

**STATE OF VERMONT  
BEFORE THE PROFESSIONAL RESPONSIBILITY BOARD**

In Re THOMAS MELONE,  
(Thomas Melone, Respondent)

PRB File No. 25-120

**RESPONDENT’S OPPOSITION TO MOTION TO QUASH  
SUBPOENA TO EDWARD MCNAMARA**

Respondent THOMAS MELONE (“Respondent”) hereby submits this Michael Hanley’s Opposition to the Motion to Quash the Subpoena to Edward McNamara (the “Motion”).

**INTRODUCTION**

Respondent contends that the use of the bar disciplinary process against him is political retribution to retaliate for Thomas Melone’s exercise of his First Amendment rights to free speech and to petition the government in connection with his proposed development of solar projects in Bennington, Vermont, over the many years that two proposed projects have been litigated, and to chill the exercise of his First Amendment rights in the future. And as argued in Respondent’s response to the Clerk’s Memorandum, *see* **EXHIBIT 1**, the Respondent claims that the initiation by the Clerk of a purported *ex parte* communication violation was also retaliatory.

Count III of the Petition for Misconduct filed by Michael Hanley unabashedly seeks to retaliate against Respondent’s exercise of his First Amendment rights in connection with Respondent’s communications with Vermont Legislators who were considering revising the definition of “plant” under 30 V.S.A. §8002.

**FACTUAL BACKGROUND**

On March 24, 2025, Respondent sent an email to the members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy, which is attached as **EXHIBIT 2**. *See*, Petition for Misconduct (“Complaint”) ¶66. In that email, Respondent responded to testimony to Legislators given by Public Utility Commission (“PUC”) Chair Edward McNamara, in which he specifically singled out Respondent (although not by

name). Mr. McNamara gave that testimony in his capacity as an employee of the Executive Branch of the State of Vermont, not in any judicial or quasi-judicial capacity. As a commissioner of an executive branch agency, Mr. McNamara wears many hats. The March 24, 2025 email repeated many of the statements that Respondent has previously made regarding the PUC and its creation and application of what has become known as the “single-plant” rule under 30 V.S.A. §8002. In other words, nothing in that email would have been new information to the parties to the current PUC dockets 23-0249 and 24-3517. But it would be new to the legislators to whom it was sent.

Respondent copied Mr. McNamara, who is a Vermont licensed attorney, on the Legislative email. Mr. Hanley’s asserts that because Respondent did not send a copy of his March 24, 2025 email “to any of the other parties in the proceedings involving Apple Hill’s applications for a Certificate of Public Good,” that Respondent violated VRPC “3.5(b)(1) in that it was an ex parte communication with a person acting in a judicial or quasi-judicial capacity,” and “Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.” Compl. Para 121.

The Vermont Administrative Procedure Act, 3 V.S.A. §813, provides that “members or employees of any agency *assigned to render a decision or to make findings of fact and conclusions of law in a contested case* shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative, except upon notice and opportunity for all parties to participate.”

The PUC is required to adopt its own rules of practice, see 30 V.S.A. § 11(a)(1), which it has. The PUC has its own separate rule on communications with members of the PUC. Commission Rule 2.201(E) provides:

*Ex parte communications.*

- (1) Prohibited communications. Upon the filing in a contested case of a complaint, petition, application, or other filing that the Commission has treated as the same, the Commission may not communicate, directly or indirectly, in connection with any issue of fact with any party or any person, or in connection with any issue of law with any party or any employee, agent, or representative of any party, unless:
  - (a) all parties have consented to the communication;
  - (b) there has been notice and opportunity for all parties to participate;
  - or
  - (c) the communication is required for the disposition of *ex parte* proceedings authorized by law.

- (2) Allowed communications. Non-substantive *ex parte* communications with the clerk or other administrative employees regarding procedural, scheduling, technological, or administrative matters are allowed, even in contested cases, and no disclosure to other parties is required. Also, in an emergency situation in a contested case, *ex parte* communications are authorized, provided:
  - (a) the Commission reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication regarding the emergency, and
  - (b) the Commission promptly notifies all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.
  
- (3) Participation in decision. In general, a Commissioner, Commission employee, or agent of the Commission may not participate or advise (except as a witness) in the Commission's decision, recommended decision, or review of a pending, contested case if the person has communicated about any facts regarding the case with any person or party, or has communicated about any issue of law with any party or any employee, agent, or representative of any party. However, the prohibition in this provision does not apply to any of the following:
  - (a) communications allowed under (2) above;
  - (b) communications that are required for disposition of *ex parte* proceedings authorized by law;
  - (c) communications that all parties have consented to; or
  - (d) when there has been notice and opportunity for all parties to participate.
  
- (4) Improper communications by parties. Any person or party who, directly or through an employee, agent, or representative, communicates or attempts to communicate with the Commission on any subject so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding may be disqualified from later participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Commission under the Commission's powers as a court of record under 30 V.S.A. § 9, and/or may be deemed to have waived any objection to the later decision by the Commission with respect to any proceeding that is the subject of such communication.
  
- (5) Exception. Despite any provision above, Commissioners, Commission employees, and agents of the Commission may communicate with other Commissioners, Commission employees, or agents, provided that none of the latter has engaged in communications prohibited by (1) above.
  
- (6) Facilitation and mediation. An employee or agent of the Commission may, with the consent of the parties, confer separately with a party or their representative in an effort to mediate or settle proceedings pending before the Commission. Pursuant to (1), above, such employee or agent of the Commission may not participate in rendering a decision in such proceedings.

And then there is a third rule contained in Vt. Prof. Cond. Rule 3.5, which provides "A lawyer shall not: ... (b) communicate ex parte (1) with a judge or other person acting in a judicial

or quasi-judicial capacity in a pending or impending adversary proceeding, unless authorized to do so by the Code of Judicial Conduct, by other law, or by court order.

The PUC Commissioners are not judges and are not subject to the Vt. Code of Judicial Conduct. In addition, according to the Vermont Supreme Court, CPG proceedings are unique in that “[w]hen the PUC evaluates a CPG petition under 30 V.S.A. § 248, it is engaged in a legislative, policy-making process.” *In re Derby GLC Solar, LLC*, 2019 VT 77, ¶ 18 (quotation omitted). In other words, in a CPG proceeding the PUC is not acting in a quasi-judicial capacity.

Based upon heavily-redacted documents provided by the PUC in response to a public records request, *see* **EXHIBIT 3**, Mr. McNamara caused the legislative email to be forwarded to one or more recipients on March 24, 2025. It was also forwarded on March 25, 2025, and April 14, 2025. Mr. McNamara also caused the legislative email to be filed in ePUC in dockets 23-0249 and 24-3517 on April 21, 2025.

