

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: 01/30/2023

ORDER REQUESTING FURTHER BRIEFING

On January 13, 2023, the Vermont Agency of Natural Resources (“ANR”) filed a proposed schedule for the penalty phase of this proceeding on behalf of itself and the Vermont Department of Public Service (the “Department”). Also on January 13, 2023, Allco Renewable Energy (the “Developer”) filed a response to ANR’s proposed schedule.

ANR’s proposed schedule begins with a March 2, 2023, deadline for ANR and the Department to file penalty recommendations. This would be followed by reply comments on those recommendation on March 16, 2023.

The Developer proposes a more extensive schedule including discovery and an evidentiary hearing that would conclude in January 2024. The Developer argues that the longer schedule is needed because “to the extent that any component of ANR’s penalty calculation is attributable to a purported impact on rare plants, Allco intends to challenge ANR’s jurisdiction to protect such rare plants in these proceedings.”

As Allco’s filing recognizes, it is not clear what ANR will use as the basis for its recommended penalty or to what extent, if any, discovery is appropriate in probing ANR’s basis for its recommended penalty (given that it is ultimately we, not ANR, who assesses the penalty). At this point, therefore, it is premature to order an opportunity for discovery on this or any other matter.¹

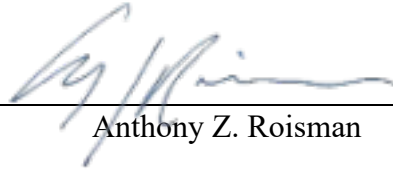
¹ See Commission Rule 2.230(A)(1) (requiring that all discovery be “proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit”).

Rather, at this point in the case, we agree with ANR that briefing is the next step. We request that the Department and ANR (jointly or separately) file briefs with penalty recommendations by March 2, 2023. We also order the Developer to file a response brief by March 16, 2023.² Any reply briefs by ANR or the Department are due by March 30, 2023.

SO ORDERED.

² If, after seeing ANR and the Department's penalty recommendations, the Developer still believes that discovery is appropriate, the Developer's reply brief should include a request to engage in discovery and an explanation of how the requested discovery is relevant and proportional to the needs of the case, in accordance with the factors listed in Commission Rule 2.230(A)(1).

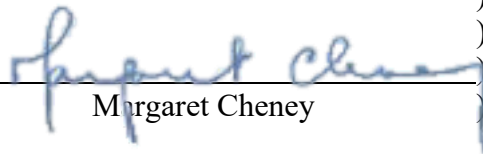
Dated at Montpelier, Vermont, this 30th day of January, 2023.


_____)
Anthony Z. Roisman)

PUBLIC UTILITY

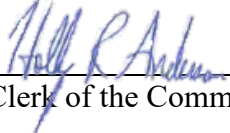
COMMISSION

OF VERMONT


_____)
Margaret Cheney)

OFFICE OF THE CLERK

Filed: January 30, 2023

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)

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