STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-3587-NMP

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| Petition of Norwich Upper Loveland Solar, LLC. for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 500 kW (AC) group net-metering solar electric generation system in Norwich, Vermont | |

Order entered:

## PROPOSAL FOR DECISION

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## I. INTRODUCTION

This case involves an application filed by Norwich Upper Loveland Solar LLC ("Applicant") with the Vermont Public Utility Commission ("Commission") for a certificate of public good ("CPG"), pursuant to 30 V.S.A. §§ 248 and 8010, to install and operate a 500 kW solar group net-metering system at 201 Upper Loveland Road in Norwich, Vermont (the proposed "Facility"). The Facility is on a preferred site identified in a joint letter of support from the municipal legislative body and municipal and regional planning commissions.

Based on the below findings and subject to conditions, I recommend that the Commission conclude that the Facility complies with the requirements of Commission Rule 5.100, does not raise a significant issue with respect to the applicable criteria of 30 V.S.A. §§ 248 and 8010, and will promote the general good of the State of Vermont.

## II. PROCEDURAL HISTORY

On August 31, 2021, the Applicant filed an application for the Facility with the Commission.

Notice and copies of the application have been provided pursuant to Commission Rule 5.100. The deadline for filing comments or requesting a hearing in this matter was January 3, 2022.

On December 23, 2021, Stephen Gorman filed public comments on the Facility.

On December 27, 2021, John Benson, III, filed public comments on the Facility.

On January 3, 2022, the Vermont Department of Public Service ("Department"), the Vermont Agency of Natural Resources ("ANR"), and the Vermont Division for Historic Preservation ("DHP") filed comments on the Facility.

Between January 3 and 5, 2022, Laurence and Shelley Ufford, Stephen Gorman, and John and Heather Benson filed motions to intervene in the case. Notices of intervention were filed by adjoining landowners Dan and Jenn Goulet, Samin Kim, and Jayoung Joo. Requests for a hearing were filed by John and Heather Benson, Dan and Jenn Goulet, and Stephen Gorman. Host landowner John Lewis filed a motion to intervene. Adjoining landowner Aaron Lamperti also filed a notice of intervention and a request for a hearing.

On January 10, 2022, I issued an order granting party status to Dan and Jenn Goulet, Samin Kim, and Jayoung Joo as adjoining landowners, and setting a deadline for responding to the remaining motions, notices, and hearing requests.

On February 25, 2022, the Applicant filed a notice that adjoining landowners James and Kathleen McTaggart did not receive the 45-day advance notice of the Project or the notice of the complete petition that was provided to the other adjoining landowners in the case. The Applicant stated that the application materials were hand-delivered to the McTaggarts on February 24, 2022.

On March 17, 2022, after an opportunity for responses, I issued an order granting party status to Aaron Lamperti, Joy Kenseth, Stephen Gorman, John and Heather Benson, Laurence and Shelley Ufford, and John Lewis. I deferred resolution of the hearing requests filed by Stephen Gorman, John and Heather Benson, Dan and Jenn Goulet, and Joy Kenseth pending clarification of the substantive issues on which a hearing was sought, and denied the hearing requests filed by Aaron Lamperti and John Lewis because they did not raised any substantive issues distinct from those raised by the Applicant. I also reopened the comment period to allow James and Kathleen McTaggart an opportunity to file comments, a notice of intervention, and request a hearing.

On April 18, 2022, Stephen Gorman provided additional details on the issues requested for hearing. The filing was joined by John and Heather Benson, Dan and Jenn Goulet, and Joy Kenseth. On the same day, James McTaggart filed a notice of intervention.

On April 20, 2022, the Applicant filed a response to the additional details filed by Stephen Gorman.

On June 1, 2022, Samin Kim, Jayoung Joo, Stephen Gorman, Laurence and Shelley Ufford, John and Heather Benson, Dan and Jenn Goulet, and Joy Kenseth (the "Landowner Parties") filed a motion to dismiss the application and requesting sanctions.

On June 2, 2022, I issued an order granting party status to James McTaggart. I also granted the hearing requests on the issues of orderly development (30 V.S.A. § 248(b)(1)) and aesthetics; streams; headwaters; wetlands; soil erosion; necessary wildlife habitat; rare, threatened, and endangered species; natural environment; and public health and safety (30 V.S.A. § 248(b)(5)).

On August 19, 2022, after responses and replies were filed, I issued an order denying the motion to dismiss and for sanctions.

On September 27, 2022, I issued an order establishing the schedule for the proceeding.

On October 25, 2022, I conducted a site visit in Norwich, Vermont.

During the period from November 2022 through April 2023, the parties filed testimony and exhibits, and I ruled on evidentiary issues leading up to the hearing.

On April 28, 2023, I conducted an evidentiary hearing.

On May 22, 2023, the parties filed initial briefs and proposed findings of fact.

On June 5, 2023, the parties filed reply briefs.

On June 29, 2023, the Applicant filed a motion asking the Commission to take judicial notice of a preferred site letter request that it argued was submitted to the Town of Norwich Planning Commission and Selectboard. The parties submitted filings regarding the issue of judicial notice through August 21, 2023.

No other comments on the application were received by the Commission.

At the evidentiary hearing, I admitted Commission Exhibit 1, an exhibit list, and all the prefiled testimony and exhibits listed on Commission Exhibit 1.

## III. SUMMARY OF COMMENTS

*Vermont Department of Public Service*

The Department requested a CPG condition requiring the Applicant to file with the Commission whether it will use a perimeter fence or protective screening prior to Facility operation in any CPG that issues.

*Vermont Division for Historic Preservation*

DHP concluded in its comments that the Facility will have no effect on any historic sites listed in or eligible for inclusion in the State Register of Historic Places.

*Vermont Agency of Natural Resources*

ANR's comments included proposed conditions to avoid undue adverse impacts on streams, wetlands, and necessary wildlife habitat. ANR also noted that the forest clearing proposed for the Facility was approximately 8.2 acres, which is the twelfth highest acreage of forest clearing per kWh of nameplate capacity out of the 188 solar projects for which ANR has collected forest clearing data since 2016.

*Public Comments*

Of the substantive public comments received, five commenters supported the proposed Facility, while four were opposed. Opposition to the Facility was based primarily on the Facility's impacts on the natural environment, including forest clearing and nearby wetlands. Two of the commenters that opposed the Facility intervened in the proceeding and are parties to the case.

## IV. CONDITIONAL WAIVER OF REVIEW UNDER CERTAIN CRITERIA FOR NET-METERING PROJECTS

Pursuant to 30 V.S.A. § 8010 and Commission Rule 5.111, the Commission has conditionally waived review of the following criteria, and I recommend that the Commission find that no party presented any testimony that warrants rescinding any part of that waiver in this proceeding:

- 30 V.S.A. § 248(b)(2) (need);
- 30 V.S.A. § 248(b)(4) (economic benefit);
- 30 V.S.A. § 248(b)(6) (integrated plan);
- 30 V.S.A. § 248(b)(7) (electric energy plan);
- 30 V.S.A. § 248(b)(9) (waste-to-energy facilities); and
- 30 V.S.A. § 248(b)(10) (transmission facilities).

Therefore, only the criteria applicable to the system under Rule 5.111 are addressed in this Order.

## V. FINDINGS

Pursuant to 30 V.S.A. § 8(c), and based on the record and evidence before me, I present the following proposed findings of fact to the Commission.

### Description of the Facility

1. The Facility consists of a solar electric system with a total capacity of 500 kW AC. Martha Staskus, Applicant ("Staskus pf.") at 4.

2. The Facility will be interconnected with Green Mountain Power Corporation's ("GMP") distribution system. Staskus pf. at 6.

3. The Facility will require clearing approximately 8.2 acres of a larger 38-acre parcel. Staskus pf. at 5; exh. NUL-MS-2 (rev. 4/26/23); exh. NUL-MS-6 at 1; exh. NN-JG-2 at 1.

4. The Facility will be adjacent to a 150-foot-wide transmission corridor and a cellular communications tower. The Facility will be accessed by an existing access road that also provides access to the cellular communications tower. The access road will be extended to provide access to the Facility site. Staskus pf. at 4-5, 8; exh. NUL-MS-2 (rev. 4/26/23).

5. Facility components include: (a) approximately 15 rows of solar panels supported by a fixed ground-mounted racking system; (b) string inverters for an aggregate nameplate capacity of approximately 500 kW (AC); (c) three new pole-mounted transformers; (d) underground wiring connecting the array to the transformers; (e) an approximate 750-foot-long line extension; and (f) either an approximately eight-foot-tall security fence with mesh size no smaller than six inches by six inches within three feet of ground level, or shielding such as solar scrim consistent with the "Guarding of Live Parts" requirements of the National Electrical Code. Staskus pf. at 5-7; exh. NUL-MS-2 (4/26/23); exh. NUL-MS-4; exh. NUL-MS-12.

6. The maximum sound levels generated by Facility equipment are estimated to be approximately 27.4 dBA at the nearest residence. Staskus pf. at 13; exh. NUL-MS-8.

7. Construction activities will be limited to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays. No construction activities will occur on Sundays or state or federal holidays. Staskus pf. at 10.

## Preferred Site Status

8. The Applicant received a joint letter of support from the Norwich Selectboard ("Selectboard"), the Norwich Planning Commission ("Planning Commission"), and the Two Rivers-Ottauquechee Regional Planning Commission ("Regional Planning commission"). Staskus pf. at 10; exh. NUL-MS-5.

9. The Facility layout underwent several iterations between the Applicant's first notice to adjoining landowners and the site plan included in the application filed with the Commission. Exh. NN-JK-14; exh. NN-JK-21.

10. A sketch of the first Facility layout was sent to adjoining landowners on May 6, 2021. The first Facility layout showed a footprint that was adjacent to the existing transmission line

west of the Facility site and limits of clearing set back from a ridgeline to the east of the Facility site. Exh. NN-JK-21 at 1-2.

11. The Applicant's presentation to the Planning Commission on July 13, 2021, included a second Facility layout and a viewshed analysis. The second Facility layout was similar in size and area to the sketch of the first Facility layout that was sent to adjoining landowners on May 6, 2021. The second Facility layout included a caption that stated "Array over the ridge behind these trees – near transmission line corridor" and indicated "approximately 500 feet" of screening from residences along Upper Loveland Road. Exh. NN-JK-15 at 8; exh. NN-JK-21 at 3-8.

12. At the July 13, 2021, Planning Commission meeting, the Applicant explained that the Facility layout "might change slightly depending on the review of the wetland scientist" but any changes would be "minor." Exh. JK-21 at 7.

13. After the Applicant's presentation at the July 13, 2021, meeting, the Planning Commission voted to recommend to the Selectboard that a letter of support be provided for the Facility. Exh. NN-JK-16; exh. NN-JK-21 at 8.