Additionally, 30 V.S.A. § 11a provides for filing documents with the PUC. Federal courts as well as legal scholars have concluded that the focal point of the analysis should center on the date the Clerk of the Court was in receipt of the pleading. *Bragg v. Bill Heard Chevrolet, Inc.*, 374 F.3d 1060, 1064 n.4 (11th Cir. 2004) (“Several circuits have determined that pleadings should be deemed filed on the date submitted to the clerk.”); *United States ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003) (“A pleading, including a complaint, is considered filed when placed in the possession of the clerk of the court.”) (citing *McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 101 (5th Cir. 1995))

There is no explanation as of now as to why, if Mr. McNamara believed the receipt of the legislative email was an *ex parte* communication prohibited by a rule that should be filed in a particular docket, why he waited until April 21, 2025, to put it into ePUC in the dockets in which it was filed in. The Case log entries on the PUC’s ePUC website shows the entries listed on **EXHIBIT 4** from March 24, 2025 to April 21, 2025 for PUC case 24-3517. The Case log entries on the PUC’s ePUC website shows the entries listed on **EXHIBIT 5** from March 24, 2025 to April 21, 2025 for PUC case 23-0249. As shown on both those case logs, nothing related to the substance

of the legislative email occurred between March 24, 2025 to April 21, 2025.

On April 21, 2025, the Clerk of the Public Utility Commission issued a memorandum seeking comments on whether Respondent's March 24, 2025 email violated the *PUC's rule* against ex parte communications. *See*, Compl. at ¶76.

On November 24, 2025, Respondent issued a subpoena duces tecum to Edward McNamara requesting the following:

For the period from March 24, 2025, to November 24, 2025, all e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service, such as Slack or WhatsApp), analyses, manuals, evaluations, opinions, and other documents in your possession or control concerning, mentioning, or relating to the allegations of ex parte contact that is the subject of the attached memo from Holly R. Anderson, as well as all documents relating, in whole or in part to, the alleged ex parte email that is the subject of that attached memo

Mr. Hanley argues that the Subpoena should be quashed because in Mr. Hanley's view no document that Respondent might obtain as a result thereof would be relevant. He argues that there are only two legal issues remaining regarding the alleged rule violations of Rules 3.5(b)(1) and 8.4(d). Specifically, he argues that those legal issues are (1) whether enforcement of Rule 3.5(b)(1) or 8.4(d) violates Mr. Melone's First Amendment rights and (2) whether any alleged violation of those rules was subsequently cured. That second legal issue referred to by Mr. Hanley is an apparent reference to *Restatement (Third) of the Law Governing Lawyers* (the "Restatement") 113, Comment c, that provides that "A written communication to a judicial officer with a copy sent timely to opposing parties or their lawyers is not ex parte."

## **ARGUMENT**

### **I. MR. HANLEY HAS NO STANDING TO SEEK TO QUASH THE SUBPOENA.**

In a May 20, 2025, letter to Mr. Melone, Merrick Grutchfield stated that "Disciplinary Counsel has a conflict with the complaint made against you. The Chair of the Professional Responsibility Board has assigned Michael Hanley, Esq. to serve as Conflict Disciplinary Counsel." In an October 14, 2025, email to Mr. Melone, Merrick Grutchfield stated that the appointment of Michael Hanley was done under color of authority of "Policy Number 22 [which]

allows for the PRB Chair to name an alternate if Disciplinary Counsel has a conflict. AO 9 refers to the appointment of Disciplinary Counsel, versus the appointment of an alternate if Disciplinary Counsel has a conflict.” See Policy 22 (“22. When bar counsel, disciplinary counsel, screening counsel or any member of a hearing panel has a conflict or is otherwise disqualified or unable to serve, the Board Chair shall appoint an alternate.”)

While A.O. 9, Rule 1E(1)(c) provides that the PRB’s “powers and duties include ... Adopt[ing] internal procedures for the administration of the program that are consistent with these rules, including but not limited to guidelines for: ... (c) the appointment of alternates when ... disciplinary counsel ... has a conflict or is otherwise disqualified or unable to serve,” and the PRB has adopted Policy #22 that states the “Board Chair shall appoint an alternate,”

- a. there is no evidence of his appointment being made by the Board Chair, rather the letter from Merrick Grutchfield that it was the Program Administrator, Merrick Grutchfield, that “appointed” Mr. Hanley, not Carolyn Anderson. For that reason alone, the Complaint must be dismissed.
- b. Carolyn Anderson (if she is the Carolyn Anderson of Green Mountain Power (“**GMP**”)) has a direct conflict with Respondent as she is general counsel for GMP and GMP is in active litigation with Respondent in *In Re: Petition of Otter Creek Solar LLC*, Supreme Court docket number 24-AP-374, (appealed from Vermont Public Utility Commission case no. 19-0516-PET). Her conflict prevents her from taking *any action* related to Respondent, including, if she had the power, appointing Mr. Hanley.
- c. There is no publicly available evidence found by Respondent that shows Carolyn Anderson was appointed to act as Chair for 2025.
- d. Policy 22 has not been approved by the Vermont Supreme Court.
- e. Policy 22 is inconsistent with A.O. 9’s requirements regarding appointment of disciplinary counsel under A.O. No. 9, Rule 2, which states that Disciplinary Counsel must be appointed by the Court Administrator “[f]ollowing consultation with the Board, and subject to Court approval.” The Supreme Court did not approve Mr. Hanley’s appointment for this matter

following consultation between the PRB and the Court Administrator. The PRB can have a policy regarding “appointment of alternates when ... disciplinary counsel ... has a conflict or is otherwise disqualified or unable to serve,” but that policy cannot bypass the clear requirement of Rule 2.

The unlawful appointment of Michael Hanley renders his purported official actions void *ab initio*. The Complaint against Mr. Melone that Mr. Hanley alone signed and filed is thus a nullity and should be dismissed. Dismissal of the Complaint is warranted because Mr. Hanley was not lawfully exercising governmental authority when he investigated, presented and signed the Complaint. When a court determines that a government actor exercised “power that the actor did not lawfully possess,” including because he was not “properly *appointed*,” that ruling renders his past actions “void.” *Collins v. Yellen*, 594 U.S. 220, 257-58 (2021) (emphasis added); *see id.* at 258 (citing cases). With an improper appointment, the officer at issue cannot “lawfully exercise the statutory power of his office at all in light of the rule that an officer must be properly appointed before he can legally act as an officer.” *Id.* at 266 (Thomas, J., concurring). And any “[a]ttempts to do so are void.” *Id.* at 283 (Gorsuch, J., concurring in part).

In light of these principles, the United States Supreme Court has invalidated judgments issued or reviewed by an improperly appointed adjudicator. In *Ryder v. United States*, 515 U.S. 177 (1995), for instance, the United States Supreme Court “reversed” the court-martial conviction of a defendant after he successfully challenged the appointment of the intermediate appellate judges who reviewed his case. *Id.* at 188. Likewise, in *Lucia v. SEC*, 585 U.S. 237 (2018), the United States Supreme Court set aside an agency adjudication “tainted with an appointments violation,” making clear that a decision of an improperly appointed official cannot stand. *Id.* at 251. Similarly, in *United States v. Trump*, 740 F. Supp. 3d 1245 (S.D. Fla. 2024), the court applied these principles when dismissing an indictment because of a defect in the appointment of the prosecutor who secured the charges. The court reasoned that “[i]nvalidation follows directly from the government actor’s lack of authority to take the challenged action in the first place.” *Id.* at 1302-03.

For the above reasons, Mr. Hanley has no standing to seek to quash the subpoena.

