

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

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

**PETITIONER’S OPPOSITION TO THE INTERVENORS
MOTION TO RE-OPEN AND MOTION TO STAY**

Chelsea Solar LLC (the “Petitioner” or “Chelsea”) files this opposition to the motion to re-open and motion to stay (the “Motion”) filed by intervenors the Apple Hill Homeowners Association and Maru Leon (together, the “Intervenors”) on October 19, 2018.

The motion should be denied for several reasons. *First*, the alleged factual basis for the motion has nothing to do with the project in this case. Any complaints by persons with the requisite standing would need to be filed with the Public Utility Commission (the “Commission”) in the context of Sudbury Solar and not here. *Second*, the Intervenors have no standing to file any complaints regarding Sudbury Solar. They were not intervenors in the Sudbury Solar proceeding in docket 8225, nor do they have any connection with Sudbury. *Third*, the Intervenors motion is a transparent attempt to further delay this case for no justifiable cause. *Fourth*, the Intervenors offer no reason why these materials were only “recently discovered” and could not have been available to them to be presented for admission into evidence at the time of the evidentiary hearings.¹ Indeed, the Intervenors and their cohorts have a fixation with the Sudbury Solar project, citing it not only in this docket, but in others, such as Apple Hill solar and even the standard-offer

¹ See *Cent. Vt. Pub. Serv. Corp.*, Docket Nos. 6946/6988, Order of 5/25/05 at 3 (quoting *Brown v. International Harvester Corp.*, 142 Vt. 140, 142-43 (1982) (new facts should not be presented if "with the exercise of due diligence by counsel, [those facts could] have been placed before the court")) and V.R.C.P 60(b)(2) (reopening may be appropriate for "newly discovered evidence which by due diligence could not have been discovered in time").

review in case 17-5257-INV². *Fifth*, the content of the materials is not so relevant as to require yet another evidentiary hearing in these already extended proceedings so that the Intervenors might attempt to have them admitted into evidence over Chelsea's objections. *Sixth*, any potential relevancy these materials may have (if they are admissible) is outweighed by the unfair prejudice that would be suffered by Chelsea due to the delay required to litigate their relevance and admissibility in another hearing.

As to the substance of the assertions, the attached email (**Exhibit A**) was been sent to Cindy Hill, Esq., who the Intervenors claim is representing the Town of Sudbury, as soon as we became aware of any concern with the landscaping. As we explain, all required landscaping was installed as required and we have the documentation to support that. The aerial photo of the project in the Sudbury Town Plan shows the installation of the landscaping in accordance with the approved plan. The invoice documenting the installation is attached as **Exhibit B**.

As further explained, we have recently become aware that at least one of the neighbors in the area is engaging in unauthorized mowing of some of the property for hay. Separately, Sudbury Solar has been using another Sudbury resident for maintenance on an as needed basis. The properties to the south are also mowed apparently for hay. We did not think there was any need to take any action at this time so long as no one in Sudbury complained (since the neighbors appear to be the ones benefitting and apparently engaging in unauthorized mowing), and, in any case, it would be too late in the season to re-plant anything that was cut or removed either accidentally or intentionally on an unauthorized basis. We would want to see what if anything might grow back.

The landscaping plan for the project was driven mainly by the Town's letter so as to result

² See VT PUC Docket No. 8454, Exhibit Harris-AHHA-JS-2, Page 25 and see also VT PUC Docket No. 17-5257-INV, "Vermonters for a Clean Environment's comments in response to the Public Utility Commission's August 15, 2018 Memorandum," Page 2.

in consultation with certain neighbors, mainly the neighbor to the south. *See*, CPG Conditions 37-38 (“Sudbury Solar shall propose some plantings along the southern edge of the Project site to help soften views of the Project both from the residence south of the Project site and for travelers heading north on Route 30.”) Despite the fixation with the Sudbury Solar project by the Intervenors and their cohorts, we have received no complaints from the Town or neighbors since installation.

We have no desire to drag local residents into the controversy. If the Town or neighbors have some issue with the current condition of the project, we are happy to discuss the issues with them, and address those issues. At this time, absent further direction from the Town or the Commission, Sudbury Solar intends to contact the neighbors and the Town to inform them of the current situation and to discuss a preferred course of action.