14. The Applicant filed its 45-day advance notice submission the day after the Planning Commission meeting, on July 14, 2021. The 45-day notice included a site plan showing a third Facility layout. The site plan states that it was "Prepared on: 6/24/21 RD" and that the total limits of disturbance are 9.6 acres. Exh. NN-JK-17; exh. NN-JK-21 at 8.

15. The third Facility layout moved the southern limit of disturbance north to avoid a wetland. As a result of the layout reconfiguration, the eastern limit of disturbance moved approximately 100 feet to the east, extending onto the ridge adjacent to the Facility. The third Facility layout shows a distance of approximately 405 feet to the nearest residence. Exh. NN-JK-17; exh. NN-JK-21 at 8-10.

16. The Applicant provided the first, second, and third Facility layouts to the Selectboard in the meeting packet for an August 11, 2021, meeting. Exh. NN-JK-20 at 6, 11, 28; exh. NN-JK-21 at 13.

17. The Applicant provided the third Facility layout to the Regional Planning Commission in an August 23, 2021, submission with an explanation that the Facility would have limited visibility. Exh. NN-JK-19; exh. NN-JK-21 at 13.

18. At its August 11, 2021, meeting, the Selectboard voted to support the Facility and issued a joint letter on Town of Norwich letterhead signed by the Selectboard and Planning Commission dated August 20, 2021. The Regional Planning Commission also signed the joint letter of support. Exh. NN-JK-18; exh. NN-JK-21 at 13-14; exh. NUL-MS-5.

19. The Applicant filed a site plan showing fourth Facility layout with its application on August 31, 2021. The site plan filed with the application was dated August 27, 2021, and again moved the eastern limit of disturbance and included additional clearing that extended over the eastern ridge and indicated that the array was approximately 325 feet from the nearest residence. Exh. NUL-MS-2 (8/31/2); exh. NN-JK-21 at 15-16.

Discussion

The Landowner Parties argue that the Commission should disregard the joint letter of support from the Planning Commission, Selectboard, and Regional Planning Commission.

According to the Landowner Parties, the Applicant used different Facility layouts to purposely misrepresent the Facility to adjoining landowners, the Planning Commission, the Selectboard, and the Regional Planning Commission, before ultimately submitting the final Facility layout in the site plan provided to the Commission. The Landowner Parties note that the June 27, 2021, date of the third Facility layout map provided to the Selectboard and Regional Planning Commission preceded the Applicant's July 13, 2021, presentation to the Planning Commission and was included in the 45-day notice the day after the Planning Commission meeting but was not provided to the Planning Commission.

The Applicant acknowledges that the Facility site plans changed, but denies that there was any misrepresentation about the Facility. The Applicant states that it informed the Planning Commission of the potential for changes following the environmental site assessment. The final changes to the Facility layout occurred, according to the Applicant, in response to comments from ANR on the Applicant's 45-day advance notice, which the Applicant received on August 4, 2021, noting the possible presence of a vernal pool at the southern end of the Facility site.[1] The vernal pool was confirmed in a subsequent review by the Applicant's environmental consultant, and a 100 foot buffer was added to the Facility layout.[2]

[1] Affidavit of Martha Staskus (6/6/22).
[2] *Id.*

The Applicant represents that it provided the revised site plan to the Planning Commission by email, and again when the complete application was filed with the Commission.[3] The Applicant also argues that members of the Landowner Parties group attended meetings of the Planning Commission and Selectboard seeking to have those entities revoke their support for the Facility, but the Planning Commission and Selectboard declined to do so.[4]

The evidentiary record confirms that the Facility layout changed between the date that the Applicant provided the site plans to the municipal and regional entities and the date that the Applicant filed the final site plan with the Commission.[5] That the Facility changed, however, does not demonstrate misrepresentation or malfeasance by the Applicant. Design details often change over the course of the development process for a variety of reasons, including changes to reduce natural resource impacts as the Applicant claims here.

The record also shows that the Applicant told the Planning Commission when presenting the Facility at the July 13, 2021, Planning Commission meeting that layout changes to avoid wetland areas were possible, and that the Applicant would notify the municipal entities of the changes and provide the complete application as required by the Commission's rules.[6] The Applicant's environmental report states that the Applicant's consultant performed field investigations of the Facility site in June and July of 2021, which is consistent with the timing of the changes that occurred with the Facility layout.[7]

The Applicant represents that it notified the Norwich municipal entities of the changes to the Facility. The record shows that the Applicant provided the third Facility layout, which was also included in the Applicant's 45-day notice, to the Selectboard and the Regional Planning

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[3] Applicant Reply Br. at 20-21.

[4] *Id.* at 26; Applicant Response to Motion to Dismiss and for Sanctions (6/6/22) at 3.

[5] Exh. NN-JK-21.

[6] Exh. NN-JK-8 at 3 ("The layout of our solar array might change slightly depending on the review of the wetland scientist but . . . it will be very minor changes based on the location, and there [are] areas that we already are avoiding based on our understanding of this site."); exh. NN-JK-8 at 16-18 ("I'm very happy to come back and present and will send you the data through the . . . we can send the data directly to Rod when we have it. I do want to note that you will not see it in the 45-day notice, that will be coming out tomorrow based on . . . the timing of various PUC deadlines but you will see it in the full application and we will have it before we submit the full application and can send it to you before we submit the full application by sending it to Rod."). *See also* Commission Rule 5.107(E)(1) (requiring applicants to "serve copies of the application or provide notice of the application" on "the municipal legislative bodies and the municipal and regional planning commissions where the net-metering system will be located" within two business days of the Commission's determination that an application is complete).

[7] Exh. NUL-DB-2 at 3.

Commission.[8] Draft minutes from a February 23, 2023, Selectboard meeting show that counsel for the Landowner Parties and Joy Kenseth voiced concerns about the Facility and the Town's review process after the application was filed with the Commission.[9] Although the evidentiary record shows that some additional discussions occurred, the specific content of those discussions are not part of the evidentiary record.

In its post-hearing briefing and subsequent motion for judicial notice, the Applicant asked the Commission to supplement the record by taking judicial notice of several additional documents to support its representation that it communicated the Facility layout changes to the Norwich municipal entities.[10] The Landowner Parties opposed the motion, but also presented additional documents that they would like admitted into the evidentiary record "[i]f the Commission is inclined to allow the admission of further evidence at this stage."[11]

Pursuant to 3 V.S.A. § 810(4):

> Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

"Judicially cognizable facts" are facts "not subject to reasonable dispute" and "capable of accurate and ready determination."[12]

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[8] Exh. NN-JK-20 at 28; exh. NN-JK-21 at 13.

[9] Exh. NUL-MS-13 at 2.

[10] The Applicant has asked the Commission to take notice of the following documents related to the joint letter of support: Exh. NUL-Reply-Brief-2 (email from T. McBride to R. Francis dated 8/23/21 re: Norwich Upper Loveland, cited at Applicant's Reply Brief at 23 n.2); exh. NUL-Reply-Brief-3 (email from T. McBride to R. Francis dated 6/29/21 re: Preferred siting meeting request for potential solar project, cited at Applicant's Motion for Judicial Notice at 3 n.1); exh. NUL-Reply-Brief-4 (email from J. McLean to K. Hayden, B. Dingledine dated 7/17/23 re: FW: Preferred siting meeting request for potential solar project, cited at Applicant's Reply to Motion for Judicial Notice at 3); NUL Reply Brief-5 (Norwich Planning Commission 7/11/23 Meeting Agenda and Packet, cited at Applicant's Reply to Motion for Judicial Notice at 3); exh. NUL-Reply-Brief-6 (Norwich Planning Commission 9/14/21 draft minutes, cited at Applicant's Reply to Motion for Judicial Notice at 3); and exh. NUL-Reply-Brief-7 (Norwich Planning Commission 7/11/23 Draft Minutes, cited at Applicant's Reply to Motion for Judicial Notice at 3).

[11] Landowner Parties Surreply to Request For Judicial Notice at 5. The Landowner Parties have requested judicial notice of Exh. D (Norwich Selectboard 6/7/23 draft minutes) and Exh. E (video of the May 24, 2023, Norwich Selectboard Meeting).

[12] V.R.E. 201(b) and (f).

I recommend that the Commission take judicial notice of the publicly available meeting minutes and document packets from the Selectboard and Planning Commission meetings that the Applicant and Landowner Parties have identified.[13] These documents are not subject to reasonable dispute, are capable of accurate and ready determination, and are therefore appropriate for judicial notice.[14]

The municipal meeting packets and minutes provide further evidence that Norwich residents, including some of the Landowner Parties, voiced concerns about the Facility to the Planning Commission and Selectboard at meetings that occurred after the municipal entities signed the joint letter of support and after the application was filed with the Commission. The official documents show that the Planning Commission discussed the Facility at its July 23, 2023, meeting. The meeting was attended by members of the Landowner Parties group and their counsel, and a motion to reopen discussion on the designation of the preferred siting of the Facility failed.[15] The Selectboard also revisited the Facility at meetings on May 23 and June 7, 2023, without any action on the letter of support.[16]

The meeting packets and minutes discussed above show the Selectboard and Planning Commission heard from the Landowner Parties about the Facility on several occasions after the application and fourth Facility layout was filed with the Commission, but the municipal entities did not withdraw their support for the Facility at its proposed location.

I recommend that the Commission deny the Applicant's request for judicial notice for the three documents not discussed above, which consist of emails between the Applicant and various municipal officials.[17] As demonstrated in the post-hearing briefing, the parties dispute the facts surrounding those emails, and the Commission has no ability to verify the accuracy or

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[13] This includes exhibits NUL-Reply-Brief-5 (Norwich Planning Commission 7/11/23 Meeting Agenda and Packet); NUL Reply Brief-6 (Norwich Planning Commission 9/14/21 draft minutes); and NUL-Reply-Brief-7 (Norwich Planning Commission 7/11/23 Draft Minutes) to the Applicant's post-hearing briefing; and exhibits D (Norwich Selectboard 6/7/23 draft minutes); and E (video of the May 24, 2023, Norwich Selectboard Meeting) to the Landowner Parties' post-hearing briefing.

[14] This recommendation provides the notification to the parties required by 3 V.S.A. § 810(4). The parties will have the opportunity to contest the noticed material in their comments on this proposal for decision or at oral argument, if requested.

[15] Exh. NUL-Reply-Brief-7 at 1-4.

[16] Exhs. D and E to Landowner Parties' Surreply to Applicant's Request for Judicial Notice. This is in addition to the February 23, 2022, Selectboard meeting reflected in Exhibit NUL-MS-13.

[17] This includes exhibits NUL-Reply-Brief-2, NUL-Reply-Brief-3, and NUL-Reply-Brief-4.

authenticity of the emails without reopening the evidentiary record. The email documents, which were submitted by the Applicant, are also not necessary to confirm the validity of the joint letter of support.