**II. THERE ARE NO EXTRAORDINARY CIRCUMSTANCES THAT WOULD JUSTIFY QUASHING OR RESTRICTING THE SUBPOENA.**

The Vermont Supreme Court has cautioned that “during the pretrial period ‘restrictions which may impede the development, presentation and determination of facts should be avoided.’” *Schmitt v. Lalancette*, 2003 VT 24 (2003) at P13 (“*Schmitt*”) quoting *Int’l Bus. Mach. Corp. v. Edelstein*, 526 F.2d 37, 41 (2d Cir. 1975). See also, *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir. 1985) (“trial preparation and defense . . . are important interests, and great care must be taken to avoid their unnecessary infringement”). The position on protective orders of the Vermont Supreme Court and all federal and state courts is the same—protective orders are disfavored and should only be granted under extraordinary circumstances. *Schmitt* at P12 fn. 3 (“[p]rotective orders might prove necessary where there is a risk that one party will abuse the discovery process, [] but these are exceptional situations.”)

Here, the subpoena is simply for documents, documents that are easily accessible to Mr. McNamara. It is not burdensome.

Respondent also disagrees with Mr. Hanley’s assertion that the only issues presented are the ones he asserts. Respondent also disagrees that Mr. Hanley’s asserted issues are only pure questions of law divorced from the facts that Mr. McNamara’s responses may relate to. Respondent also disagrees with Mr. Hanley’s assertion that no document obtained as a result of the Subpoena would be relevant to those either his claimed issues or issues relevant to the Complaint. First of all, until the documents are produced, no conclusion could be made as to whether the documents would produce relevant information to the Complaint or information that would potentially lead to relevant information.

Second, there are factual issues relevant to the Complaint that likely will or may be illuminated by the responses to the subpoena, such as,

1. Whether the legislative email is considered filed with the PUC once it was received by Mr. McNamara or when he forwarded it to the Clerk, which would make the date of

- the filing on the same date that Mr. McNamara received it. If it was considered filed at that time, then it was the responsibility of Mr. McNamara or the Clerk to file it into the appropriate dockets. Any delay attributable to their actions is not an action that is Respondent's responsibility.
2. Related to #1, there is the factual issue of whether the legislative email was an ex parte communication at all because it was timely provided to all participants (which were only government entities) in those PUC cases no later than April 21, 2025, or perhaps before that.
  3. Part of Respondent's defense is that the Clerk's Memo and all that came after was political retaliation for the comments made by Respondent in the legislative email and all the other years of litigation at the PUC challenging PUC orders and positions. The requested documents are relevant to that issue. If Respondent can prove bias and retaliatory motives then the characterization of the legislative email as ex parte is specious.
  4. Part of Respondent's defense is that VRPC 3.5(b)(1) does not apply at all when as here the Vermont Administrative Procedure Act and the PUC have rules that govern what communications are permissible or not. And Respondent contends that neither 3 V.S.A. §813 nor PUC Rule 2.201 were violated. Moreover, 3 V.S.A. §813 applies only to "members or employees of any agency *assigned to render a decision or to make findings of fact and conclusions of law in a contested case.*" Whether Mr. McNamara has been *assigned to render a decision or to make findings of fact and conclusions of law in a contested case* related to the legislative email is an open factual question. Separate factual issues relate to whether the legislative email violated PUC 2.201 which Respondent contends it did not as explained in **EXHIBIT 1**.
  5. So too is the open factual question of whether any of the contents in the legislative email was an issue before the PUC in either of the dockets in which Mr. McNamara eventually filed the email. Respondent contends that nothing in the legislative email

was an issue being contested in either docket.

6. Another open factual question is whether Mr. McNamara was or would be acting in a quasi-judicial capacity (even though he is not subject to the judicial code of conduct) and whether the legislative email was sent to him in that capacity or simply in his capacity as an executive branch employee, which is the capacity in which he testified before the legislative committee.
7. Another open factual question is whether Mr. McNamara acts in a quasi-judicial capacity or a legislative policy-making capacity in CPG proceedings.
8. Another open question is when the email was considered delivered to the other parties to the two PUC proceedings and whether the email was timely delivered to them and whether there is any evidence of untimeliness or prejudice to those other government entities.
9. Other open factual questions relate to whether Rule 8.4(d) was violated, i.e., how was the legislative email “conduct that is prejudicial to the administration of justice.” Discovery on Mr. McNamara will certainly relate to that issue.

These and potentially other factual and legal issues will be impacted by the discovery on Mr. McNamara from the subpoena.

Information is regarded as relevant to the subject matter if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. *Ceramic Corp. of America v. Inka Maritime Corp. Inc.*, 163 F.R.D. 584, 589 (C.D. Cal. 1995). Not only are the requested documents relevant, they are central to the Respondent’s case with respect to Count IV, and by extension Count VIII.

As far as relevancy, documents that Respondent may obtain could be relevant to all raised by Mr. Hanley, the Complaint and the specific ones noted above. For example, documents could demonstrate whether or not Mr. McNamara was acting in a quasi-judicial capacity and what role he had in the underlying 248 cases. Documents could also reveal whether or not the subject matter of the communication at issue was considered to be relevant to the underlying 248 cases.

Documents could also reveal what definition of *ex parte* the PUC was using (they certainly were not using the definition from the PUC Rules). Documents could demonstrate a motivation for accusing Respondent of making an *ex parte* communication. Documents could demonstrate how many individuals were sent the communication and on what dates, and who those individuals were. Documents produced might reasonably assist Respondent in evaluating the case and preparing for a hearing.

### **III. MR. MCNAMARA’S OPINIONS ARE ALSO RELEVANT.**

Mr. Hanley argues that Mr. McNamara’s opinions are not relevant. It should go without saying that the Subpoena is not limited to seeking documents that would shed light on Mr. McNamara’s opinions. In any case, documents revealing his opinions would absolutely be relevant to all the issues concerning Count IV, and by extension Count VIII, as they could shed on, at a minimum, (i) whether he believed he was acting in a quasi-judicial capacity, (ii) what he believed his role to be the underlying 248 cases, (iii) what his motivations were concerning disclosure of the communication in question, (iv) whether or not he believed the subject matter of the communication at issue was considered to be relevant to the underlying 248 cases and (v) who he sent the communication to and why, and why he did not file it right away if he thought it truly was an issue in the two CPG dockets.

### **IV. THE PUC’S PREVIOUS REDACTED PRODUCTION.**

Respondent had submitted a public records request to the PUC on May 8, 2025 (the “May 8 Request”) seeking “All records related to the allegations of *ex parte* contact that is the subject of the attached memo as well as all records relating to the alleged *ex parte* email that is the subject of the attached.” The PUC on May 12, 2025, responded by producing 13 documents, each of which was fully redacted. The PUC alleged that these documents were redacted pursuant to 1 V.S.A. §§ 317(c)(1)-(4), (14), and (24). These exemptions cover records that are relevant to litigation to which the Commission is a party of record, contain confidential attorney-client and work-product communications, or are prepared for the deliberations of any public agency acting in a judicial or quasi-judicial capacity. The Respondent appealed the PUC’s decision to the redact the documents

and Mr. McNamara himself denied the appeal.