It is worth remembering the statement at the Sudbury public hearing by Sudbury resident Jeannie Albert (starting at 39:46 of the video) states:

I want to support solar projects. I happen to think that when I see them that they make me feel good I want it to be on record that when I drive by and see a large blanket of solar panels, I’m thinking nobody died to produce that energy. And that’s really important to me. So what do we get out of it? We get energy that’s clean, we get energy that no one has to like go overseas and die so that we could have it.³

And that statement was made in 2013. Now in 2018 the climate crisis is much more urgent.

Personally, I have driven past the Sudbury project many times on the way to and from Middlebury College. The view is fleeting and if you were not looking for the project, you would pass it before you knew it was there because it is set so far down from the road elevation. In fact, sometimes as I was looking for the project I would drive past it before I was able to turn my head

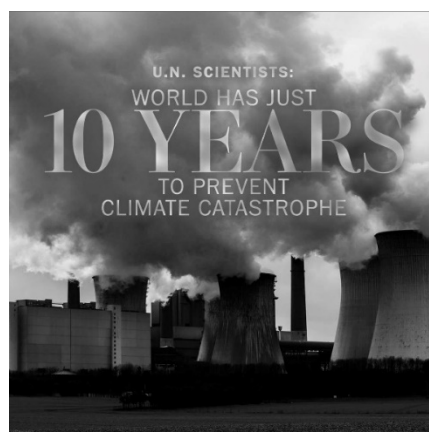
³ <https://youtu.be/nJQx2eHlhos?t=2386>. Sudbury’s Town Plan now proudly contains an aerial photo of the Sudbury project. The Town of Sudbury also has been collecting almost twice the annual tax revenue from the project than they had originally requested. Tax revenue was *the* major concern at that public hearing.

to see it.

We have also experienced unauthorized mowing by the Intervenor and their cohorts at the “orchard parcel,” adjacent to the Chelsea site. The PUC commissioners saw firsthand at a recent site visit some of the debris the opponents leave on the orchard parcel. Those actions continue despite multiple requests asking them to cease. Those actions are despite lawfully posted no trespassing signs, which the opponents removed. We have not taken action against that unlawful conduct either.

As to the motion to stay, as shown above, there is no basis on which to issue a stay, nor have the Intervenor made even the slightest attempt to address the criteria that must be shown for any type of injunctive relief. Of course, even if the Intervenor motion had any merit (which it does not), one of the hornbook criteria for a stay is that it must be consistent with the public interest. Here such as showing could not remotely be made in light of the extensive societal benefits from the Project and the other projects mentioned by the Intervenor.

Two weeks ago the Washington Post reported: “The world has just over a decade to get climate change under control, U.N. scientists say:”⁴



⁴ https://www.washingtonpost.com/energy-environment/2018/10/08/world-has-only-years-get-climate-change-under-control-un-scientists-say/?noredirect=on&utm_term=.8aa65dd81535.

The world stands on the brink of failure when it comes to holding global warming to moderate levels, and nations will need to take “unprecedented” actions to cut their carbon emissions over the next decade, according to a landmark report by the top scientific body studying climate change.

The Commission has also recognized the substantial and immediate public interest involved in deploying renewable energy, *see* Order, July 10, 2018, in Case 18-2660-INV:

Scientists agree that the earth has been and continues to be experiencing a period of climate change that features an increase in average temperatures. These same scientists are also confident that the cause of this climate change is mainly due to human activities, in large part the burning of fossil fuels, which releases greenhouse gases (“GHGs”) into the atmosphere, trapping heat.

Global climate change has already begun to have effects on the natural environment in the form of shrinking glaciers, earlier ice breakup on rivers and lakes, shifting plant and animal ranges, loss of sea ice, sea-level rise, drought, severe storms, and longer, more intense heat waves. Scientists are confident that temperatures will continue to rise for decades with associated long-term effects, including changes in precipitation patterns, a further increase in drought and heat waves, intensifying hurricanes, and accelerated sea-level rise.

