

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

**DEPARTMENT OF PUBLIC SERVICE RESPONSE TO
MOTION TO REOPEN PROCEEDINGS**

On June 24, 2021, Chelsea Solar LLC (“Petitioner”) filed a motion to reopen these proceedings (“Motion”). On July 16, 2021, the Public Utility Commission (“Commission”) issued a procedural order requesting parties to file any responses to the Motion by July 30, 2021. For the following reasons, the Department of Public Service (“Department”) recommends that the Motion be denied and Petitioner be permitted to file an amendment to its petition consistent with the Commission’s June 12, 2019 Final Order (the “Willow Road Order”).

The threshold determination of whether to reopen a prior decision under V.R.C.P. 60(b) is committed to the discretion of the Commission.¹ V.R.C.P. 60(b)(5) relief “is to be granted sparingly, so as not to open the door for re-litigation of the merits of every final order, thereby undermining the finality of such orders.”²

Here, the Motion should be denied for three reasons. First, because Petitioner’s appeal of the Commission’s May 7, 2020 Order (the “Apple Hill Order”)³ denying a Certificate of Public Good (“CPG”) to install and operate a solar facility at the adjacent Apple Hill Solar parcel is still

¹ *Petition of Vermont Gas Systems, Inc.*, Docket 7970, Order of 1/8/16 at 19.

² *J.L. v. Miller*, 158 Vt. 601, 604, 614 A.2d 808, 810-11 (1992) (citing *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384, 112 S.Ct. 748, 760 (1992)).

³ *Petition of Apple Hill Solar LLC*, Docket 8454, Order of 5/7/20.

before the Vermont Supreme Court, the timing of the Motion is premature.⁴ Although Petitioner is correct that the Commission denied it a CPG to install and operate the Apple Hill facility, the Vermont Supreme Court has yet to issue an opinion on the matter. Therefore, the reason Petitioner gives to reopen these proceedings – that the Willow Road Order has been vacated and therefore the reason for denying a CPG no longer exists – is still outstanding.

Second, in order to seek modifications under V.R.C.P. 60(b)(5), Petitioner has the burden of showing either a “significant change in factual conditions or in law.”⁵ Petitioner has not shown anything meriting that these proceedings be reopened aside from inaccurately stating that the Willow Road Order has been vacated. As previously mentioned, because the appeal of the Apple Hill Order is still outstanding before the Vermont Supreme Court, whether the Willow Road Order is vacated remains unknown.

Finally, even if the Motion was filed after the Vermont Supreme Court issued an opinion regarding the Apple Hill Order, the Willow Road Order made clear that the Petitioner may continue to pursue the Willow Road project by filing an amendment to the petition reflecting the Commission’s final determination.⁶ Therefore, the proper recourse is not to reopen these proceedings, but instead to file an amended petition that either reflects the Apple Hill and

⁴ See *Wild v. Brooks*, 2004 VT 74, ¶ 20, 177 Vt. 171, 180, 862 A.2d 225, 232 (2004) (Where the Court found that filing a V.R.C.P. 60(b) motion should not occur until the Act 250 process played out in order to determine whether the operation of a commercial shooting range under newly imposed conditions created a nuisance or if the range would be allowed to operate at all, stating, “V.R.C.P. 60(b) does not operate to protect a party from freely made tactical decisions which in retrospect may seem ill advised” (citing *Okemo Mountain Inc., v. Okemo Trailside Condos., Inc.*, 139 Vt. 433, 436, 431 A.2d 457, 459 (1981))).

⁵ *J.L. v. Miller*, 158 Vt. 601, 604.

⁶ Specifically, the June 12, 2019 Final Order stated that Petitioner:

[M]ay seek to amend the Petition either (1) by formally merging the Apple Hill Facility and the Willow Road Facility as a single project and seeking authorization for a 4.0 MW plant unsupported by either standard-offer contract, or (2) demonstrating that the Willow Road Facility does not share equipment or infrastructure with the Apple Hill Facility.

Willow Road facilities as a single project or demonstrates that the Willow Road facility does not share equipment or infrastructure with the Apple Hill facility.

Dated at Waterbury, Vermont, this 30th day of July, 2021.

Vermont Department of Public Service

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cc: Service List