Mr. Hanley argues that Respondent has already obtained many of the documents he seeks in the Subpoena. *First*, as a general matter, Mr. Hanley is in no position to make that determination. *Second*, the legality of the redactions is still an open issue given that no details or privilege log were provided by the PUC. *Third*, the legality of that appeals process is questionable considering the obvious conflict of interest with Mr. McNamara being the sole arbiter of the appeal. *Fourth*, the applicable time period covered by the May 8 Request is markedly different than the time period covered by the Subpoena. All in all, Respondent has clearly not received all of the responsive documents.

### **CONCLUSION**

The Subpoena is specifically targeted at eliciting documentation that could shed light on each of the open issues related to Count IV, and by extension Count VIII and it is therefore relevant. It is Mr. Hanley who decided to include the *ex parte* communication issue in the Petition of Misconduct. Recall that the PUC had already looked at this issue at length and determined that the communication did not justify sanctions of any kind. Having raised an issue that clearly does not belong before the Hearing Panel, Mr. Hanley should not be able to complain about the burden imposed upon Mr. McNamara. Mr. Hanley also offers no explanation as to why he feels that Mr. McNamara would somehow be burdened by the Subpoena. Quashing the Subpoena which is targeted and limited in scope will most certainly impede the development, presentation and determination of facts with respect to Count IV and by extension Count VIII, as such, the Motion should be denied.

Dated: December 10, 2025

Respectfully submitted,  
/s/Thomas Melone  
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# **EXHIBIT 1**

**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 )  
operation of the “Chelsea Solar Project,” a )  
2.0 MW solar electric generation facility )  
located off Willow Road in Bennington, )  
Vermont )

Docket No. 23-0249-PET

Petition of Apple Hill Solar LLC, )  
pursuant to 30 V.S.A. § 248, for a )  
certificate of public good authorizing )  
the installation and operation of a 2.0 )  
MW solar electric generation facility )  
located off Willow Road in Bennington, )  
Vermont )

Docket No. 24-3517-PET

**RESPONSE TO MEMORANDUM ISSUED BY  
HOLLY R. ANDERSON, CLERK OF THE COMMISSION,  
DATED APRIL 21, 2025, RE “REQUEST FOR COMMENTS”**

On April 21, 2025, Holly R. Anderson, Clerk of the Commission, issued a memorandum (the “Memorandum”) stating as follows:

On March 24, 2025, counsel for the Petitioner, Thomas Melone, sent an email to the members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy. Attorney Melone copied the Vermont Public Utility Commission’s (“Commission”) Chair Ed McNamara on the email.

Based on the content of the communication and Attorney Melone’s open proceedings before the Commission, this email constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E). The email has been uploaded into both cases as an attachment to this memorandum so that all parties can review the communication.

The parties to each case have until May 9, 2025, to provide any comments or concerns related to Attorney Melone’s communications, and specifically whether Commission Rule 2.201(E)(4) is implicated.

The Clerk’s Memorandum raises several issues, which are discussed below.

**I. THE MEMORANDUM CONSTITUTES A RULING MADE WITHOUT DUE PROCESS OR ANY PROCESS.**

The Memorandum states: “Based on the content of the communication and Attorney Melone’s open proceedings before the Commission, this email *constitutes* a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E).”

The Clerk has no authority to make a determination as to whether an email “constitutes a prohibited *ex parte* contact.” *See*, 30 V.S.A. § 6. So that determination must have been made by someone else. I request that the Commission disclose and file into the record of each of the above-captioned proceedings exactly who concluded that the referenced email “constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E),” and the legal and factual basis for that ruling. I also request that the Commission disclose and file into the record all written communications regarding the decision that the referenced email “constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E).”

The Memorandum issued a substantive determination, which is not permitted to be made without proper due process. And here no process was provided.

Petitioners intend to timely appeal the interlocutory decision represented by the Memorandum, specifically the ruling that the referenced email “constitutes a prohibited *ex parte* contact, pursuant to Commission Rule 2.201(E)” to the Vermont Supreme Court, and the fact that such a ruling was done without any due process.

**II. THE EMAIL PLAINLY DOES NOT CONSTITUTE AN *EX PARTE* COMMUNICATION UNDER RULE 2.201(E)(1).**

Commission Rule 2.201(E)(1) prohibits *the Commission from communicating* with parties (not the other way around). *See, id.* (“Prohibited communications ... the Commission may not communicate, directly or indirectly, in connection with any issue of fact with any party or any person, or in connection with any issue of law with any party or any employee, agent, or representative of any party, unless ...”). The email to the Legislative committees was not a communication *by* the Commission *to* a party. It thus does not constitute an “*ex parte*” communication under Rule 2.201(E)(1).

**III. THE MEMORANDUM MAKES NO ATTEMPT TO TIE THE EMAIL TO THESE TWO CASES, WHICH IS ANOTHER REQUIREMENT OF RULE 2.201(E).**

Commission Rule 2.201(E)(1) prohibits *the Commission from communicating* with parties (not the other way around), in connection with any issue of fact or law *in the applicable contested case*. The Memorandum does even attempt to explain what issue is addressed by the Legislative email that is presented in the two above-captioned cases.

The focus of the Legislative email was to provide a counterpoint to Chair McNamara's testimony before the House Committee that singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. The purpose of Chair McNamara's testimony was to oppose any revival of the Standard Offer program. One of the central reasons proffered by Chair McNamara for his opposition to the Standard Offer program is the litigation brought by me. But Chair McNamara omitted key facts regarding the litigation, one of which was the demonstrably false claim in the 2019 Chelsea Solar decision that formed the basis for the Commission's retroactive application of the newly created single plant rule in that 2019 decision. *See*, Melone Legislative Email of March 24, 2025:

The PUC's new single-plant rule was applied *retroactively* to Chelsea and Apple Hill Solar (both Allco projects) based upon the demonstrably *false claim* that when the Chelsea Solar and Apple Hill Solar contracts were executed in 2013 & 2014 it was not known that both projects would require GMP to build a new line extension from GMP's nearest then existing three-phase line to the site of both projects. It was known because the 2013 Standard offer contract that was *approved by the PUC* specifically described the GMP interconnection plan that *clearly and unambiguously* stated that the "new Line" would be needed to interconnect both the Chelsea project and the Apple Hill project. ("Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. *These would be shared with Apple Hill if constructed.*") (Emphasis added.)

Every discussion of the single-plant rule should be accompanied by the origins of the rule being based upon a demonstrably false claim made by the Commission. Despite that sordid history of the rule, the Memorandum does not state what in the Legislative email is the discussion of "any issue of fact .. [or] any issue of law," in the either of the above-captioned cases.

So query how a Legislative email regarding the Standard Offer program's renewal is an issue in either of the above-captioned cases. Likewise, in Case 24-3517, the petitioner has stated

that it is not relying on waivers related to the Standard Offer program. So again, query how a Legislative email regarding the Standard Offer program’s renewal is an issue in either of the above-captioned cases.