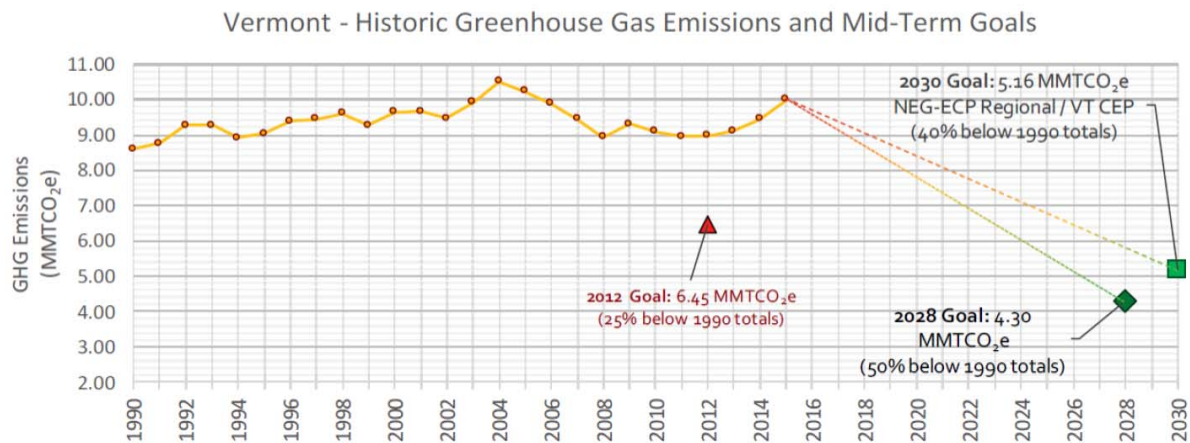
How much the world’s climate will change depends on the amount of GHG emissions and exactly how they interact with the climate. In spite of an increasing awareness regarding our GHG emissions and their impact on the climate, our emission levels continue to increase. Combatting the effects of climate change in part requires mitigation strategies. Mitigation strategies are those strategies designed to curb the level of human-induced GHG emissions into the environment.

(internal footnotes omitted.)

Vermont’s greenhouse gas statute—10 V.S.A. § 578—calls for a 50% reduction of GHG emissions from 1990 baselines by January 1, 2028 and a 75% reduction by January 1, 2050. However, the Agency of Natural Resources and the Vermont Commission on Climate Change recently announced that emissions have increased 16% above 1990 baseline levels, and that we are significantly off track from meeting our climate goals⁵:

⁵ Vermont Climate Commission 2018 Final Report at 2.

Figure 1: Vermont Greenhouse Gas Emissions and Mid-Term Goals¹



The Climate Commission warned:

Based on this new information, the Commission urges that, ***unless there is significant progress in greenhouse gas emission reductions, Vermont should institute additional, wide scale measures to reduce greenhouse gas emissions***, informed by the Joint Fiscal Office’s analysis of decarbonization methods in Vermont and other emergent information.⁶

Furthermore, even at the current pace of RPS mandates, ISO-NE is forecasting an increase in fossil fuel use. Coal, oil and gas resources represent approximately 71% of ISO-NE’s fuel capacity, and that is expected to rise to 76% by 2025 (see: <https://www.iso-ne.com/about/key-stats/resource-mix>). That 76% number is shocking.

Making matters still worse, the United Nations IPCC Report may have been too conservative. See, e.g., Scott Waldman, *IPCC: Was the scary report too conservative?* (October 11, 2018), available at: <https://www.eenews.net/climatewire/2018/10/11/stories/1060102283>:

The U.N. climate report released this week had some stunning revelations, claiming that the 2020s could be one of humanity's last chances to avert devastating impacts. But some say its authors were being *too* cautious. The Intergovernmental Panel on Climate Change report states in plain language that averting a climate crisis will require a wholesale reinvention of the global economy. By 2040, the report predicts, there could be global food

⁶ Vermont Climate Commission 2018 Final Report at 5-6.

shortages, the inundation of coastal cities and a refugee crisis unlike the world has ever seen. A number of scientists contend that the report wasn't strong enough and that it downplayed the full extent of the real threat. They say it doesn't account for all of the warming that has already occurred and that it downplays the economic costs of severe storms and displacement of people through drought and deadly heat waves.

In Federal court, even the United States of America has admitted that “the consequences of climate change are already occurring and, in general, those consequences will become more severe with more fossil fuel emissions,” and that “current and projected atmospheric concentrations of . . . [greenhouse gases], including CO₂, threaten the public health and welfare of current and future generations, and thus will mount over time as [greenhouse gases] continue to accumulate in the atmosphere and result in ever greater rates of climate change.” *See, In Re United States*, Docket No. 18A410 (United States Supreme Court, docketed October 18, 2018), *Brief of Respondents Juliana, et al., to Petitioners’ Application for a Stay* (October 22, 2018) at p.12, available at: http://www.supremecourt.gov/DocketPDF/18/18A410/67574/20181022101920375_2018.10.22.SCOTUS%20Brief%20FINAL%20for%20filing.pdf.

