

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 20-1611-INV

Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2)	
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Order entered: 06/24/2020

**ORDER OPENING INVESTIGATION AND NOTICE OF HEARING**

**I. INTRODUCTION**

In this order the Vermont Public Utility Commission (“Commission”) opens an investigation and provides notice of a hearing by videoconference at 9:30 A.M. on Friday, June 26, 2020. The Commission has automatically made parties to this proceeding all of the parties to Docket 8454<sup>1</sup> and Case No. 17-5024-PET.<sup>2</sup> The Commission asks the parties to be prepared to address with affidavits (filed before the hearing begins) or live testimony whether site clearing being conducted on Apple Hill in Bennington, Vermont, violates Section 248(a)(2) of Title 30. The parties should also be prepared to notify the Commission (in writing before the hearing or in live testimony) whether they are requesting, or opposed to, a temporary restraining order under Commission Rule 2.406, and whether such an order is necessary to avoid irreparable harm.

**II. BACKGROUND**

On June 19, 2020, public comments were filed by Annette Smith alleging that tree clearing was occurring on Apple Hill on the sites of two proposed 2.0 MW solar electric generation facilities. Ms. Smith also alleges that the area of Apple Hill set aside for rare, threatened, and endangered species was being disturbed by the tree-clearing activity.

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<sup>1</sup> *Petition of Apple Hill Solar LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the installation and operation of a 2.0 MW solar electric generation facility at 1133 Willow Road in Bennington, Vermont, Docket 8454.*

<sup>2</sup> *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 “Willow Road Project,” a 2.0 MW solar electric generation facility on Willow Road in Bennington, Vermont, Case No. 17-5024.*

Also on June 19, 2020, Thomas Melone of Allco Renewable Energy Limited, Apple Hill Solar LLC, and Chelsea Solar LLC filed a response to Ms. Smith's comments. Mr. Melone states that:

It is my understanding that at approximately 12:45 P.M. on June 16, 2020, the Apple Hill site was visited by Vermont Environmental Enforcement Officer Patrick Lowkes at the request of Don Einhorn. While [the Vermont Agency of Natural Resources ("ANR")] can certainly make its own comments, Officer Lowkes' inspection confirmed that NO [rare, threatened, or endangered species] area was being disturbed and that the [rare, threatened, or endangered species] area was cordoned off to prevent intrusion.<sup>3</sup>

On June 23, 2020, ANR filed preliminary comments in response to Ms. Smith's public comments. ANR states that it "has confirmed that site clearing activity is occurring on the 27-acre parcel on which the Apple Hill and Willow Road solar projects are proposed to be constructed."<sup>4</sup>

ANR states that the tree-clearing activity raises two concerns. The first concern is that the petitioner<sup>5</sup> is conducting site preparation without certificates of public good. The second concern is that the site clearing has not been reviewed to ensure that it does not have an undue adverse effect on the environment.

Specifically, ANR is concerned that the site clearing presents a substantial and immediate harm to "very rare" and "rare" plants at the site. ANR believes that a cease-and-desist order may be necessary to prevent irreparable harm to the plants. ANR states that it will file more comprehensive comments on Friday, June 26, 2020.

On June 24, 2020, the Vermont Department of Public Service ("Department") also filed comments stating:

In this case, based on the Agency of Natural Resources Environmental Enforcement Officer's initial findings regarding the site clearing activity, cause appears to exist meriting further investigation into whether petitioner initiated preparing the Apple Hill site for electric generation in violation of 30 V.S.A. § 248(a)(2).<sup>6</sup>

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<sup>3</sup> Email from Thomas Melone to the PUC Clerk, at 7:07 P.M. on June 19, 2020.

<sup>4</sup> ANR Comments at 2.

<sup>5</sup> Apple Hill Solar LLC and Chelsea Solar LLC.

<sup>6</sup> Department Comments at 2.

Also on June 24, 2020, the Apple Hill Homeowners Association, Libby Harris, and the Mount Anthony Country Club (collectively, the “Intervenors”) filed comments in response to Ms. Smith’s public comments. The Intervenors assert that: (1) the standard-offer contracts for the two proposed facilities on Apple Hill were procured by fraud and should be voided by the Commission; and, (2) the petitioner has engaged in site preparation in violation of 30 V.S.A. § 248 and the Commission should declare the petitions for those facilities to be withdrawn or abandoned.

This investigation is initiated in response to these filings and the filings addressed above have been filed in ePUC under Case No. 20-1611-INV.

### III. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

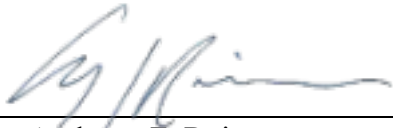
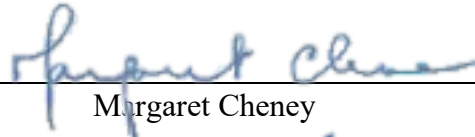
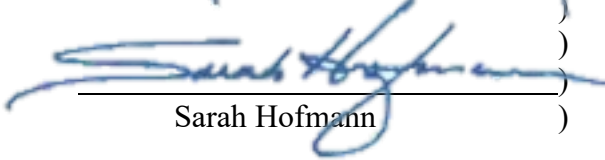
1. Pursuant to 30 V.S.A. §§ 30, 203, and 209, an investigation is opened into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2).

2. Pursuant to 30 V.S.A. §§ 8, 10, 203, and 209, and Commission Rule 2.406, an evidentiary hearing will be held by videoconference before the Public Utility Commission on June 26, 2020, at 9:30 A.M. A pre-meeting to address videoconferencing procedures will take place prior to the hearing at 9:15 A.M. The evidentiary hearing will be held remotely using a web-based online platform, GoToMeeting.<sup>7</sup> Participants and members of the public may access the hearing online at <https://global.gotomeeting.com/join/276668837>, or call in using the following information: Phone number: +1 (646) 749-3112; access code: 276-668-837. Participants may wish to download the GoToMeeting software application in advance of the hearing at <https://global.gotomeeting.com/install/276668837>. Guidance on how to join the meeting and system requirements may be found at <https://www.gotomeeting.com/meeting/online-meeting-support>.

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<sup>7</sup> Pursuant to V.R.C.P. 43.1(c)(5), because of the COVID-19 pandemic, the Commission is waiving the 28-day requirement for notice of video hearings contained in V.R.C.P. 43.1(c)(3). Any party that objects to the evidentiary hearing being held remotely shall file its objection by June 26, 2020.

Dated at Montpelier, Vermont, this 24th day of June, 2020.

 _____ )	) PUBLIC UTILITY ) ) COMMISSION ) OF VERMONT
Anthony Z. Roisman )	
_____ )	
 _____ )	) PUBLIC UTILITY ) ) COMMISSION ) OF VERMONT
Margaret Cheney )	
_____ )	
 _____ )	) PUBLIC UTILITY ) ) COMMISSION ) OF VERMONT
Sarah Hofmann )	
_____ )	

OFFICE OF THE CLERK

Filed: June 24, 2020

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](mailto:puc.clerk@vermont.gov))*

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