**IV. THE MEMORANDUM PRESUMES THAT CHAIR MCNAMARA WOULD PARTICIPATE IN A FINAL DECISION IN BOTH ABOVE-CAPTIONED CASES.**

The Memorandum implicitly assumes that Chair McNamara would participate in a final decision on the petitions in the above-captioned cases. As far as the undersigned is aware, Chair McNamara only participated in one ruling, and that was in docket 23-0249, which is the procedural order issued on November 8, 2024. Docket 23-0249 was filed on January 25, 2023.

30 V.S.A. §3(e) requires “[w]hen a Commission member who hears all or a substantial part of a case retires from office before the case is completed, the member shall remain a member of the Commission for the purpose of concluding and deciding the case, and signing the findings, orders, decrees, and judgments. A retiring chair shall also remain a member for the purpose of certifying questions of law if appeal is taken.” The issue is whether the proceedings in case 23-0249 that occurred while Anthony Roisman was the chair constitute a “substantial part” of the case. If they do (which petitioners contend they do), then Anthony Z. Roisman and not Edward M. McNamara would be the commission member that sees case 23-0249 to its conclusion. For that reason *too*, Rule 2.201(E) would not apply in case 23-0249.

For case 24-3517, Edward McNamara’s recent testimony to the House Committee relating to his participation while at the Department of Service circa 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES, raises serious questions regarding whether Mr. McNamara can participate in either of the above-captioned cases.

**V. THE MEMORANDUM APPEARS TO BE A TRANSPARENT ATTEMPT TO RETALIATE FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS.**

It would have been simple for Chair McNamara to just file the Legislative email in whatever dockets he wanted to so his receipt of the email was disclosed to whomever he wanted

to disclose it to, and leave it at that. But that wasn't enough. Instead, the Memorandum's purpose appears to be weaponizing Commission Rule 2.201(E)(4) against me and the petitioners. See Memorandum ("The parties to each case have until May 9, 2025, to provide any comments or concerns related to Attorney Melone's communications, and *specifically whether Commission Rule 2.201(E)(4) is implicated.*")

Examples of weaponization of the government to target speech and those that disagree with government are all over the news these days. The Memorandum's reference to Rule 2.201(E)(4) is more of the same.

Rule 2.201(E)(4) states:

Improper communications by parties. Any person or party who, directly or through an employee, agent, or representative, communicates or attempts to communicate with the Commission on any subject so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding may be disqualified from later participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Commission under the Commission's powers as a court of record under 30 V.S.A. § 9, and/or may be deemed to have waived any objection to the later decision by the Commission with respect to any proceeding that is the subject of such communication.

Specifically calling out Rule 2.201(E)(4) is a threat against me and the petitioners to level some type of sanction based upon a purported violation of Rule 2.201(E)(4). While such a sanction would be devoid of factual and legal basis, the mere threat here shows bias against me and the petitioners. The petitioners will make a public records request to the Commission demanding all documents related to the Memorandum.

Specifically threatening me and the petitioners with some type of potential sanction based upon a purported violation of Rule 2.201(E)(4) from the mere receipt of the March 24, 2025, email, sent to Vermont Legislators also illustrates the procedural safeguards that have been eroded by the administrative state. Today's current state of play was unimaginable to the Framers of both the federal and state constitutions. They "could hardly have envisioned today's vast and varied [] bureaucracy and the authority administrative agencies now hold over our economic, social, and political activities." *City of Arlington v. FCC*, 569 U.S. 290, 313 (2013) (Roberts, C.J., dissenting).

*See also* Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U.L. REV. 1523, 1555 (2013) (“While the Framers were familiar with British ministries’ and colonies’ charter governments, the writings on government that Framers like Madison were familiar with did not discuss anything that even approximates the administrative state we have today.”).

Unlike today’s freewheeling administrative state, the first of our “nation’s regulatory statutes ... contain[ed] detailed and *limited* grants of authority to administrative bodies.” Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev. 2245, 2255 (2001) (emphasis added). Early Congresses also “fought regularly with departments on domestic and international matters” that involved the President’s policy directives “being carried out by his immediate cabinet subordinates.” Turley, *supra*, at 1556. But over time, “the rise of the regulatory state and the need for administrative discretion” undermined the “strict limits on congressional delegation of power” the Framers had contemplated. Erwin Chemerinsky, *A Paradox Without A Principle: A Comment on the Burger Court’s Jurisprudence in Separation of Powers Cases*, 60 S. CAL. L. REV. 1083, 1107 (1987).

Today, “the administrative state has ... grow[n] out of control.” Peter J. Wallison, *Judicial Fortitude: The Last Chance To Rein In The Administrative State* 134 (1st ed. 2018). The Framers may have considered the legislative “the most dangerous branch,” but modern agencies now make the Executive “the constitutional institution to reckon with.” Jon D. Michaels, *An Enduring, Evolving Separation of Powers*, 115 Colum. L. Rev. 515, 528-29 (2015). “[T]he danger posed by the growing power of the administrative state cannot be dismissed.” *City of Arlington*, 569 U.S. at 315 (Roberts, C.J., dissenting).

Like other regulatory agencies, the PUC “acts as a mini legislature, prosecutor, and court, responsible for creating substantive rules for a wide swath of industries, prosecuting violations, and levying knee-buckling penalties against private citizens.” *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2202 n.8 (2020). Its rulings are appealable to the Vermont Supreme Court, but that court rarely overturns the PUC and expressly accords the PUC substantial deference (a concept that at

the Federal level has been entombed by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244 (2024)).

What remains then are state agencies that are antithetical to the founding principles of this Nation embodied in the United States Constitution. To them, the “accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.” *The Federalist No. 47* at 298 (James Madison) (Clinton Rossiter ed., 2003).

**VI. THE EMAIL PLAINLY DOES NOT CONSTITUTE AN IMPROPER COMMUNICATION PROHIBITED UNDER RULE 2.201(E)(4).**

As set forth in the Declaration of Thomas Melone attached as Exhibit 1, the email in question was in no way intended to cause the disqualification of Edward M McNamara. Neither Petitioner in the above-captioned proceedings will raise (and never intended to raise) his receipt of that email as a basis for disqualification.

Dated: May 9, 2025

Respectfully Submitted,  
/s/ Thomas Melone  
Thomas Melone, Esq.  
Chelsea Solar LLC  
Apple Hill Solar LLC  
157 Church Street, 19<sup>th</sup> Floor  
New Haven, CT 06510  
[Thomas.melone@allcous.com](mailto:Thomas.melone@allcous.com)  
212-681-1120

# **EXHIBIT 1**

**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 operation of the )  
“Chelsea Solar Project,” a 2.0 MW solar )  
electric generation facility located off Willow )  
Road in Bennington, Vermont )

Docket No. 23-0249-PET

Petition of Apple Hill Solar LLC, pursuant to 30 )  
V.S.A. § 248, for a certificate of public good )  
authorizing the installation and operation of a )  
2.0 MW solar electric generation facility )  
located off Willow Road in Bennington, )  
Vermont )

Docket No. 24-3517-PET

**DECLARATION OF THOMAS MELONE**

I, Thomas Melone declares under the penalty of perjury:

1. Attached as **Exhibit A** is an email that I sent on March 24, 2025, to various members of the Vermont Legislature. I also “cc’d” Edward M. McNamara.