Based on the discussion and findings above, I recommend that the Commission conclude that the Facility is on a preferred site and find that the evidence in the record does not support the Landowner Parties' request that the Commission disregard the joint letter of support. The joint letter of support in evidence is signed by representatives of the Selectboard, the Planning Commission, and the Regional Planning Commission.[18] The Commission's rules required the Applicant to provide notice or a copy of the full application to the municipal and regional entities once the application was deemed complete, and there is no evidence that the Applicant did not do so.[19] The complete application included the final site layout. If the municipal entities had concerns after receiving the site plan filed with the application or after revisiting the Facility at the various Planning Commission and Selectboard meetings after the application was filed, it could have intervened in the proceeding but did not.

My recommendation that the joint letter of support receive its full evidentiary weight is based on the existing record. Although I have also recommended that the Commission take judicial notice of certain additional official municipal records offered by the parties, those municipal records are not necessary to my recommendation regarding the joint letter of support. Instead, those documents provide additional confirmation that the Selectboard and Planning Commission were aware of the Landowner Parties' concerns and declined to revoke their support for the Facility. My recommendation regarding the joint letter of support does not change if the Commission declines to take notice of these documents.

## Applicable Rate Adjustors

20. The Applicant has elected to transfer the Facility's renewable energy credits ("RECs") to GMP. Staskus pf. at 22.

21. The Facility will be located on a preferred site, as defined in Commission Rule 5.103, because it will be located on a site that is identified in joint letters of support from the

[18] Exh. NUL-MS-5.
[19] *See* Commission Rule 5.107(E)(1).

Selectboard, the Planning Commission, and the Regional Planning Commission. Staskus pf. at 10; exh. NUL-MS-5.

Discussion

Pursuant to Commission Rule 5.127(C)(2), because the Facility is greater than 150 kW and is located on a preferred site, a siting adjustor of minus four cents per kilowatt hour applies to all energy generated by the net-metering system.

Because the Applicant has elected to transfer the ownership of the RECs generated by the net-metering system, there is no REC adjustor, pursuant to Commission Rule 5.127(B).

The siting and REC adjustors will be stated in the Facility's CPG, pursuant to Commission Rule 5.127(B)(2) and (C)(1).

## Orderly Development of the Region

[30 V.S.A. §§ 248(b)(1) and 248(b)(1)(C)]

22. The Facility will not unduly interfere with the orderly development of the region. In making this finding, due consideration has been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. Substantial deference has been given to the land conservation measures and specific policies contained in the duly adopted regional plan. This finding is supported by the additional findings below.

23. The Norwich Town Plan ("Town Plan") has not received an affirmative determination of energy compliance under 24 V.S.A. § 4352. Exh. PSD-LT-2 at 20.

24. The Two Rivers-Ottauquechee Regional Plan ("Regional Plan") has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. Exh. PSD-LT-2 at 20.

25. The Facility is consistent with the energy objectives in the Town Plan and the Regional Plan. Exh. NUL-MS-6 at 7-9; Staskus pf. reb. at 7-8.

26. The Facility will be in a Ridgeline Protection Overlay Area discussed in the Town Plan. Exh. NUL-MS-6, Appendix C; Joy Kenseth, Landowner Intervenor ("Kenseth pf.") at 3; Staskus pf. reb. at 2-4.

27. The Town Plan includes Energy Policy 3-2.h, which states, "For solar generation projects sized from 15 kW to 500 kW the presumption is that all of Norwich meets the Public Utility Commission definition of 'preferred site,' notwithstanding the existing areas of local concern including the Ridgeline Protection Overlay Area . . . ." Exh. NN-JK-6 at 22.

28. Section 3.8 of the Town Plan includes "Renewable Energy Project Siting Standards" and explain that "[t]his plan calls upon the Public Utility Commission to issue Certificates of Public Good for projects between 15 kW and 500 kW based on the presumption that lands in Norwich meet the so-called 'preferred site criteria,' except in areas already mapped as Ridgeline Protection Overlay Area[s] . . . ." Exh. NN-JK-6 at 28.

29. The Facility is in a Resource Protection Planning Area. Exh. NN-JK-6 at 9, 20; exh. NN-JK-22 at 4-5.

30. The Town Plan states:

> [t]he intent of the Resource Protection Planning Area is to recognize the constraints and limitations that exist on a large portion of the land in Norwich. Little change in the use or development of these lands is anticipated and this plan discourages further disturbance or fragmentation of the remaining undeveloped portions of these lands through incremental, large-lot residential development."

Exh. NN-JK-6 at 9.

31. The Facility array will be sited in a mostly level area behind a ridge that runs in a north-south direction east of the array and parallel to Upper Loveland Road and I-89. There are steep slopes east of the Facility and over the ridge between the Facility and Upper Loveland Road. The slopes vary, with the average slope approximately 30% and portions of the slope exceeding 50%. Exh. PSD-LT-2 at 5, 12.

32. The Selectboard, the Planning Commission, and the Regional Planning Commission support the Facility at the proposed location. Staskus pf. at 10; exh. NUL-MS-5.

Discussion

Before finding that the construction of a generation facility will not unduly interfere with the orderly development of the region, the Commission must give due consideration to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any

affected municipality.[20] The Commission must give "substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352."[21]

The Regional Plan has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. The Town of Norwich, however, has not adopted an enhanced energy plan that has received an affirmative determination of energy compliance.[22] Accordingly, the Town Plan receives "due consideration" from the Commission under the Section 248(b)(1) criteria, not "substantial deference" as argued by the Landowner Parties.[23]

The Landowner Parties argue that the Facility will unduly interfere with the orderly development of the region because the Facility is contrary to land conservation measures and specific policies in the Town Plan and Regional Plan. The Landowner Parties specifically note that the Facility is in a Ridgeline Protection Overlay Area and a Resource Protection Planning Area. The Landowner Parties also argue that the Facility is prohibited by the Town's zoning regulations, which they assert are incorporated into the Town Plan.[24]

The Applicant disagrees that the Facility is inconsistent with the Town Plan. The Applicant argues that many of the provisions identified by the Landowner Parties as land conservation measures are instead general policy statements that are not considered in an orderly development analysis. Even if applicable, the Applicant contends, the Facility is consistent with the general considerations contained in the Town Plan. The Applicant acknowledges that the Facility is in a Ridgeline Protection Overlay Area and a Resource Protection Planning Area, but argues that the Town Plan does not prohibit the Facility in those areas.

A "land conservation measure" within the meaning of Section 248(b)(1) must be "more than a general statement of principles."[25] Instead, it "must be intended to preserve the aesthetic

[20] 30 V.S.A. §248(b)(1).
[21] *Id.*
[22] The Landowner Parties state that the Norwich Town Plan has received an affirmative determination of energy compliance. Landowner Parties' Br. at 3. This is incorrect, as can be confirmed by reference to the Regional Planning Commission website at https://www.trorc.org/town-plan-approvals/. *See also* Department Br. at 2.
[23] Landowner Parties' Br. at 8.
[24] *Id.* at 8-10.
[25] *Apple Hill Solar LLC*, 2021 VT 69, ¶ 43.

or scenic beauty of the area where the proposed project is located and must apply to specific resources in the proposed project area."[26]

In *Apple Hill Solar*, the Vermont Supreme Court discussed the specificity required for a land conservation measure while addressing a town plan's restriction on development "in prominently visible locations on hillsides."[27] In concluding that the provision at issue was specific enough to be a land conservation measure, the Court discussed two of its previous decisions involving the review of town plans in the context of Act 250.[28] In *Kesiel*, the Court found that a town plan's limitation on development on "steep slopes" was too abstract to require compliance as a land conservation measure.[29] In contrast, in *Green Peak Estates*, the Court found that a restriction on "residential development on slopes exceeding twenty percent" was a "specific policy" and therefore a land conservation measure.[30]

The Commission must only consider compliance with a town plan during its orderly development analysis if the plan contains land conservation measures.[31] The Commission is not required to consider provisions in a town plan that do not qualify as land conservation measures.

The Landowner Parties characterize several provisions in the Land Use section of the Town Plan as land conservation measures, including the objectives and policies statements in the Land Use Section,[32] the Future Land Use subsection and its discussion of Resource Protection Planning Areas,[33] and the Renewable Energy Project Siting Standards in the Energy Section.[34]

*Land Use Objectives and Policies*

The objectives and policies statements in the Land Use section of the Town Plan are general statements of policy. The language used in the policies is one of suggestion—to "*guide* development away from visually prominent locations" and "steep slopes," and to "*encourage*

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[26] *Id.* at ¶ 39 (quoting *In re UPC Vermont Wind LLC*, 2009 VT 19, ¶ 38).
[27] *Id.* at ¶¶ 45-46.
[28] *Id.* at ¶ 46 (discussing *In re Kisiel*, 172 Vt. 124 (2000) and *In re Green Peak Estates*, 154 Vt. 363 (1990)). In Act 250 proceedings, compliance with town and regional plans is required for a permit. *Id.* at ¶ 31.
[29] *Id.*
[30] *Id.*
[31] *In re Acorn Energy Solar 2, LLC*, 2021 VT 3, ¶ 92.
[32] Landowner Parties' Br. at 3-4 (citing Exh. NN-JK-6 at 4, 5).
[33] *Id.* at 4-6 (citing exh. NN-JK-6 at 7-9).
[34] *Id.* at 6 (citing exh. NN-JK-6 at 28-29).

conservation of primary agricultural soils."[35] As general policies and objectives, these provisions are not land conservation measures that the Commission must consider under Section 248(b)(1).

*Future Land Use*

The Town Plan contains a map in the future land use subsection identifying the Resource Protection Planning Area.[36] The Town Plan explains that the "Resource Protection Planning Area is composed of lands with resource constraints or hazards that significantly limit their potential for future development, and lands not available for future development due to public ownership or private conservation easements."[37] The Town Plan states that "[l]ittle change in the use or development of these lands is anticipated and this plan discourages further disturbance or fragmentation of the remaining undeveloped portions of these lands through incremental, large-lot *residential* development."[38]

The Resource Protection Planning Area is specifically identified in the Town Plan. However, while the Town Plan states that it does not anticipate future development in the identified areas due to their limited potential, development in the Resource Protection Planning Area is not prohibited. Residential development is discouraged, but the Facility is not residential and the Town Plan does not address non-residential development. Because the Resource Protection Planning Area identifies developmentally constrained areas rather than being "intended to preserve the aesthetic or scenic beauty of the area," the Resource Protection Planning Area is not a land conservation measure that the Commission must consider. Additionally, even if the Resource Protection Planning Area is a land conservation measure, the measure does not discourage non-residential development such as the Facility.

