

My Experience Participating at Public Service Board Hearings

Libby Harris, Apple Hill, Bennington, Vermont

For the past year I have been experiencing the most difficult if not impossible task of being a participant in the process of assessing the merit of installing 27 acres of solar panels in Bennington, Vermont.

Because my land adjoins this proposed site, I received filings from the company to the Public Service Board (PSB). I asked for and received Intervenor status on both stages of the two contiguous 2 MW proposed projects and therefore, have the legal right to participate in the filing of testimony, briefs, answering discovery questions, reviewing every filing and responding to them.

It is totally impossible for an average citizen with no legal training to fend one's way through this massive material with any acuity at all. I was lucky enough to hear of Vermonters for a Clean Environment, a non-profit organization spearheaded by Annette Smith, of Danby, Vt. She has spent hundreds of hours with me helping me to understand and participate in this daunting process.

I was given Intervenor status only in several areas including Orderly Development, Aesthetics, Noise and Wind. I was told that if I wanted to participate I could not submit my own testimony but had to supply expert testimony in each area. In addition, since my neighborhood, Apple Hill, is deed restricted to residential only, I expressed concern to the PSB about a commercial enterprise using residential land thereby violating our deed restrictions. The hearing officer told me that the PSB doesn't deal with deed issues and I'd have to go to Superior Court to be heard on that issue. It would have cost at least \$10,000 to do that. And any expert testimony in any of the areas that I was granted Intervenor status would have cost the same.

At the August 18 Technical Hearing for the second, lower half of the project called Apple Hill Solar, I added an App. to my phone which tracked the actual noise levels at my house at different times of the day. It was refused to be admitted into evidence. I supplied a contractor who has lived in my community for 20 years as an expert and he was attacked by the solar

company's lawyer for not having degrees, honors and familiarity with scientific theories in the field of wind to be an expert. The PSB allowed him to give testimony on his experience but added that it would be given the weight the PSB deemed worthy.

The solar company has produced only simulated drawings, mostly in black and white, not any actual simulated photos. Their studies were accepted into evidence, including a noise study for the upper Chelsea Solar project done by a company from California based on modeling. No expert witness on noise was presented to testify at the technical hearing and be available for cross-examination. No actual sound monitoring was conducted to determine baseline conditions. No noise study was submitted in the lower Apple Hill project. At the technical hearing, the PSB hearing officer helped the applicant make his case for why a noise study is not necessary, something that only the company's lawyer should have been doing.

We have made numerous requests for the wind issue to be addressed. The Apple Hill Homeowners Association asked, I asked, and I filed a motion with the PSB asking them to use their authority to hire independent experts to evaluate the noise and wind issue since the company refused. The PSB denied my motion. No wind study has been done by the company.

We all know that when you cut a forest, noise and wind can increase. There is nothing in the record at the PSB that credibly addresses these concerns, and the company has testified that if there is wind damage after the forest is cut, they will not investigate or take any responsibility. I presented evidence that the noise might increase 5 to 10 dBA according to the Federal Highway Administration's Noise Screening handbook, but the company's modeling showed it would increase 3 dBA. The PSB hearing officer said my information from the FHA would be given the weight it was due, implying it wasn't worth as much as the company's model.

As an intervenor, I have to appear as my own lawyer *pro se*, which means be my own lawyer, since citizens are not provided legal counsel to represent them at PSB hearings. State agencies of natural resources and public service send attorneys who do not participate because they have already signed off on Memoranda of Understanding with the developers. Two attorneys paid for by the state sit in each hearing and seem to be working for the developer, while I sit there without an attorney scrambling to keep up with all the legalese.

The entire process is geared to overwhelm the average citizen trying to participate and the solar company is totally professionally prepared to ply the citizen with motion after motion with the aim of forcing the person to give in and give up.

Every time I file something I have to prepare a cover letter, a certificate of service, send it all in an email to the other parties, mail paper copies to the other parties, and provide four paper copies to the PSB that have to be delivered on the date of the deadline.

I have been threatened and bullied by this company and some of the instances were allowed into the public record but still the onslaught continues. In attempting to negotiate a maintenance agreement for the shared right of way they intend to use for maintaining the upper project, the company made dropping my intervention a condition of acceptance of the agreement. A second time in discussing screening my view of the upper project, they again tried to get me to drop my intervention, and said they could cut all the trees in the apple orchard I look out onto, and would “wipe the floor” with me at the technical hearing the following week if I didn’t agree to their terms.

We are now at the 11th hour. The Town of Bennington was informed more than a year ago that this was going on but only last week decided to get involved and has done so. It now has Intervenor status in the second project and has stated that it opposes this installation and has hired an Aesthetics expert to review all filings. Since the project will be in full view of the Bennington Welcome Center and visible from parts of the Bennington Battle Monument, the Town has now come on board to assess the consequences of having 27 acres of solar panels facing directly at sites which are visited by 625,000 people entering this southwest entry way into Vermont.

Let me state firmly that I am not a case of NIMBY, Not In My Backyard. I am presently going solar on my own land. Renewable energy is the wave of the future to get us off fossil fuels. It is not this that I oppose. It is allowing huge Wall Street conglomerates to run amok in poorly sited places and with the intent of taking advantage of massive tax breaks whilst the very renewable energy credits will not at all be used in Vermont to help Vermonters meet our renewable energy goals.