2. Vermont Public Utility Commission Rule 2.201(E)(4) states in pertinent part that “[a]ny person or party who ... communicates or attempts to communicate with the Commission on any subject so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding” may be subject to various sanctions.

3. My copying Mr. McNamara was in no way done “so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding.” Chair McNamara’s testimony referenced in that email specifically referred to me (although not by name). Because I was talking about his testimony about me, I thought it appropriate to let him know that I was talking about him. Neither Petitioner in the above-captioned proceedings will raise (and never intended to raise) his receipt of that email as a basis for disqualification.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 9, 2025, at Ho-Ho-Kus, New Jersey.

/s/Thomas Melone

Thomas Melone

Allco Finance Limited

157 Church St., 19<sup>th</sup> floor, New Haven, CT 06510

Phone: (212) 681-1120

Email: [Thomas.Melone@AllcoUS.com](mailto:Thomas.Melone@AllcoUS.com)

# EXHIBIT A



Thomas Melone <thomas.melone@gmail.com>

---

## Standard Offer Testimony of Ed McNamara

---

Thomas Melone <Thomas.Melone@allcous.com>

Mon, Mar 24, 2025 at 10:03 AM

To: kjames@leg.state.vt.us, scampbell@leg.state.vt.us, lsibilia@leg.state.vt.us, rbailey@leg.state.vt.us, chowland@leg.state.vt.us, bkleppner@leg.state.vt.us, cmorrow@leg.state.vt.us, msouthworth@leg.state.vt.us, dtorre@leg.state.vt.us, awatson@leg.state.vt.us, tkwilliams@leg.state.vt.us, rhardy@leg.state.vt.us, sbongartz@leg.state.vt.us, sbeck@leg.state.vt.us  
Cc: ed.mcnamara@vermont.gov

Greetings Honorable Members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy,

I respectfully request that I be given equal time to testify before you via zoom to address the testimony given by PUC Chair Ed McNamara to the House Committee on February 7, 2025. [https://www.goldendomevt.com/VTHouseEnergyDigitalInfra\\_2025-02-07\\_11-13.html](https://www.goldendomevt.com/VTHouseEnergyDigitalInfra_2025-02-07_11-13.html)

Mr. McNamara singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. That part is true, but most of the litigation has been focused on the PUC's weaponization of the "single-plant" rule, a concocted PUC rule that has been used (and is still being used) by the PUC to crush non-utility solar projects.

I am (or more accurately my company—Allco) is the single developer that Mr. McNamara focused on in his testimony.

The Vermont Superior Court has referred to Allco as "climate warriors who would subject anything in their path to the broad sweep of their scythe, leaving the path open for all other solar developers." *Otter Creek Solar LLC v. Vermont Pub. Util. Comm'n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at \*7. Allco has a long list of *successful* litigation challenging unfair practices against small local solar projects, including in California, Connecticut, Massachusetts & Vermont.

Allco's challenges to the bad (and in my view unlawful) aspects of the Standard Offer are part of those.

But the "single-plant" rule is the worst violator of them all. In his testimony, Mr. McNamara provided context that has to date been missing. As he stated, it was around 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES. Shortly thereafter, the PUC weaponized and expanded the single-plant rule by denying the CPG for the very first project awarded a contract under the Standard Offer competitive solicitation rules, which is Chelsea Solar (named after my youngest daughter—a 2015 graduate of Middlebury College).

The PUC's new single-plant rule was applied *retroactively* to Chelsea and Apple Hill Solar (both Allco projects) based upon the demonstrably *false claim* that when the Chelsea Solar and Apple Hill Solar contracts were executed in 2013 & 2014 it was not known that both projects would require GMP to build a new line extension from GMP's nearest then existing three-phase line to the site of both projects. It was known because the 2013 Standard offer contract that was *approved by the PUC* specifically described the GMP interconnection plan that *clearly and unambiguously* stated that the "new Line" would be needed to interconnect both the Chelsea project and the Apple Hill project. ("Chelsea Solar would require significant reconductoring and addition of phases to the

point of interconnection. These would be shared with Apple Hill if constructed.”) (Emphasis added.)

But the actual facts didn't matter. What appears to matter to the PUC is political connections. Thus, last year when the “single-plant” rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them using another contorted legal argument that the United States Supreme Court has described as “dangerous.” The United States Supreme Court has explained that “the meaning of words in a statute cannot change with the statute's application. [] To hold otherwise ‘would render every statute a chameleon,’ [], and ‘would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.’” *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) “To give the same words a different meaning for each category would be to invent a statute rather than interpret one”. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Respectfully,

Thomas Melone  
Chief Executive Officer  
Allco Renewable Energy Limited  
157 Church St., 19th Floor  
New Haven, CT 06510  
(212) 681-1120  
(801) 858-8818 (fax)

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# **EXHIBIT 2**



Thomas Melone <thomas.melone@gmail.com>

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## Standard Offer Testimony of Ed McNamara

---

Thomas Melone <Thomas.Melone@allcous.com>

Mon, Mar 24, 2025 at 10:03 AM

To: kjames@leg.state.vt.us, scampbell@leg.state.vt.us, lsibilia@leg.state.vt.us, rbailey@leg.state.vt.us, chowland@leg.state.vt.us, bkleppner@leg.state.vt.us, cmorrow@leg.state.vt.us, msouthworth@leg.state.vt.us, dtorre@leg.state.vt.us, awatson@leg.state.vt.us, tkwilliams@leg.state.vt.us, rhardy@leg.state.vt.us, sbongartz@leg.state.vt.us, sbeck@leg.state.vt.us  
Cc: ed.mcnamara@vermont.gov

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# **EXHIBIT 3**

**From:** [Thomas Melone](mailto:Thomas.Melone@allcous.com)  
**To:** [kjames@leg.state.vt.us](mailto:kjames@leg.state.vt.us); [scampbell@leg.state.vt.us](mailto:scampbell@leg.state.vt.us); [Sibilia, L](mailto:Sibilia,L); [rbailey@leg.state.vt.us](mailto:rbailey@leg.state.vt.us); [chowland@leg.state.vt.us](mailto:chowland@leg.state.vt.us); [bkleppner@leg.state.vt.us](mailto:bkleppner@leg.state.vt.us); [Chris Morrow](mailto:Chris.Morrow); [msouthworth@leg.state.vt.us](mailto:msouthworth@leg.state.vt.us); [dtorre@leg.state.vt.us](mailto:dtorre@leg.state.vt.us); [awatson@leg.state.vt.us](mailto:awatson@leg.state.vt.us); [tkwilliams@leg.state.vt.us](mailto:tkwilliams@leg.state.vt.us); [rhardy@leg.state.vt.us](mailto:rhardy@leg.state.vt.us); [sbongartz@leg.state.vt.us](mailto:sbongartz@leg.state.vt.us); [sbeck@leg.state.vt.us](mailto:sbeck@leg.state.vt.us)  
**Cc:** [McNamara, Ed](mailto:McNamara,Ed)  
**Subject:** Standard Offer Testimony of Ed McNamara  
**Date:** Monday, March 24, 2025 10:05:23 AM

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You don't often get email from [thomas.melone@allcous.com](mailto:thomas.melone@allcous.com). [Learn why this is important](#)

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

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Chief Executive Officer  
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New Haven, CT 06510  
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[REDACTED]

[REDACTED]

[REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]  
**Date:** Monday, April 21, 2025 9:37:06 AM  
**Attachments:** [REDACTED]

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[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** [REDACTED]  
**Date:** Monday, March 24, 2025 5:14:51 PM  
**Attachments:** [REDACTED]

---

[REDACTED]

[REDACTED]

---

**From:** Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone  
**Sent:** Monday, March 24, 2025 10:03 AM  
**To:** kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibia, L <lsibia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us  
**Cc:** McNamara, Ed <Ed.McNamara@vermont.gov>  
**Subject:** Standard Offer Testimony of Ed McNamara

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Allco's challenges to the bad (and in my view unlawful) aspects of the Standard Offer are part of those.