*Renewable Energy Project Siting Standards*

The Town Plan's Energy section states that it "supports renewable energy production in Norwich" but explains that its support must be balanced with the Town Plan's other polices

[35] Exh. NN-JK-6 at 5 (emphasis added). Contrast the policies in the Norwich Town Plan with the specific restriction in the land conservation measure discussed in *In re Apple Hill Solar LLC*: "The plan states that development in Rural Conservation Districts 'cannot be sited in prominently visible locations on hillsides or ridgelines.'" 2023 VT 57, ¶ 3.

[36] Exh. NN-JK-6 at 20.

[37] *Id.* at 9.

[38] *Id.* (emphasis added).

related to the protection of natural, environmental, and scenic resources, maintaining viable agriculture, focused development, preserving cultural resources, preserving the recreational and natural value of lands in the Ridgeline Protection Overlay Area and Shoreline Protection Overlay areas, and increasing housing.[39] The siting standards in the Town Plan apply generally to all renewable energy projects and include provisions directed to minimizing visual and noise impacts; satisfying zoning requirements related to setbacks, landscaping, screening, lighting, and stormwater control; requiring a decommissioning plan for projects larger than 500 kW; and restricting clearing in mapped forest blocks for projects larger than 500 kW without a forest management and reforestation plan.[40]

The Town Plan's siting standards are not a land conservation measure because they apply generally to renewable energy siting anywhere in Norwich rather than specific locations or resources.[41] Additionally, the subject matter of the Town Plan's siting standards are all issues regulated by the Commission pursuant to Section 248. To the extent that siting standards are consistent with the Commission's application of the Section 248 criteria, they will be satisfied by the Facility.

The Energy section also:

> calls upon the Public Utility Commission to issue Certificates of Public Good for projects between 15 kW and 500 kW based on the presumption that lands in Norwich meet the so-called 'preferred site criteria,' except in areas already mapped as Ridgeline Protection Overlay Area, the Shoreline Protection Overlay Area, and the designated village center.[42]

The Town Plan does not, however, provide a map of the Ridgeline Protection Overlay Area that would allow a determination of where the preferred-site presumption applies.

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[39] *Id.* at 28.
[40] *Id.* at 29.
[41] *Apple Hill Solar LLC*, 2021 VT 69, ¶ 39.
[42] Exh. NN-JK-6 at 28-29. Policy 3-2.h includes similar language that replaces "except" with "notwithstanding." *See* Exh. NN-JK-6 at 22; findings 27 and 28. Using "notwithstanding" in place of "except" results in the preferred site presumption applying more broadly throughout Norwich, without regard for whether a project is in one of the enumerated areas such as the Ridgeline Protection Overlay Area or the designated town center. While these provisions are inconsistent, resolving them is ultimately unnecessary because the Facility was reviewed by the municipal entities under the narrower interpretation as though no presumption applied.

Determining whether the Facility is in the Ridgeline Protection Overlay Area requires reference to the Norwich Zoning Regulations. The Zoning Regulations contain a map and explain that the purpose of the Ridgeline Protection Overlay Area is:

> to protect Norwich's rural character and scenic landscape by ensuring that development is located and designed in a manner that protects the uninterrupted skyline and minimizes adverse visual impact on designated ridgelines and adjacent slopes as viewed from public roads (Class I, II, and III town highways, state highways and interstate highways within the town).[43]

The Zoning Regulations contain a map of specific areas that are within the Ridgeline Protection Overlay Area and the stated purpose uses the language of a land conservation measure. However, I recommend that the Commission conclude that the Ridgeline Protection Overlay Area in the Zoning Regulations is not a land conservation measure that must be considered in a Section 248 analysis for several reasons.

First, land conservation measures must be in the municipal plan to be considered by the Commission under Section 248(b)(1).[44] Zoning regulations are not part of the municipal plan and do not apply to Section 248 Projects.[45] Although I have used the Zoning Regulation map of the Ridgeline Protection Overlay Area to understand *where* the Town Plan's preferred-site presumption applies, that does not mean the remainder of the Zoning Regulations related to the Ridgeline Protection Overlay Area apply to the Facility.[46] Instead, the only effect specified in the Town Plan for siting the Facility in the Ridgeline Protection Overlay Area is to eliminate the presumption of preferred siting.

Second, eliminating the presumption that a site is a preferred site does not "preserve the aesthetic or scenic beauty of the area where the proposed project is located" or "apply to specific resources in the proposed project area."[47] The Town Plan does not prohibit siting renewable energy projects in the Ridgeline Protection Overlay Area, but might affect whether a project site is a preferred site.

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[43] Exh. NN-JK-4; exh. NN-JK-5 at 28.
[44] *Acorn Energy Solar 2, LLC*, 2021 VT 3, ¶ 92.
[45] *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 36.
[46] Arguments specifically related to the Zoning Regulations are discussed in more detail in the next subsection.
[47] *Apple Hill Solar LLC*, 2021 VT 69, ¶ 39.

Projects that are 150 kW or less can receive a CPG without being on a preferred site. For these project sizes, the Town Plan's preferred-site presumption could affect the siting adjustor for a project but not whether the project is eligible to receive a CPG.

Net-metering projects larger than 150 kW, however, must be on a preferred site to be eligible a CPG.[48] Although the lack of a preferred-site designation by the Norwich municipal entities could prevent a project larger than 150 kW from receiving a CPG, preferred-site status can also be based on a variety of definitions, only one of which is a joint letter of support. If another preferred-site definition applied, a net-metering project larger than 150 kW proposed in the Ridgeline Protection Overlay Area would still be eligible for a CPG.

Although removing the preferred-site presumption does not "preserve the aesthetic or scenic beauty of the area," it is not without effect. When a preferred-site designation is requested for a project proposed in the Ridgeline Protection Overlay Area, the Town Plan requires the Planning Commission and Selectboard to consider their support without any underlying presumption. The Planning Commission and Selectboard did so here, and fulfilled the requirements of the Town Plan related to the Ridgeline Protection Overlay Area.

*Zoning Regulations*

The Landowner Parties also advance arguments based on Norwich's Zoning Regulations, which they assert are incorporated into the Town Plan.[49] The pages identified by the Landowner Parties do not contain any express language of incorporation, but page 29 of the Town Plan states that "[p]rojects larger than 150 kW must meet existing standards for setbacks, site design (landscaping, screening, lighting, stormwater, etc.) as laid out in the Norwich Zoning and Subdivision Regulations."[50]

Although the Commission must give due consideration to land conservation measures in municipal plans, the permitting process under Section 248 "preempts municipal zoning requirements altogether."[51] Therefore, even if the Town Plan incorporated requirements from the Zoning Regulations, the incorporated requirements would not necessarily apply to projects

[48] *See* Commission Rule 5.103 (defining "Category III Net-Metering System").
[49] Landowner Parties' Br. at 28.
[50] Exh. NN-JK-6 at 29.
[51] 30 V.S.A. §248(B)(1); *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 36. *See also* 24 V.S.A. § 4413(b), which provides that zoning bylaws and ordinances "shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248."

subject to Section 248.[52] Section 248(b)(1)(B) requires the Commission to review ground-mounted solar projects for compliance with "the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance," but the Landowner Parties have not argued that any of the Zoning Regulations discussed below are bylaws or ordinances adopted under 24 V.S.A. §§ 4414(15) or 2291(28).[53]

The Landowner Parties identify two provisions of the Zoning Regulations as land conservation measures. The first is Table 2.9, which addresses Ridgeline Protection Overlay Districts and was discussed above.[54] As explained, the Town Plan uses the Ridgeline Protection Overlay Area to negate a presumption that a renewable energy project is on a preferred site. However, as discussed above, the Zoning Regulations' requirements for the Ridgeline Protection Overlay Area are not part of the Town Plan and do not constitute a land conservation measure that applies to the Facility.

The Landowner Parties also cite Section 3.13(a)(1)(f)(ii) of the Zoning Regulations, which states that "[e]xcavation, filling, and development in areas to be disturbed with slopes in excess of 25% is not allowed except for the installation of lines for utility, septic, and water services."[55] The Town Plan states a policy of "Guid[ing] development away from steep slopes," which are "poorly suited to development," but does not prohibit it.[56] While the zoning requirement might provide insight into the meaning of "steep slopes" where that phrase is used in the Town Plan, references to steep slopes in the Town Plan are examples of general policies rather than land conservation measures.

*Regional Plan*

Like the Town Plan, the Regional Plan does not contain any land conservation measures that apply to the Project area. Instead, the Regional Plan identifies general policies for

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[52] *Cf. Petition of Rutland Renewable Energy, LLC, for a certificate of public good*, Docket No. 8188, Order of 3/11/15 at 48 ("[R]ecognizing the setback requirements in the Standards as a clear written community standard would be tantamount to taking what is in substance a zoning bylaw, and by simply calling it something else, facilitating the circumvention of Section 248's zoning bylaw exemption.").

[53] Norwich has not adopted screening requirements under 24 V.S.A. § 4414(15) or 24 V.S.A. §2291(28). *See* Findings 33-34.

[54] The Town Plan refers to Ridgeline Protection Overlay "Areas," rather than "Districts."

[55] Exh. NN-JK-5 at 43-44.

[56] Exh. NN-JK-6 at 5, 7.

encouraging health and recreation, preserving agriculture, natural resources, and scenic resources, and also contains some general guidance for renewable energy siting. These policies are not sufficiently specific to be considered land conservation measures.

*Conclusion*

Based on the above discussion, I recommend that the Commission conclude that the Project will not have an undue adverse impact on the orderly development of the region. This recommendation is based in part on my consideration of the Town and Regional Plans, which do not contain any land conservation measures that apply to the Facility, even if the municipal zoning regulations are considered in an advisory capacity. What remains for consideration is the recommendation of the Selectboard, Planning Commission, and Regional Planning Commission, all of which support the Facility in its proposed location.

**Municipal Screening Requirements**
[30 V.S.A. § 248(b)(1)(B)]

33. Norwich has not adopted screening requirements for ground-mounted solar electric generation facilities pursuant to either 24 V.S.A. § 4414(15) or 24 V.S.A. § 2291(28) with which the Facility would have to comply. Staskus pf. at 11; exh. PSD-LT-2 at 18.

34. Norwich has adopted screening requirements related to Ridgeline Protection Overlay Districts, but those screening requirements are not specific to solar facilities and were not adopted pursuant to 24 V.S.A. § 4414(15) or 24 V.S.A. § 2291(28). Exh. PSD-LT-2 at 18; exh. NN-JK-5 at 28-29.

**Impact on System Stability and Reliability**
[30 V.S.A. § 248(b)(3)]

35. The Facility will not have an adverse effect on system stability and reliability. This finding is supported by the additional findings below.

36. The Facility will interconnect with GMP's distribution network through an approximately 750-foot line extension. Staskus pf. at 6; exh. NUL-MS-2 (4/26/23); exh. NUL-MS-12 at Section 4.

37. The Facility will comply with all applicable requirements of the National Electrical Code and the National Electrical Safety Code. Staskus pf. at 17.