The social cost of carbon continues to rise with each new storm, each new heatwave, each new flood. 1,000-year storm events are now happening every year. Two weeks ago we saw the destruction from Hurricane Michael, the most powerful hurricane to ever hit the Florida gulf coast. Last week catastrophic flooding caused the Llano river in Texas to rise an unprecedented 35 feet in Texas and wipe out entire communities and infrastructure that has been intact for decades. Vermont is still recovering from Tropical Storm Irene.

The Chelsea project has already been delayed by nearly five years—a delay triggered by false information provided by neighbors and the succeeding cascade of events, as the Petitioner has previously explained to the Commission in numerous filings. It should not be delayed any

longer.

For the reasons stated above, the Intervenors' motions should be denied.

Dated: October 26, 2018

Respectfully submitted,

/s/ Thomas Melone

Thomas Melone

Bar No. 5456

Allco Renewable Energy Limited

1740 Broadway, 15th floor

New York, NY 10019

Phone: (212) 681-1120

Email: Thomas.Melone@AllcoUS.com

Attorneys for Chelsea Solar LLC

EXHIBIT A



Thomas Melone <thomas.melone@gmail.com>

Sudbury Solar

Thomas Melone <thomas.melone@gmail.com>
To: lawyerhill@yahoo.com, hillattorneypllc@gmail.com

Fri, Oct 19, 2018 at 5:45 PM

Hello Cindy Hill,

I'm contacting you about Sudbury Solar and the photographs allegedly taken by you last week and submitted today by opponents to a project in Bennington to the Public Utility Commission in case 17-5024. The opponents state that you are the Town counsel for Sudbury so that is why I am contacting you.

If the Town has a complaint about the condition of the project site they should come to us. All required landscaping was installed as required and we have the documentation to support that. We have recently become aware that at least one of the neighbors in the area is mowing some of the property.

We did not think there was any need to take any action so long as no one in Sudbury complained. I'm telling you this so that you are aware that the complaints by 2 residents that live in Bennington (and apparently assisted by you as Town counsel) may end up dragging a local resident into the controversy. If the Town or neighbors have some issue with the current condition of the project, we are happy to discuss the issues with them.

I have driven past the Sudbury project many times on the way to and from Middlebury College. The view is fleeting and if you weren't looking for the project, you would pass it before you knew it was there because it is set so far down from the road elevation.

We have also experienced unauthorized mowing by the opponents to that same Bennington project. The PUC commissioners saw first hand at a recent site visit some of the debris the opponents dump on the property. We have not taken action against that unlawful conduct either.

Regards,

Tom

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Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
1740 Broadway, 15th Floor
New York, NY 10019
(212) 681-1120
(801) 858-8818 (fax)

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EXHIBIT B

July 15, 2016



Sudbury Solar Landscaping Invoice

		Size	Qty.	Price	Total
Cornus racemosa	Gray Dogwood	3-4'	91	\$ 100.00	\$ 9,100.00
Hamamelis vernalis	Vernal Witchhazel	3-4'	19	\$ 100.00	\$ 1,900.00
Physocarpus opulifolius	Common Ninebark	3-4'	17	\$ 100.00	\$ 1,700.00
Viburnum dentatum	Arrowwood Viburnum	3-4'	114	\$ 100.00	\$ 11,400.00
Viburnum lentago	Nannyberry Viburnum	3-4'	58	\$ 100.00	\$ 5,800.00
Planting Soil - continuous bed prep					\$ 7,200.00
				Total	\$ 37,100.00

Quote includes material, installation, mulching, watering and 1 year warranty.

Deposit Request 50% \$ 18,550.00
recd deposit ck 4731 \$ (18,550.00)