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I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

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Chief Executive Officer  
Allco Renewable Energy Limited

157 Church St., 19th Floor  
New Haven, CT 06510  
(212) 681-1120  
(801) 858-8818 (fax)

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**From:** Thomas Melone <[thomas.melone@gmail.com](mailto:thomas.melone@gmail.com)> **On Behalf Of** Thomas Melone  
**Sent:** Monday, March 24, 2025 10:03 AM  
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[sbongartz@leg.state.vt.us](mailto:sbongartz@leg.state.vt.us); [sbeck@leg.state.vt.us](mailto:sbeck@leg.state.vt.us)  
**Cc:** McNamara, Ed <[Ed.McNamara@vermont.gov](mailto:Ed.McNamara@vermont.gov)>  
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**Sent:** Monday, March 24, 2025 10:03 AM  
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**Cc:** McNamara, Ed <Ed.McNamara@vermont.gov>  
**Subject:** Standard Offer Testimony of Ed McNamara

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**From:** Thomas Melone <[thomas.melone@gmail.com](mailto:thomas.melone@gmail.com)> **On Behalf Of** Thomas Melone  
**Sent:** Monday, March 24, 2025 10:03 AM  
**To:** [kjames@leg.state.vt.us](mailto:kjames@leg.state.vt.us); [scampbell@leg.state.vt.us](mailto:scampbell@leg.state.vt.us); Sibia, L <[lsibia@leg.state.vt.us](mailto:lsibia@leg.state.vt.us)>;  
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[sbongartz@leg.state.vt.us](mailto:sbongartz@leg.state.vt.us); [sbeck@leg.state.vt.us](mailto:sbeck@leg.state.vt.us)  
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**From:** Thomas Melone <[thomas.melone@gmail.com](mailto:thomas.melone@gmail.com)> **On Behalf Of** Thomas Melone

**Sent:** Monday, March 24, 2025 10:03 AM

**To:** [kjames@leg.state.vt.us](mailto:kjames@leg.state.vt.us); [scampbell@leg.state.vt.us](mailto:scampbell@leg.state.vt.us); Sibia, L <[lsibia@leg.state.vt.us](mailto:lsibia@leg.state.vt.us)>; [rbailey@leg.state.vt.us](mailto:rbailey@leg.state.vt.us); [chowland@leg.state.vt.us](mailto:chowland@leg.state.vt.us); [bkleppner@leg.state.vt.us](mailto:bkleppner@leg.state.vt.us); Chris Morrow <[cmorrow@leg.state.vt.us](mailto:cmorrow@leg.state.vt.us)>; [msouthworth@leg.state.vt.us](mailto:msouthworth@leg.state.vt.us); [dtorre@leg.state.vt.us](mailto:dtorre@leg.state.vt.us); [awatson@leg.state.vt.us](mailto:awatson@leg.state.vt.us); [tkwilliams@leg.state.vt.us](mailto:tkwilliams@leg.state.vt.us); [rhardy@leg.state.vt.us](mailto:rhardy@leg.state.vt.us); [sbongartz@leg.state.vt.us](mailto:sbongartz@leg.state.vt.us); [sbeck@leg.state.vt.us](mailto:sbeck@leg.state.vt.us)

**Cc:** McNamara, Ed <[Ed.McNamara@vermont.gov](mailto:Ed.McNamara@vermont.gov)>

**Subject:** Standard Offer Testimony of Ed McNamara

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**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

Greetings Honorable Members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy,

I respectfully request that I be given equal time to testify before you via zoom to address the testimony given by PUC Chair Ed McNamara to the House Committee on February 7, 2025. [https://www.goldendomevt.com/VTHouseEnergyDigitalInfra\\_2025-02-07\\_11-13.html](https://www.goldendomevt.com/VTHouseEnergyDigitalInfra_2025-02-07_11-13.html)

Mr. McNamara singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. That part is true, but most of the litigation has been focused on the PUC's weaponization of the "single-plant" rule, a concocted PUC rule that has been used (and is still being used) by the PUC to crush non-utility solar projects.

I am (or more accurately my company—Allco) is the single developer that Mr. McNamara focused on in his testimony.

The Vermont Superior Court has referred to Allco as "climate warriors who would subject

anything in their path to the broad sweep of their scythe, leaving the path open for all other solar developers.” *Otter Creek Solar LLC v. Vermont Pub. Util. Comm’n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at \*7. Allco has a long list of *successful* litigation challenging unfair practices against small local solar projects, including in California, Connecticut, Massachusetts & Vermont.

Allco’s challenges to the bad (and in my view unlawful) aspects of the Standard Offer are part of those.

But the “single-plant” rule is the worst violator of them all. In his testimony, Mr. McNamara provided context that has to date been missing. As he stated, it was around 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES. Shortly thereafter, the PUC weaponized and expanded the single-plant rule by denying the CPG for the very first project awarded a contract under the Standard Offer competitive solicitation rules, which is Chelsea Solar (named after my youngest daughter—a 2015 graduate of Middlebury College).

The PUC’s new single-plant rule was applied *retroactively* to Chelsea and Apple Hill Solar (both Allco projects) based upon the demonstrably *false claim* that when the Chelsea Solar and Apple Hill Solar contracts were executed in 2013 & 2014 it was not known that both projects would require GMP to build a new line extension from GMP’s nearest then existing three-phase line to the site of both projects. It was known because the 2013 Standard offer contract that was *approved by the PUC* specifically described the GMP interconnection plan that *clearly and unambiguously* stated that the “new Line” would be needed to interconnect both the Chelsea project and the Apple Hill project. (“Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. These would be shared with Apple Hill if constructed.”) (Emphasis added.)