38. GMP performed a feasibility study and determined that the Facility can interconnect safely without a System Impact Study if the Applicant implements certain requirements specified in the study. Staskus pf. supp. at 2-3; exh. NUL-ML-12 at 1.

39. The Applicant will be responsible for the costs of the following requirements of the feasibility study: (a) upgrading approximately 2,250 feet of existing single-phase conductor to three-phase; (b) installing a 750-foot three-phase line extension; (c) installing utility monitoring using a remote terminal unit or a point-of-common-coupling recloser with responsibility for monthly SCADA communications costs; (d) increasing amperage of a line recloser ground pickup at pole T71683 to 180 amps; (e) replacing 20K fuses with 50K fuses at poles T71759 to pole T71748; (f) moving 10K fuses to pole T71769; (g) limiting inverter reconnection to a soft-start ramp rate of 2% of maximum current output per second; (h) limiting overvoltage contribution consistent with the most recent version of IEEE 1547, Section 7.4, or installing a point of common coupling recloser; and (i) confirming that the Facility inverters comply with ISO New England's Inverter Source Requirement Document. Staskus pf. supp. at 2-3; exh. NUL-ML-12 at Section 4.

**Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment, the Use of Natural Resources, and Public Health and Safety**
[30 V.S.A. § 248(b)(5)]

40. Subject to the conditions described below, the Facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, or public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts on primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts. This finding is supported by the additional findings below.

## Outstanding Resource Waters

[10 V.S.A. § 1424a(d)] and [30 V.S.A. § 248(b)(8)]

41. The Facility will not affect any outstanding resource waters as defined by 10 V.S.A. § 1424a(d) because there are no outstanding resource waters in the Facility area. Exh. NUL-DB-2 at 6.

## Air Pollution and Greenhouse Gas Impacts

[30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1)]

42. The Facility will not result in undue air pollution or greenhouse gas emissions. This finding is supported by the additional findings below.

43. There will be limited emissions associated with the construction of the facility and periodic maintenance, but these emissions will not be undue. Staskus pf. at 16.

44. The Facility will generate approximately 900,000 kWh/year of electricity without any generation-related greenhouse gas emissions. Staskus pf. at 13.

45. The Facility will require approximately 8.2 acres of tree clearing. Geoff Martin, Applicant ("Martin") pf. reb. at 3.

46. No party has submitted a lifecycle carbon accounting analysis for the Facility. Martin pf. reb. at 4; exh. NUL-GM-7.

Discussion

The Applicant and the Landowner Parties disagree on the measure of greenhouse gas impacts associated with the Facility. The Applicant focuses on Facility's generation of emission-free electricity.[57] The Landowner Parties argue that a full accounting of Facility carbon emissions is necessary to evaluate the impacts of the Facility, including emissions associated with the manufacture and transport of Facility components, the loss of carbon absorption and storage due to clearing the Facility site, and the installation, operation, and decommissioning of the Facility.[58]

Parties sometimes present lifecycle carbon accounting analyses for projects under review by the Commission, but there is no statutory requirement that they do so.[59] ANR, which is the

[57] Staskus pf. at 13.

[58] Gorman pf. at 4; Exh. NN-JG-2 at 22-24.

[59] *See Petition of Chelsea Solar LLC for a certificate of public good*, Docket No. 8302, Order of 2/16/16 at 23; *Petition of South Forty Solar, LLC, for a certificate of public good*, Docket No. 8600, Order of 9/27/16 at 17-18, 55.

State agency tasked with overseeing greenhouse gas emissions in Vermont, has explained in past cases that a complete carbon lifecycle analysis may be necessary in some cases for it to perform its statutory duties,[60] but has not requested a carbon lifecycle analysis for this Facility.

In lieu of a carbon lifecycle analysis, the Applicant and the Landowner Parties have submitted competing statistics about carbon reductions and emissions related to solar power generation projects.[61] However, the statistics provided are estimates and are not specific to this Facility and I have given them little weight in my analysis.

For example, the Applicant states that "the approximately 900,000 kWh/year of electricity that is expected to be generated by the Facility equates to 638 metric tons/year of avoided CO2 emissions" based on 2021 U.S. Environmental Protection Agency equivalency numbers.[62] However, the website linked as support for the Applicant's assertion states that the "estimates are approximate and should not be used for emission inventories or formal carbon emissions analysis."[63] The Applicant and the Landowner Parties also cite to materials related to the carbon storage and sequestration amounts provided by forests.[64] Again, the sources provide generalized estimates of the carbon benefits of forested areas, but do not contain Facility-specific information that the Commission could rely on as evidence.[65]

The information provided by the parties on carbon emissions is general rather than specific to the Facility in this case. The information shows generally that solar projects generate electricity without emissions, that forests absorb and store carbon that can be released when trees are cleared, and that there are carbon emissions associated with the production and disposal of solar panels. The sum of reductions and emissions for this specific Facility, however, cannot be determined from the evidence submitted. As a result, the evidence does not aid the Commission's inquiry into whether this Facility meets the requirements of Section 248.

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[60] *South Forty Solar*, Docket No. 8600, Order of 9/27/16 at 55.

[61] *See, e.g.*, Gorman pf. at 3-4; Martin pf. at 2-4; Staskus pf. reb. at 9; exhs. NN-SG-2 at 16-17, NN-SG-4, NN-JG-2 at 22-24; NUL-GM-4.

[62] Staskus pf. at 13.

[63] *See* https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.

[64] *See* exhs. NN-SG-2 at 16-17, NN-SG-4, NUL GM-4.

[65] Exh. NN-SG-4 at 3 (providing estimates of average forest carbon storage levels and listing variables that affect levels); exh. NUL-GM-4 ("Note that these values are the estimated average carbon per acre in Vermont; an actual acre of forest may store and sequester less or more carbon and the ratios among the pools may differ.").

In concluding that the Facility will not have an undue adverse impact on air pollution and greenhouse gas emissions, I have relied on the facts in evidence that are specific to this Facility. The Facility will generate electricity without any associated greenhouse gas commissions, which cannot be said for fossil-fuel based generation projects. Although there will be some emissions that result from construction, maintenance, and decommissioning activities, those emissions will be typical of construction projects in Vermont.

The Facility also advances State policy and will contribute to compliance with statutory renewable energy requirements. Tier II of Vermont's Renewable Energy Standard ("RES")[66] "encourages the economic and environmental benefits of renewable energy" by establishing minimum required amounts of each utility's power supply portfolio. Utilities use RECs from net-metering projects to satisfy their Tier II obligations.[67] The Facility will help GMP meet its RES obligations by introducing new renewable generation in GMP's service territory that will offset other sources of electricity.

For these reasons, I recommend that the Commission conclude that the Facility will not result in undue air pollution or greenhouse gas emissions.

**Water Pollution**
[10 V.S.A. § 6086(a)(1)]

47. The Facility will not result in undue water pollution. This finding is supported by findings under the criteria of headwaters through soils, below.

**Headwaters**
[10 V.S.A. § 6086(a)(1)(A)]

48. The Facility is located in a headwater as it is located within a watershed with a drainage area less than 20 square miles and is characterized by steep slopes. Exh. NUL-DB-2 at 4-5.

49. The headwater drains through a stream adjacent to the existing access road, under the existing access road and Interstate 91, through a pond owned by intervenor Larry Ufford, and

[66] 30 V.S.A. § 8005(a)(2).
[67] *See* 2022 *Vermont Comprehensive Energy Plan* at 226 ("Tier II requirements are generally satisfied with RECs from utility-owned resources as well as resources from Vermont's net-metering and Standard Offer programs. Vermont statute requires electric utilities to retire RECs assigned to them from net-metered systems; these RECs can be counted toward Tier II of RES.").

into the Connecticut River. Dori Barton, Applicant ("Barton") pf. reb. at 2; exh. NUL-DB-2 at 4-5; exh. NN-JG-2 at 6.

50. The Facility will be constructed in accordance with the Vermont Standards & Specifications for Erosion and Prevention and Sediment Control (2020), and the Applicant will apply for coverage under the Agency of Natural Resources Department of Environmental Conservation Construction General Permit. Exh. NUL-DB-2 at 5.

51. The Facility will meet all applicable Vermont Department of Health and Vermont Department of Environmental Conservation regulations and will not result in a reduction of the quality of ground or surface waters in the area. Staskus pf. at 18; exh. NUL-DB-2 at 5.

52. The United States Army Corps of Engineers visited the Facility site on April 26, 2022, and determined that no permit was required for the Facility. Barton pf. reb. at 3-4; exh. NUL-DB-5.

Discussion

The Landowner Parties challenged the Applicant's identification of the headwaters location but did not raise any arguments about headwaters in their post-hearing briefing.[68] The Applicant acknowledges that the Facility is in a headwaters area, and states that it will comply with all Department of Environmental Conservation Standards and obtain all required permits.

I recommend that the Commission find that the Facility will not have an undue adverse impact on headwaters.

## Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

53. The Facility will meet all applicable Health and Environmental Conservation Department regulations regarding the disposal of waste and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Staskus pf. at 18.

[68] *See* Exh. NN-JG-2 at 5.

**Water Conservation**
[10 V.S.A. § 6086(a)(1)(C)]

54. The Facility will not have an undue adverse effect on water conservation because the Facility will not involve the use of water other than what is needed for dust control during installation and to promote seed germination. Staskus pf. at 19.

**Floodways**
[10 V.S.A. § 6086(a)(1)(D)]

55. The Facility is not located within a floodway or floodway fringe and therefore will not restrict or divert the flow of flood waters, significantly increase the peak discharge of a river or stream within or downstream from the Facility, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Exh. NUL-DB-2 at 5.

**Streams**
[10 V.S.A. § 6086(a)(1)(E)]

56. The Facility will not have an undue adverse effect on streams because there is no work proposed in any streams in the Facility area. Exh. NUL-DB-2 at 4, 5-6.

57. The existing gravel access road crosses a small tributary of the Connecticut River. The Facility will utilize this existing road with no upgrades or tree clearing within the riparian buffer zone of this stream. Exh. NUL-DB-2 at 4, 5-6.

58. The Applicant agrees with and will comply with ANR's stated condition to ensure the Facility will not have an undue adverse effect on streams. Barton pf. reb. at 11.

Discussion

In prefiled testimony, the Landowner Parties argued that there are two stream channels in the Facility area that were not included in the Applicant's natural resources review.[69] The Landowner Parties did not address this issue in their post-hearing briefing.

