

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: 07/01/2020

PROCEDURAL ORDER RE: GUIDANCE FOR INJUNCTION HEARING

I. INTRODUCTION

In today's Order the parties are advised of the procedures that will be used to conduct the evidentiary hearing scheduled for Thursday, July 9, 2020, at 9:30 A.M. by videoconference. The hearing will be before all three members of the Vermont Public Utility Commission (the "Commission") along with Kyle Landis-Marinello, Esq., general counsel, and Michael E. Tousley, Esq., staff attorney.

II. BACKGROUND

On Friday, June 26, 2020, at 1:30 P.M., the Commission announced that it was issuing a temporary restraining order ("TRO") against Allco Renewable Energy Limited, its affiliates, which include Chelsea Solar LLC, Apple Hill Solar LLC, and PLH LLC (collectively, the "Developer"), and the Developer's subsidiaries and contractors prohibiting any further tree clearing on any of the property for the proposed projects identified in any certificate of public good ("CPG") applications and approved amendments. This includes the sites of the proposed Chelsea,¹ Apple Hill,² and Willow Road³ solar electric generation facilities, including any

¹ *Petition of Chelsea 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 500 Apple Hill Road, Bennington, Vermont, Docket 8302, filed 6/19/14.*

² *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 to be located at 1133 Willow Road in Bennington, Vermont, Docket 8454, filed 3/5/15.*

³ *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 located off Willow Road in Bennington, Vermont, Case No. 17-5024-PET, filed 11/28/17.*

property identified in the applications for those facilities as being part of the proposed project. A written order issued that same day.

III. HEARING PROCEDURE, GUIDANCE, AND PENDING MOTION FOR CLARIFICATION

Although the Department has requested a pre-hearing conference, the timing of the upcoming proceeding does not allow for the Commission to schedule one. Further, the format for the upcoming hearing will be straightforward and similar to the format of the TRO hearing.

The hearing will begin by the parties each making a brief, 5-minute, opening statement, followed by the presentation of evidence including any affidavits, live testimony, or exhibits. This will be followed by cross-examination of any witnesses by the parties and the Commission, redirect examination, and closing arguments, of no more than 10 minutes, by each of the parties.

The Commission has prepared a guidance document for participation in remote hearings. The guidance document is attached to this order. While the guidance document refers to questioners sharing cross-exhibits on their screen, the Commission's experience conducting remote evidentiary hearings has shown that evidentiary hearings run more efficiently when questioners share on their screen any document they refer to during their direct questioning or cross-examination.

A pre-meeting to discuss hearing procedures will be held before the start of the July 9, 2020, evidentiary hearing at 9:15 A.M. All parties participating in the evidentiary hearing are required to attend the pre-meeting.

As stated in the TRO, this hearing will address whether the Commission should issue further injunctive relief (in the form of a preliminary or permanent injunction) and, if so, the scope of that relief. The hearing will also address whether the Developer's site work to date constitutes site-clearing activities without a certificate of public good in violation of 30 V.S.A. § 248(a)(2).

By Tuesday, July 7, the parties should file statements, preferably in affidavit form, identifying the witnesses they intend to call at the hearing, the time expected for direct examination of each witness, and a brief description of the nature of the witness's testimony. They should also identify all exhibits they intend to introduce at the hearing or use in cross-

examination. These exhibits, and the witness identification and summary, to the extent not already filed in this case, should be filed in ePUC no later than 4:30 P.M. on Tuesday, July 7.

The Commission also proposes that all the materials filed by the parties before, during, and after the June 26 hearing (and the transcript of that hearing) to date be admitted as evidence in this proceeding. Any objections to the admission of these materials shall be made by July 7, 2020.


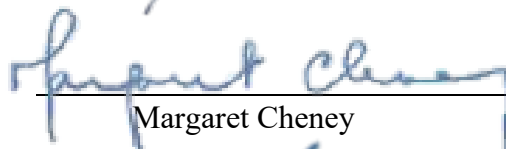
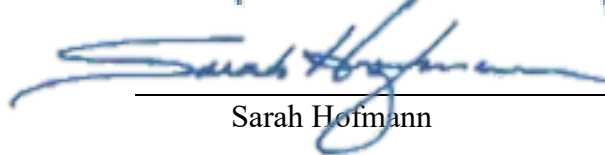
The parties should address in testimony and exhibits whether site clearing conducted by the Developer on Apple Hill in Bennington, Vermont, violates Section 248(a)(2) of Title 30. The parties should also be prepared to notify the Commission (in writing before the hearing or at the hearing) whether they are requesting, or opposed to, a preliminary or permanent injunction under Commission Rule 2.406, and whether an injunction is necessary to avoid irreparable harm. In addition, the parties should be prepared to address the issues raised in the Developer's pending motion for clarification. This includes the extent of the property affected by an injunction if the Commission decides to issue an injunction. The TRO makes clear that it applies to any property identified in the Chelsea, Apple Hill, or Willow Road applications as intended to be part of the projects, including any amendments to those applications that have been approved by the Commission, in the Apple Hill area in Bennington, Vermont.⁴

Finally, the Developer should come prepared to address the questions raised by the Agency of Natural Resources in the Agency's June 30, 2020, comments.

