deposition span three entire days of deposition: From 9:00 a.m. until 5:00 p.m. on August 29, 2018, from 10:00 a.m. until 5:00 p.m. on August 30, 2018, and from 10:00 a.m. until 5:00 a.m. on August 31, 2018. Each of the witnesses would also need to be prepared in advance of the deposition, and Town legal counsel will also need to prepare for the depositions, both of which will take additional time. This would cost the Town thousands of dollars in attorneys' fees. The Town will be charged hundreds of dollars for each deposition transcript, as well.

The Town therefore renews its request that these depositions be prohibited, and that Chelsea be limited to taking an institutional deposition (or depositions, as the case

may be) pursuant to 30(b)(6), and written discovery pursuant to V.R.C.P. 33, 34, and 36.

However, *in the alternative*, if the depositions are permitted to go forward, the Town requests that Chelsea Solar be ordered to pay: (1) all of the Town's attorneys' fees for preparing for and attending the depositions; (2) the cost of copies of all deposition transcripts; and (3) any other costs directly attributable to the depositions of non-institutional municipal witnesses.

At Manchester, Vermont this 29th day of June, 2018.

/s/Merrill E. Bent, Esq.
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