The Applicant disagrees that any streams were overlooked. The areas identified by the Landowner Parties, according to the Applicant, do not meet ANR's definition of "stream" because there is no identifiable channel, and are not shown in ANR's natural resources

[69] Exh. NN-JG-2 at 5-6 (discussing a headwater stream and snowmelt/stormwater channel).

database.[70] The Applicant also notes that the U.S. Army Corps of Engineers visited the site and determined that it had no jurisdiction.[71]

The Applicant's environmental assessment included a review of the Vermont Hydrography Dataset, the ANR Atlas, and a field investigation. ANR, which is the State agency responsible for overseeing natural resources issues in Vermont, including streams, filed comments in the case requesting a condition to avoid impacts on stream resources, but did not note any additional streams beyond those identified by the Applicant. The U.S. Army Corps of Engineers also visited the site in response to concerns raised by the Landowner Parties and confirmed the conclusions regarding streams contained in the Applicant's environmental assessment.

Based on the findings and discussion above, I recommend that the Commission find that the Facility will not have an undue adverse effect on streams. To ensure the Facility does not have an undue adverse effect on streams, I also recommend that the Commission include ANR's proposed condition, to which the Applicant has agreed, in any CPG that issues.

**Shorelines**
[10 V.S.A. § 6086(a)(1)(F)]

59. The Facility is not located on or near a shoreline. Exh. NUL-DB-2 at 6.

**Wetlands**
[10 V.S.A. § 6086(a)(1)(G)]

60. The Facility will not have an undue adverse effect on wetlands. This finding is supported by the additional findings below.

61. There are two Class II wetlands adjacent to the Facility area. Exh. NUL-DB-2 at 4, 6-7; exh. NUL-MS-2 (rev. 4/26/23).

62. The first Class II wetland is a vernal pool south of the Facility. The site plan maintains a 100-foot buffer around the vernal pool. Exh. NUL-DB-2 at 4, 6-7; exh. NUL-MS-2 (rev. 4/26/23).

[70] Barton pf. reb. at 3-5.
[71] *Id.* at 4.

63. The second Class II wetland is located north of the Facility. The site plan maintains a 50-foot buffer around the second Class II wetland. Exh. NUL-DB-2 at 4, 6-7; exh. NUL-MS-2 (rev. 4/26/23).

64. ANR confirmed the Applicant's wetland classifications and delineations, and agrees with the proposed wetland and vernal pool buffers. ANR 1/3/22 Comments at 2-3.

65. The Applicant agrees with and will comply with ANR's stated condition to ensure the Facility will not have an undue adverse effect on wetlands. Barton pf. reb. at 11.

Discussion

To avoid undue adverse effects on wetlands, ANR has requested that the Commission include condition 12 from the Applicant's proposed CPG in any CPG that issues. ANR states that proposed condition 12, along with ANR's additional proposed conditions related to streams and necessary wildlife habitat, will provide the necessary protections for the Class II wetlands near the Facility site. The Applicant has agreed that ANR's proposed conditions should be included. Therefore, to ensure the Facility does not have an undue adverse effect on wetlands, I recommend that the Commission include ANR's proposed conditions and condition 12 from the Applicant's proposed CPG in any CPG that issues.[72]

## Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2) and (3)]

66. The Facility will not cause an unreasonable burden on an existing water supply because the Facility will require only limited use of water to control dust and for seed germination. Staskus pf. at 19.

## Soil Erosion

[10 V.S.A. § 6086(a)(4)]

67. The Facility will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. This finding is supported by the additional findings below.

[72] The Landowner Parties have challenged the sufficiency of ANR's proposed conditions to protect against harm to necessary wildlife habitat and rare, threatened, and endangered species. I have addressed that argument in the necessary wildlife habitat section.

68. The Facility will clear approximately 8.2 acres of forested area. Staskus pf. at 19-20; exh. NUL-MS-2 (rev. 4/26/23).

69. Tree clearing will extend approximately 35 feet into areas with steep slopes (25% or greater) on the east side of the Facility. Approximately 0.3 acre of trees will be cleared in this area. Tr. (4/28/23) at 171 (Staskus); exh. NUL-MS-2 (rev. 4/26/23); exh. PSD-LT-2 at 5; exh. NN-JG-2 at 30-31.

70. Facility construction will be performed in accordance with the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2020), the Department of Environmental Conservation Construction General Permit 3-9020, issued December 27, 2022, and the Vermont Low Risk Handbook for Erosion Prevention and Sediment Control (2020). Staskus pf. reb. at 8-9; exh. NUL-MS-17; exh. NUL-MS-18.

71. The Facility will also be constructed in accordance with the erosion prevention and sediment control plan included in its site plan. Exh. NUL-MS-2 (rev. 4/26/23).

Discussion

The Landowner Parties have raised erosion concerns downslope from the Facility site. According to the Landowner Parties, Facility-related clearing along the ridge on the eastern limit of disturbance will increase runoff and erosion on the steep slopes between the Facility and the residences along Upper Loveland Road.[73] The increased erosion and runoff, the Landowner Parties contend, will flow through intervenor Larry Ufford's pond and into the Connecticut River.[74]

The Applicant acknowledges that some clearing will occur on steep slopes, but maintains that the clearing will not result in undue soil erosion. The Applicant argues that it has taken all reasonable precautions to minimize erosion concerns, including complying with the current version of the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2020), obtaining a low-risk Construction General Permit, and following the Vermont Low Risk Handbook for Erosion Prevention and Sediment Control.[75] The Applicant also identifies the erosion prevention and sediment control plan prepared by its licensed engineers

[73] Landowner Parties' Br. at 48.
[74] *Id.* at 48-49; exh. NN-JG-2 at 26.
[75] Applicant Reply Br. At 5.

and included in its site plan as an additional precautionary measure to prevent undue erosion at the Facility site.[76]

The Applicant has obtained all necessary permits related to erosion control from ANR and will comply with the relevant specifications for safe construction practices. Based on the Facility's compliance with these Vermont standards and practices, I recommend that the Commission find that the Facility will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results.

**Transportation**
[10 V.S.A. § 6086(a)(5)]

72. The Facility will not result in undue traffic or congestion because the Facility will cause only a small increase in traffic for a short duration during construction, and no transportation-related permits are needed for the delivery of equipment or materials. Staskus pf. at 20.

**Educational Services**
[10 V.S.A. § 6086(a)(6)]

73. The Facility will not place a burden on the ability of a municipality to provide educational services because the Facility will not require or affect educational services. Staskus pf. at 20.

**Municipal Services**
[10 V.S.A. § 6086(a)(7)]

74. The Facility will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services because the Facility will not require or affect local services. Staskus pf. at 20.

[76] *Id.*

## Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)

75. The Facility will not have an undue adverse impact on aesthetics or on the scenic or natural beauty of the area, nor will the Facility have an undue adverse effect on historic sites or rare and irreplaceable natural areas. This finding is supported by the additional findings below.

Aesthetics

76. The Facility will be located on an undeveloped forested parcel accessed from Upper Loveland Road, which is a dead-end road serving local residences. Vegetation on the site includes mature deciduous and evergreen trees, which will be cleared for the Facility installation. Exh. PSD-LT-2 at 5, 7-8; exh. NUL-MS-2 (rev. 4/26/23).

77. The Parcel currently hosts a cellular communications tower facility east of the proposed Facility site and a 150-foot-wide cleared transmission corridor section for a GMP transmission line north and west of the Facility. The communications tower includes artificial pine branching for visual mitigation. Staskus pf. at 5; exh. PSD-LT-2 at 7-8, 10; exh. NUL-MS-2 (rev. 4/26/23); exh. PSD-LT-3 at 2, 4, 7.

78. The surrounding area includes rural residential development, with twelve residential lots abutting the Facility parcel on the south, east, and north. Interstate 91 and the Connecticut River are also east of the parcel. The Town of Norwich owns a forested parcel ("Town Forest") north of the Facility parcel on the north side of the transmission line that includes some trails, but access to the Town Forest requires crossing private property. Exh. PSD-LT-2 at 7-8; exh. NUL-MS-2 (rev. 4/26/23); exh. NN-JK-14.

79. The Facility will be located on a sloped plateau over a ridge that rises to the west from Upper Loveland Road and Interstate 91. There is an elevation difference of approximately 160 feet between Upper Loveland Road and the southeast corner of the array. The plateau has an approximate 3% downhill slope from south to north. The Facility site is also sloped approximately 19-20% on the western edge, with slopes of up to 47% where the southwestern array panels are located near the utility corridor. Exh. PSD-LT-2 at 5, 9; exh. NUL-MS-2 (rev. 4/26/23); exh. PSD-LT-3.

80. Tree clearing for the Facility will require removing approximately 8.2 acres of trees from the upper portion of the east-facing ridge to reduce shading. Tree removal will extend from

the Facility elevation of approximately 700 feet above sea level to an elevation of approximately 640 feet, which is 60 feet of the approximate 160-foot elevation difference between the Facility and Upper Loveland Road. Tr. (4/28/23) at 78-79 (Staskus); exh. NUL-MS-6 at 2; exh. PSD-LT-2 at 5, 12; exh. PSD-LT-3 at 8-9; exh. NUL-MS-2 (rev. 4/26/23).

81. The Facility will be set back approximately 455 feet from Upper Loveland Road, which is the nearest public road. Views of the Facility array from Upper Loveland Road will be limited, if any, due to the low profile of the array, intervening vegetation, and changes in topography. Exh. NUL-MS-6 at 6-7; exh. NUL-MS-2 (rev. 4/26/23); exh. PSD-LT-3 at 8-9 (photos 14-16); exh. NN-JK-2 at 9-10, 12, 15.

82. Although the array itself will not likely be visible, the tree clearing on the east-facing slope is likely to be visible from public roadways, including Interstate 91 and Upper Loveland Road, particularly in leaf-off conditions. The trees that remain on the lower section of the ridge will provide some screening of the cleared upper section of the slope. Any Facility-related clearing that is visible will be similar to other clearing present on the same ridgeline. Exh. PSD-LT-2 at 13-15; exh. PSD-LT-3 at 8-9 (photos 14-16); exh. NN-JK-2 at 5, 7, 9, 15-16 (Fig. 28); tr. (4/28/23) at 79 (Staskus).

83. The Facility will be visible from the Town Forest north of the transmission corridor with little to no screening. Distant views of the Facility will also be possible from locations in New Hampshire. Kenseth pf. reb. at 14-15; exh. NN-JK-2 at 8, 16-17; exh. PSD-LT-3 at 7 (photo 11).

84. The Facility materials will include galvanized metal support structures with a light gray finish and dark crystalline solar panels with an anti-glare coating. The Facility may also include a metal mesh fence. Staskus pf. at 5; exh. PSD-LT-2 at 13.

85. The Facility will have a limited impact on open space. The Facility site is forested and has limited visibility from public areas and nearby roads due to its elevation. Existing views of the Facility site from the Town Forest north of the Facility site are forested and do not include open space. Exh. PSD-LT-2 at 16-17; exh. PSD-LT-3 at 5-7; exh. NN-JK-2 at 8, 14.

86. The Facility will not violate any clear, written community standards intended to preserve the aesthetics or scenic beauty of the area. Exh. NUL-MS-6 at 7-8; exh. PSD-LT-2 at 17-18.