SO ORDERED.

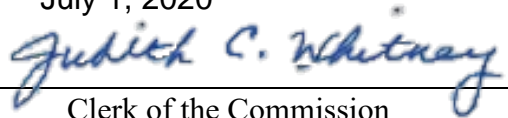
⁴ While the Developer has moved for clarification on whether the TRO extends to the "Apple Orchard Lot," no clarification is necessary because the Apple Orchard Lot was identified as the site of "mitigation planting" in the revised site plan for the Apple Hill facility, filed by the Developer in Docket 8454 as exhibit AHS-MK-12. The Developer also agreed that this property was protected from any development in the Developer's Settlement Agreement with the Town of Bennington dated September 14, 2018, filed by the Developer in Case No. 17-5024-PET. Thus, while the Developer is free to argue for a different outcome in the upcoming preliminary injunction hearing, the current status is that the TRO by its clear terms extends to the Apple Orchard Lot.

Dated at Montpelier, Vermont, this 1st day of July, 2020.

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

OFFICE OF THE CLERK

Filed: July 1, 2020

Attest: 

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)

Vermont Public Utility Commission

Guidance for Participating in Remote Evidentiary Hearings

The Vermont Public Utility Commission (“Commission”) is using GoToMeeting to conduct remote evidentiary hearings during the COVID-19 pandemic. Here are some tips to help you prepare for and participate in such a hearing.

Before the Hearing

- Prepare your space, keeping in mind that both your space and you will be on camera.
 - Official representatives for parties and *pro se* individuals who are representing themselves will be asked to be on camera the whole time.
 - Witnesses will be asked to be on camera while testifying and otherwise keep cameras off.
- If you have any corrections to make to prefiled testimony, please file them in ePUC in advance of the hearing.
- If you plan to use any cross-exhibits during the hearing:
 - Please file them in ePUC in advance of the hearing by selecting “Add Cross Exhibit” from the “Select Action” menu in the case. Contact the clerk if you need assistance making this filing.
 - Because you will be asked to share these exhibits on your screen using screen sharing, you should (1) close out of unnecessary applications so we don’t all see your various notifications and (2) open up all the cross-exhibits you plan to use before the hearing so that they are ready.
- If you have not used GoToMeeting before:
 - Download the app before the meeting, using the link in the hearing notice.
 - Take a look at GoToMeeting’s Attendee Guide:
<https://support.goto.com/meeting/new-attendee-guide>

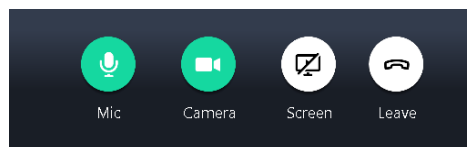
During the Hearing

- Please mute your microphone unless you are speaking. This will minimize background noises, which can be very disruptive.
- Each time you begin talking, please identify yourself by name for the court reporter.
- It is important for people to avoid talking over one another. However, if you have an objection, you must raise it at the moment the objection arises.

- When you are questioning witnesses, you will be made the presenter in GoToMeeting. You should share cross-exhibits on your screen by clicking the “share screen” icon. Verbally, please clearly identify the cross-exhibit you are showing for the court reporter. For example, “I’m showing Department-Cross-1.” When you are done with the exhibit, please click “stop sharing screen.”
- You are welcome to use GoToMeeting’s “chat” function to discuss any technical problems you may be having (such as with your audio or video). Do not type anything substantive about the case. While GoToMeeting allows you to send private chat messages, the default is that chat messages are sent to all meeting attendees. Because of the potential to inadvertently send your chat to all meeting attendees, the Commission recommends that the chat function not be used to send private, substantive messages about the case to other parties. You may not send substantive private chats to any Commissioners or Commission staff.
- If you experience technical difficulties, try to rejoin the GoToMeeting or call in to the hearing using the GoToMeeting telephone number that was provided in the hearing notice.
 - If you are able to rejoin, let the hearing officer or Commissioner presiding over the hearing know so that he or she can summarize what happened and can revisit any questions on which an objection may have been allowed, including any admission of an exhibit.
 - If you are unable to call in or rejoin the GoToMeeting, notify the GoToMeeting platform manager immediately via email, or notify the clerk immediately via email or phone. The hearing will be paused until the issue is resolved.
- In general, if technical difficulties cannot be resolved within 30 minutes, the hearing will be rescheduled. Either the platform manager or the clerk will send an email to all parties notifying them that the hearing will be rescheduled. A notice will also be posted in the case in ePUC.

Key GoToMeeting Controls

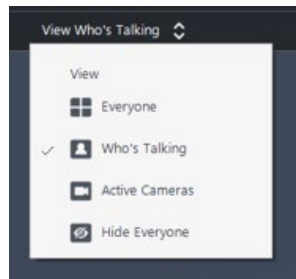
In the **bottom center of your screen** are the controls for muting/unmuting your microphone, turning your camera on and off, sharing your screen with other hearing attendees, and leaving the meeting.



In the **top right of your screen** are the controls for seeing the list of participants on the call, sending (or reading) a chat, and changing your camera and audio settings.



In the **top center of your screen** is the control for changing whom you view on your screen.



PUC Case No. 20-1611-INV - SERVICE LIST

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