greenhaven@greenhavenvt.com

802-349-9712 Daenen Norris

802-349-9713 Peter Norris

Total Balance Due	\$ 18,550.00
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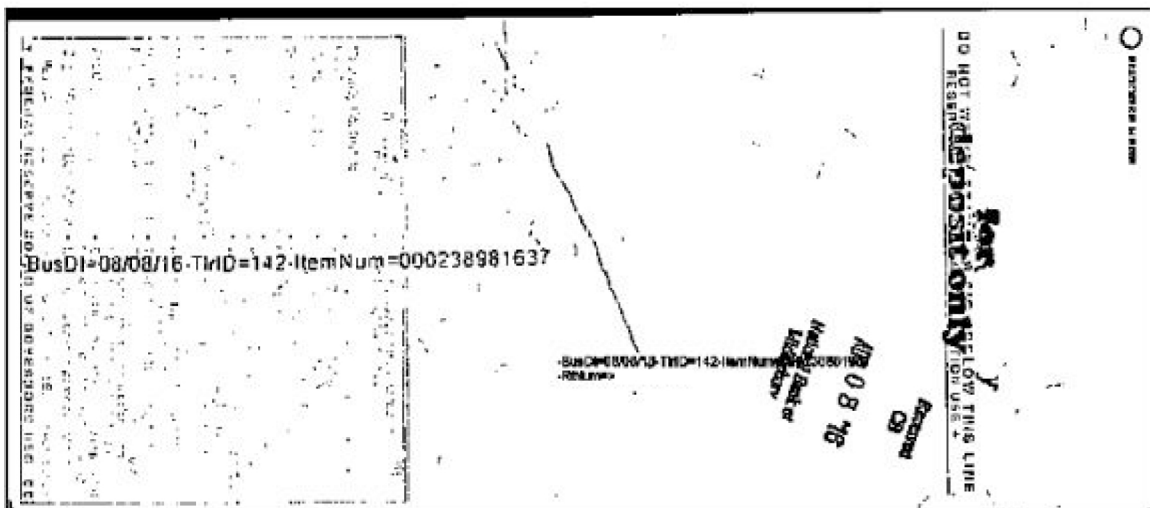
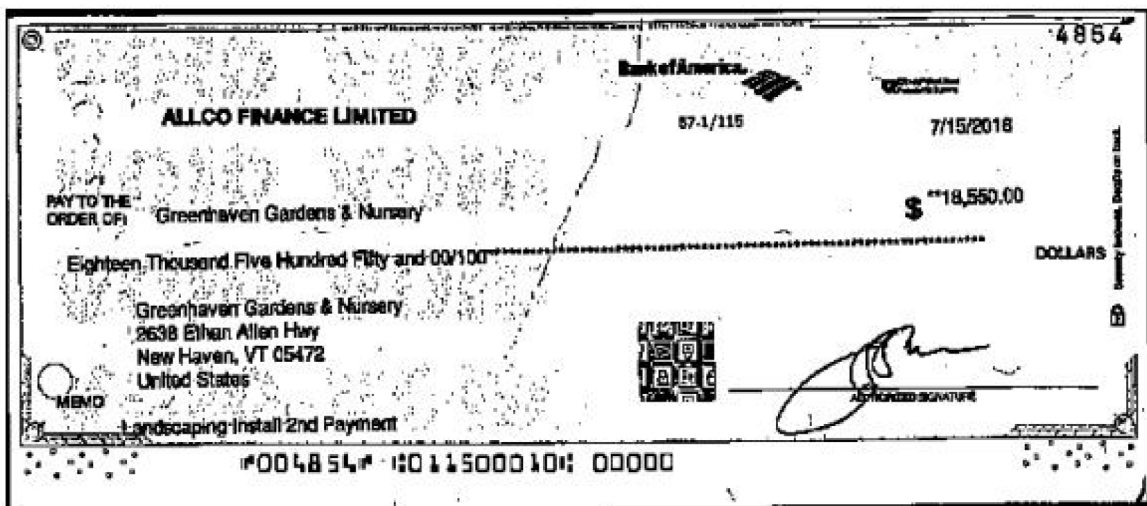
Greenhaven Gardens & Nursery
2638 Ethan Allen Hwy
New Haven Vt 05472
802-453-5382

ALLCO FINANCE LIMITED | Account # 0000

Check images - continued

Account number: 0000

Check number: 4854 | Amount: \$18,550.00



ALLCO FINANCE LIMITED | Account # 0000

Check images - continued

Account number: 0000

Check number: 4731 | Amount: \$18,550.00

Bank of America

4731

57-1/115

6/10/2016

ALLCO FINANCE LIMITED

PAY TO THE ORDER OF Greenhaven Gardens & Nursery

\$ 18,550.00

Eighteen Thousand Five Hundred Fifty and 00/100 DOLLARS

Greenhaven Gardens & Nursery
2538 Ethan Allen Hwy
New Haven, VT 05472
United States

MEMO: 50% Down Payment for Landscaping Install

004731 01500010 0000

NO HOT WRITES, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

deposit only

FOR

07/06/16 TID=141 ItemNum=000238971784

07/06/16 TID=141 ItemNum=000238971784

FEDERAL RESERVE NOTE