87. The Facility will be in a Ridgeline Protection Overlay Area, which removes the presumption created in the Town Plan that all of Norwich is a preferred site. The Norwich zoning regulations allow development in Ridgeline Protection Overlay Districts, including exempt and conditional-use developments if certain conditions related to minimizing public visibility are satisfied. Exh. NUL-MS-6, Appendix C; Kenseth pf. at 3; exh. NN-JK-4; exh. NN-JK-5 at 28; exh. NN-JK-6 at 28; Staskus pf. reb. at 2-4; findings 26-30.

88. The Facility is also in the Resource Protection Planning Area identified in the Town Plan, which discourages "incremental, large-lot residential development" in the identified areas due to resource constraints. Exh. NN-JK-6 at 9, 20; exh. NN-JK-22 at 4-5; findings 26-30.

89. The Regional Plan does not identify any specific scenic, cultural, historic, natural, or other resources that would be adversely impacted within the proposed Facility area. Exh. PSD-LT-2; exh. NN-JK-10.

90. The Facility will not be so out of character with its surroundings such that it will be shocking or offensive to the average person. Although the Facility requires clearing approximately 8.2 acres of forest, some of which may be visible from nearby roads, the Facility infrastructure will have limited to no visibility from surrounding areas. The Facility will share the parcel with an existing communications tower and a transmission line. Exh. PSD-LT-2 at 18-19; exh. PSD-LT-3.

91. The Applicant has taken generally available mitigating steps that a reasonable person would take to reduce the Facility's aesthetic impact. The Facility will have limited public visibility and will use existing road and utility infrastructure. Clearing on the eastern slope of the ridge may have some visibility, but remaining trees on the slope will provide screening. The Facility will be visible from the Town Forest parcel north of the Facility parcel, but those views will include views of the existing cleared transmission line corridor. Exh. PSD-LT-2 at 19; exh. PSD-LT-3 at 2.

Discussion

I recommend that the Commission find that the Facility will have an adverse impact on the aesthetics of the area, but that the impact will not be undue.

In determining whether a proposed project satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Commission applies the so-called "*Quechee* test."[77]

The first step in the two-part *Quechee* test is to determine whether a project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space. If the project does not have an adverse effect on aesthetics because it is in harmony with its surroundings, then the project satisfies the aesthetics criterion.

If a project would have an adverse effect on aesthetics, such adverse impact will be found to be undue if any one of the three following questions is answered affirmatively: (a) Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? (b) Would the project offend the sensibilities of the average person? (c) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings?

In addition, the Commission's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."

The Facility involves clearing approximately 8.2 acres of forested area. The Facility will have limited visibility and the views that will exist are in the context of a transmission corridor and a communications tower and related equipment that are also on the parcel. Despite the Facility's limited visibility, the significant amount of clearing required and the introduction of the Facility's fencing, steel support structures, and crystalline solar panels on the cleared site are not in harmony with the currently forested condition of the Facility site. I conclude that the site clearing associated with the Facility and the introduction of the Facility infrastructure on what is currently a forested area will have an adverse impact on aesthetics and scenic and natural beauty.

[77] *See* Commission Rule 5.112.

The Landowner Parties cite extensively to an order from the Environmental Division reviewing the aesthetics criterion in the context of Act 250.[78] Although not binding on the Commission, the included quotations discuss potential distinctions that may arise between "aesthetics" and "scenic and natural beauty" in the context of a *Quechee* analysis. The overarching inquiry, the quotations explain, is whether a project is "in harmony with its surroundings."[79] The Commission's *Quechee* analysis is outlined above, is required by the Commission's rules, and is the analysis that I have applied to the Facility.[80]

While I recommend that the Commission find that the Facility will have an adverse impact on the aesthetics of the area, I also recommend that the Commission find that the impact will not be undue.

First, the Facility will not violate any clear, written community standards in either the Town or Regional Plans. Commission Rule 5.112(C)(1) explains that a clear, written community standard:

> Designates specific scenic resources in the area where the project is proposed. Statements of general applicability do not qualify as clear, written community standards. For example, the general statement that "agricultural fields shall be preserved" would not qualify because the statement does not designate specific resources as scenic. The statement "the agricultural fields to the west of Maple Road are scenic resources that must be preserved" would qualify because it designates specific resources as scenic.

A clear, written community standard also:

> Provides specific guidance for project design. For example, the statement "only dwellings, forestry, and agriculture are permitted within the Maple Road scenic protection area" would be a clear standard because it states with specificity what type of development is permitted. The statement "all development in the Maple Road scenic protection area must maintain the rural character of the area" would not be a clear standard because it does not state with specificity what type of development is permitted.[81]

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[78] Landowner Parties' Br. at 36-39 (quoting *In re Rinker's, Inc.*, Docket No. 302-12-08 Vtec, Order of 9/17/09 at 4-6).

[79] Landowner Parties' Br. at 37.

[80] Commission Rule 5.112(A)(1) ("Step one: Determine whether the project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings.").

[81] Commission Rule 5.112(C)(1)-(2).

The Facility will be in the Resource Protection Planning and Ridgeline Protection Overlay Areas designated in the Town Plan and Zoning Regulations. The Town Plan explains that the Resource Protection Planning Area consists of "lands with resource constraints or hazards that significantly limit their potential for future development" and "discourages" large-lot residential development in these areas.[82] The Resource Protection Planning Area designates specific areas, but is not intended to preserve the aesthetics or scenic, natural beauty of the area and does not preclude development within its bounds. Therefore the Resource Protection Planning Area designation is not a clear, written community standard for the purpose of the *Quechee* analysis.

The Ridgeline Protection Overlay Area also designates specific areas, but the only standard prescribed by the Town Plan is the removal of an otherwise applicable presumption that all locations in Norwich are preferred sites. The Town has reviewed and supports the Facility and, as discussed above in the section on orderly development, the Facility complies with the Town Plan's requirements.

The Norwich Zoning Regulations contain additional restrictions on development in Ridgeline Protection Overlay Areas, including exempted and conditional uses. However, zoning regulations do not apply to projects under Section 248 and the Commission does not look to zoning bylaws for clear, community standards.[83] More importantly, the exempted- and conditional-use exceptions in the Zoning Regulations demonstrate that development is permitted, subject to municipal approval, and illustrate why the Commission does not look to zoning bylaws for community standards.[84]

Second, the Facility will not be shocking or offensive to the average viewer. The Facility will have limited visibility from public areas and roadways. The Facility will share the parcel with a communications tower and associated communications infrastructure and is adjacent to a cleared transmission corridor. The Town Forest parcel is across the transmission corridor from the Facility parcel, and views from the Town Forest parcel already include views of the transmission corridor and existing infrastructure. While there will be some potential visibility of

[82] Exh. NN-JK-6 at 9.
[83] *Petition of Rutland Renewable Energy, LLC, for a certificate of public good*, Docket 8188, Order of 3/11/15 at 48.
[84] *Id.* Exh. NN-JK-5 at 28.

clearing on the east slope of the Facility, the remaining tree cover will provide some screening of the cleared area and the views will be in the context of other clearing that exists along the same ridgeline.

Third, the Applicant has taken reasonable mitigating steps to improve the harmony of the proposed project with its surroundings. The Facility location is elevated from the surrounding areas, minimizing impacts on views of open space from Interstate 91 and other nearby roads. The Facility will share the site with other utility infrastructure, including a communications tower and a transmission line. The Facility will also use the existing access road for the communications tower, avoiding new access from public roadways. Although the Facility will require clearing a large area, the Facility's visibility is limited.

As explained in the discussion and findings above, the Facility: (1) will not violate any clear, written community standards in either the Town or Regional Plan; (2) will not be so out of context that it will be shocking or offensive to the average viewer; and (3) incorporates reasonable mitigating steps to lessen the Facility's impacts on its surroundings. Based on the findings and discussion above, I recommend that the Commission find that the aesthetic impact of the Facility will not be unduly adverse.

Historic Sites

92. The Facility will not have an undue adverse effect on historic properties. This finding is supported by the additional findings below.

93. The Facility will not be visible from any historic structures in the area. Exh. NUL-MS-6 at 10.

94. The Vermont Division of Historic Preservation visited the site on August 28, 2021, and concluded that the Facility raised no concerns regarding archaeology or historic architecture. Exh. NUL-MS-10.

Rare and Irreplaceable Natural Areas

95. The Facility will not have an undue adverse effect on rare and irreplaceable natural areas because there are no rare and irreplaceable natural areas within the Facility area. Exh. NUL-DB-2 at 7.

**Necessary Wildlife Habitat and Endangered Species**
[10 V.S.A. § 6086(a)(8)(A)]

96. The Facility will not have an undue adverse effect on any endangered species or necessary wildlife habitat. This finding is supported by the additional findings below.

97. There are no white-tailed deer winter habitats identified by the Vermont Fish and Wildlife Department in the Facility area. The nearest mapped deer winter habitat is approximately 1.13 miles west of the Facility site. Deer have been observed in and around the Facility area during winter months. Exh. NUL-DB-2 at 8; exh. NN-JG-2 at 11-14; exh. NUL-MS.

98. There is no bear habitat identified by the Vermont Fish and Wildlife Department within the Facility area. The Applicant's environmental consultant found no observations of bear use or feeding during field inventories of the Facility area, but the Landowner Parties have documented the presence of bears in the surrounding area. Exh. NUL-DB-2 at 8; exh. NN-JG-2 at 15-18.

99. The Facility is forested and does not provide suitable habitat for grassland bird species. Exh. NUL-DB-2 at 8.

100. The vernal pool at the southern end of the Facility limits of disturbance provides a breeding habitat for pool-breeding amphibians, potentially including the Jefferson salamander (S2 rare). The Facility will maintain a 100-foot buffer between the Facility limits of disturbance and the vernal pool. The habitat south of the vernal pool will not be disturbed by the Facility. ANR 1/19/22 comments at 3-5; exh. NN-JG-2 at 19-20.

101. If the Facility uses a fence, the fence will have a mesh size no smaller than 6 inches by 6 inches to allow the passage of amphibian species. Barton pf. reb. at 10, 11.

102. The limits of disturbance for the Facility are approximately 8.2 acres, which is less than 0.85% of the total forested area within one square mile of the Facility and does not require additional conservation measures to protect the Northern long-eared bat. Exh. NUL-DB-2 at 8-9.

103. The Facility is not in an area that provides a potential summer roosting habitat for the Indiana bat and there are no old or abandoned buildings proposed for demolition that provide potential roosting habitat for little brown bat. There are no known bat hibernacula or maternity roosts within one mile of the Facility site. Exh. NUL-DB-2 at 9.

104. A plant survey conducted in the Facility area on July 7, 2021, did not identify any rare, threatened, or endangered plant species. Exh. NUL-DB-2 at 9.