But the actual facts didn’t matter. What appears to matter to the PUC is political connections. Thus, last year when the “single-plant” rule became an obstacle for Global Foundries’ solarization of its campus, the PUC ditched the rule for them using another contorted legal argument that the United States Supreme Court has described as “dangerous.” The United States Supreme Court has explained that “the meaning of words in a statute cannot change with the statute’s application. [ ] To hold otherwise ‘would render every statute a chameleon,’ [ ], and ‘would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.’” *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) “To give the same words a different meaning for each category would be to invent a statute rather than interpret one”. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC’s dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco’s due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Respectfully,

Thomas Melone  
Chief Executive Officer  
Allco Renewable Energy Limited  
157 Church St., 19th Floor  
New Haven, CT 06510  
(212) 681-1120  
(801) 858-8818 (fax)

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** [REDACTED]  
**Date:** Monday, April 14, 2025 2:15:45 PM  
**Attachments:** [REDACTED]

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** Monday, April 14, 2025 2:06 PM  
**To:** [REDACTED]  
**Subject:** [REDACTED]

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** Monday, March 24, 2025 5:15 PM  
**To:** [REDACTED]  
[REDACTED]  
[REDACTED]  
**Subject:** [REDACTED]

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[REDACTED]

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[REDACTED]

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**From:** Thomas Melone <[thomas.melone@gmail.com](mailto:thomas.melone@gmail.com)> **On Behalf Of** Thomas Melone  
**Sent:** Monday, March 24, 2025 10:03 AM  
**To:** [kjames@leg.state.vt.us](mailto:kjames@leg.state.vt.us); [scampbell@leg.state.vt.us](mailto:scampbell@leg.state.vt.us); Sibia, L <[lsibilia@leg.state.vt.us](mailto:lsibilia@leg.state.vt.us)>;  
[rbailey@leg.state.vt.us](mailto:rbailey@leg.state.vt.us); [chowland@leg.state.vt.us](mailto:chowland@leg.state.vt.us); [bkleppner@leg.state.vt.us](mailto:bkleppner@leg.state.vt.us); Chris Morrow  
<[cmorrow@leg.state.vt.us](mailto:cmorrow@leg.state.vt.us)>; [msouthworth@leg.state.vt.us](mailto:msouthworth@leg.state.vt.us); [dtorre@leg.state.vt.us](mailto:dtorre@leg.state.vt.us);  
[awatson@leg.state.vt.us](mailto:awatson@leg.state.vt.us); [tkwilliams@leg.state.vt.us](mailto:tkwilliams@leg.state.vt.us); [rhardy@leg.state.vt.us](mailto:rhardy@leg.state.vt.us);  
[sbongartz@leg.state.vt.us](mailto:sbongartz@leg.state.vt.us); [sbeck@leg.state.vt.us](mailto:sbeck@leg.state.vt.us)  
**Cc:** McNamara, Ed <[Ed.McNamara@vermont.gov](mailto:Ed.McNamara@vermont.gov)>  
**Subject:** Standard Offer Testimony of Ed McNamara

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cannot change with the statute's application. [ ] To hold otherwise 'would render every statute a chameleon,' [ ], and 'would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.'" *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) "To give the same words a different meaning for each category would be to invent a statute rather than interpret one". *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

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Thomas Melone  
Chief Executive Officer  
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New Haven, CT 06510  
(212) 681-1120  
(801) 858-8818 (fax)

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**Date:** Monday, April 21, 2025 12:43:31 PM

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**From:** [Redacted]

**Sent:** Monday, April 21, 2025 12:08:27 PM

**To:** [Redacted]

**Cc:** [Redacted]

**Subject:** [Redacted]

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]  
**Date:** Monday, April 21, 2025 12:08:28 PM  
**Attachments:** [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]

# EXHIBIT 4

04/21/2025	Sent email notification regarding the issuance of 'Other attachment Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/21/2025	04/21/25 Other attachment Attorney Melone Ex-Parte Email Communication issued and entered
04/21/2025	Sent email notification regarding the issuance of 'Memorandum Requesting Comments Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/21/2025	04/21/25 Memorandum Requesting Comments Memorandum re: Request for Comments sent by Holly R. Anderson [Clerk of the Commission]
04/14/2025	Sent email notification regarding filing of 'Other document filed with the Commission Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/14/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/14/2025	04/14/25 Other document filed with the Commission Attachment A – Appellant's Motion for Stay or Extension of Time in VT Docket Nos. 24-AP-341 & 25-AP-004
04/14/2025	04/14/25 Response to Motion filed by Vermont Department of Public Service [P] in response to Other document filed with the Commission filed by []
04/14/2025	Sent email notification regarding the issuance of 'Order - Other Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/14/2025	04/14/25 Order - Other Order Quashing Subpoenas issued and

	entered
04/10/2025	Sent email notification regarding filing of 'Other document filed with the Commission Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/10/2025	Sent email notification regarding filing of 'Reply to Response Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/10/2025	04/10/25 Other document filed with the Commission ANR Reply to NSC Motion
04/10/2025	04/10/25 Reply to Response filed by Vermont Agency of Natural Resources [P]
04/08/2025	Sent email notification regarding filing of 'Motion - Change Schedule Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/08/2025	04/8/25 Motion - Change Schedule filed by Apple Hill Solar LLC [PET]
04/02/2025	Result for 04/4/25 Status Conference changed to Cancelled
04/02/2025	Sent email notification regarding the issuance of 'Other Clerk-issued document Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	04/2/25 Notice of Cancelled Status Conference, issued by Holly R. Anderson [Clerk of the Commission]
04/02/2025	Sent email notification regarding filing of 'Supplemental Prefiled Testimony Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	04/2/25 Supplemental Prefiled Testimony of Jim McClammer [WIT] filed on behalf of Apple Hill Solar LLC [PET]

04/02/2025	Sent email notification regarding filing of 'Exhibit Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	Sent email notification regarding filing of 'Supplemental Prefiled Testimony Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	04/2/25 Exhibit AH-IJ-4 of Ian A. Jewkes [WIT] filed on behalf of Apple Hill Solar LLC [PET]
04/02/2025	04/2/25 Supplemental Prefiled Testimony of Ian A. Jewkes [WIT] filed on behalf of Apple Hill Solar LLC [PET]
03/27/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
03/27/2025	03/27/25 Response to Motion filed by Vermont Department of Public Service [P] in response to Motion - Other filed by Apple Hill Solar LLC [PET]
03/27/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
03/27/2025	03/27/25 Response to Motion filed by Vermont Agency of Natural Resources [P] in response to Motion - Other filed by Apple Hill Solar LLC [PET]
03/24/2025	Sent email notification regarding filing of 'Discovery question Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
03/24/2025	03/24/25 Discovery Request PETITIONER'S NOTICE OF ISSUANCE OF SUBPOENAS filed by Apple Hill Solar LLC [PET]

# **EXHIBIT 5**

04/21/2025	Sent email notification regarding the issuance of 'Other attachment Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
04/21/2025	04/21/25 Other attachment Attorney Melone Ex-Parte Email Communication issued and entered
04/21/2025	Sent email notification regarding the issuance of 'Memorandum Requesting Comments Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
04/21/2025	04/21/25 Memorandum Requesting Comments Memorandum re: Request for Comments sent by Holly R. Anderson [Clerk of the Commission]
04/08/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
04/08/2025	04/8/25 Response to Motion filed by Town of Bennington [P] in response to Motion - Reconsideration filed by Chelsea Solar LLC [PET]
03/27/2025	Sent email notification regarding filing of 'Discovery response Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
03/27/2025	03/27/25 Discovery response Town of Bennington's Supplemental Responses to Petitioner's Discovery filed by Town of Bennington [P]
03/25/2025	Sent email notification regarding filing of 'Motion - Reconsideration Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
03/25/2025	03/25/25 Motion - Reconsideration filed by Chelsea Solar LLC [PET]