105. The Applicant agrees with and will comply with ANR's stated conditions to ensure the Facility will not have an undue adverse effect on any endangered species or necessary wildlife habitat. Barton pf. reb. at 11.

Discussion

Section 6086(a)(8)(A) of Title 10 of the Vermont Statutes Annotated states that "[a] permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species."[85] A "necessary wildlife habitat" is a "concentrated habitat that is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life, including breeding and migratory periods."[86]

Except for the vernal pool south of the Facility site, ANR's natural resources database does not identify any necessary wildlife habitat in the Facility area. Although the evidence submitted by the Landowner Parties shows the presence of bear, deer, and other wildlife in and around the Facility area, the presence of wildlife alone does not establish a necessary wildlife habitat as the term is defined in statute. In the absence of a necessary wildlife habitat for these species, the Facility will not have undue adverse effects under this criterion.

To protect the vernal pool, ANR has requested, and the Applicant has agreed to, conditions to avoid undue adverse impacts on the habitat associated with the vernal pool.[87] The Landowner Parties cite several sources to argue that ANR's proposed conditions are not sufficient to protect the vernal pool habitat.[88]

ANR is the State agency responsible for protecting natural resources issues in Vermont in proceedings before the Commission, which includes the protection of wildlife and wetlands such as the vernal pool.[89] As part of this responsibility, ANR has issued rules "to identify and protect

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[85] The "permit" referenced in Section 6086(a)(8)(A) is to an Act 250 permit, not a permit under 30 V.S.A. § 248. The Commission is required to give due consideration to the Act 250 criteria in 10 V.S.A. §§ 6086(a)(1) through (8) and (9)(K) under the Section 248(b)(5) criterion.

[86] 10 V.S.A. § 6001(12).

[87] ANR 1/19/22 comments at 3-5; Barton pf. reb. at 11.

[88] Exh. NN-JG-2 at 29-30.

[89] *See* 10 V.S.A. §§ 905b, 5402-5403.

significant wetlands" and provides recommendations for the protection of wildlife in Vermont.[90] Section 4.2 of the Vermont Wetland Rules establishes buffer zones of 100 feet for Class I wetlands and 50 feet for Class II wetlands, unless the Secretary of Natural Resources determines that a different buffer is required. The Vermont Wildlife Action Plan from the Vermont Department of Fish and Wildlife recommends a 30-meter (98.4-foot) buffer around the perimeter of habitat pools.[91]

ANR filed recommendations in this case and proposed conditions to avoid impacts on the vernal pool to the south of the Facility. ANR's proposed conditions include a buffer zone, consistent with the Wetland Rules and the Wildlife Action Plan, and limitations on significant ground disturbance during specific times of the year to protect amphibian migration periods. ANR's comments recognize that amphibian migration distances may be up to 650 feet from the vernal pool, which is comparable to the distances noted by the Landowner Parties in their testimony. Although ANR has encouraged the Applicant to conduct tree clearing during frozen ground conditions, it has not proposed a condition requiring it.[92] ANR does, however, note that the forest south of the vernal pool will not be disturbed by the Facility.[93]

I recommend that the Commission find that the Facility will not have an undue adverse impact on necessary wildlife habitat or endangered species. Although the sources cited by the Landowner Parties may contain different recommendations from ANR's proposed protections,[94] ANR is required to balance natural resource concerns when developing its recommendations and it is understandable that differences may exist between ANR's recommendations and the recommendations in the Landowner Parties' sources. ANR's wetland-buffer requirements are the product of a public rulemaking process and reflect ANR's reasoned conclusion after an opportunity for stakeholders to provide input. The Wildlife Action Plan also demonstrates that ANR's recommendations are informed by the consideration of numerous references, at least one

[90] *See, e.g.*, Vermont Wetland Rules, § 1.1 (version effective 1/21/20); Vermont Wildlife Action Plan (cited in exh. NN-JG-2 at 19).
[91] Vermont Wildlife Plan, Appendix A1 at 5.
[92] ANR 1/3/22 Comments at 4.
[93] *Id.*; exh. NN-JG-2 at 29.
[94] The underlying sources are not in evidence.

of which was relied on by the Landowner Parties in their argument.[95] The Landowner Parties have not offered evidence that undermines ANR's recommendations and proposed conditions.

To ensure the Facility does not have an undue adverse effect on necessary wildlife habitat or endangered species, I also recommend that any CPG issued for the Facility include the conditions proposed by ANR.

**Development Affecting Public Investments**
[10 V.S.A. § 6086(a)(9)(K)]

106. The Facility will not unnecessarily or unreasonably endanger the public or quasi-public investment in any facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of, or access to any such facility, service, or lands. This finding is supported by the additional findings below.

107. The Facility will be adjacent to an existing transmission line and a cellular communications tower. The Facility will use the existing access road to the communications tower and will not interfere with the use of the transmission line or communications tower. Staskus pf. supp. at 2-3; exh. NUL-MS-12.

108. The Facility will have a limited and temporary impact on surrounding roads and highways during construction. Staskus pf. at 20, 22.

109. The Facility will have an impact on views from the Town Forest parcel north of the transmission corridor, which includes trails maintained by the Norwich Trails Committee. The Town of Norwich supports the Facility at its proposed location. Kenseth pf. reb. at 14-15; exh. PSD-LT-3 at 7 (photo 11); Staskus pf. at 10; exh. NUL-MS-5.

**Public Health and Safety**
[30 V.S.A. § 248(b)(5)]

110. The Facility will not have any undue adverse effects on the health, safety, and welfare of the public. This finding is supported by the additional findings below.

111. The Facility equipment and design satisfies all applicable safety codes, including the National Electrical Code and the National Electrical Safety Code. The Facility transformers will be compliant with GMP's specifications (Distribution Standard #T-01, 3.1, 12/13) that meet

[95] Vermont Wildlife Plan, Appendix A1 at 3 (citing "Faccio 2003").

or exceed ANSI C57.12.00-2010, C57.12.20-2005, C57.12.90-2006, and all other applicable standards. Staskus pf. at 17.

112. The Facility may restrict access with a fence and a locked gate. If a fence is not used, all energized equipment will be rated for outdoor use, securely shielded, locked by enclosure covers, and otherwise compliant with the "Guarding of Live Parts" requirements of the National Electrical Code. Staskus pf. at 7, 17; exh. NUL-MS-4.

Discussion

The Department requested that the Commission require the Applicant to notify the Department and the Commission upon determining whether the Project will use solar scrim or a fence to protect against unauthorized access. The Applicant has not responded to the proposed condition, but the Commission has issued CPGs containing the condition to Norwich-related entities in the past.[96] I recommend that the Commission include the Department's proposed condition in any CPG issued for the Project.

In my order setting issues for hearing, I granted the Landowner Parties' request for a hearing on the issue of public health and safety based on specific concerns raised by the Landowner Parties about increased tree fall on the slope below the clearing along the eastern edge of the Facility site.

The Landowner Parties argue that the increased wind exposure of trees downslope from the Facility will result in increased treefalls near the residences along Upper Loveland Road. The Landowner Parties cite as an example a 2022 incident, in which an ash tree weakened by the emerald ash borer fell within 20 feet of a downhill residence.[97]

The Applicant argues that the Landowner Parties' concern is speculative and should receive little weight. According to the Applicant, the Landowner Parties' argument is based on testimony submitted by one of the Landowner Parties, who is not an expert on wind throw and relies on publications that are not in the evidentiary record.[98]

I recommend that the Commission conclude that the Facility will not have an undue adverse impact on public health and safety. Although the Landowner Parties' concerns about

[96] *See Petition of West Fairlee Stevens Solar LLC for a Certificate of public good*, Case No. 20-3530-NMP, Order of 9/2/22 at 29.

[97] Landowner Parties' Br. at 25; exh. NN-JK-2 at 12-13.

[98] Applicant Reply Br. at 11.

trees on the east-facing slope between Upper Loveland Road and the Facility site above may is based on experience, the evidence does not demonstrate that the Facility will increase the rate of falling trees. The Landowner Parties' evidence on the potential for increased treefall consists of non-expert testimony from one of the intervenors based on references that are not included in the evidentiary record. The Landowner Parties have not provided any study or analysis of tree-fall potential on the slope between the Facility and Upper Loveland Road that would support a finding that the Facility will result in an increased treefall risk.

**Primary Agricultural Soils**
[30 V.S.A. § 248(b)(5)]

113. The Facility will not have any undue adverse effects on primary agricultural soils as defined in 10 V.S.A. § 6001 because there are no primary agricultural soils within the Facility area. Staskus pf. at 21; exh. NUL-MS-2 (rev. 4/26/23).

**Natural Environment**
[30 V.S.A. § 248(b)(5)]

114. The Facility will not have any undue adverse effects on the natural environment. This finding is supported by the additional findings below.

115. The clearing of approximately 8.2 acres proposed by the Facility is the twelfth highest acreage of forest clearing per kWh of nameplate capacity out of 188 solar projects for which ANR has collected forest clearing data since 2016. ANR 1/3/22 Comments at 5.

116. The tree canopy in the Facility area includes hemlock, red oak, sugar maple, and white ash. It is characterized as a Hemlock-Northern Hardwood Forest, but does not constitute a state significant natural community or rare or irreplaceable natural area due to its size and condition. Exh. NUL-DB-2 at 7; exh. NN-JG-2 at 2-3.

117. The Facility is not within a high or medium priority forest block identified by the Town of Norwich in its Town Plan. Barton pf. reb. at 8-9; exh. NN-JK-6 at 18.

118. The Vermont Fish and Wildlife Department assigned the Facility site forest block a score of 4 out of 10 in its Vermont Habitat Blocks and Habitat Connectivity analysis, which is not a high ranking. The Facility site forest block does not make a significant contribution to

regional or statewide landscape connectivity because it is already fragmented by roads, the transmission line corridor, and other existing development. Barton pf. reb. at 7-8.

119. The Facility site is not within a mapped interior forest block or connectivity block according to the Vermont Department of Fish and Wildlife Department's more recent forest block mapping effort, the "Vermont Conservation Design". Barton pf. reb. at 7-8.

120. The general movement patterns of local wildlife, such as skunks, racoon, and deer will likely be changed to some degree, but the wildlife will develop new routes to traverse the site. The Facility site is not located between significant natural areas or critical habitat features that would indicate that the site functions as a corridor. Barton pf. reb. at 10.

Discussion

Pursuant to Section 248(b)(5), the Commission must find that the Facility will not have an undue adverse effect on the natural environment. Forests are an important component of the natural environment, and therefore, the Commission may consider the effects of forest clearing on the natural environment.[99] The Commission applies the following standard when undertaking such analysis:

> In determining whether any proposed forest clearing constitutes an undue adverse effect on the natural environment, the Commission considers the character and values of the forest in question and other case-specific facts such as mitigation.[100]

Based on the findings above, I recommend that the Commission find that the Facility will have an adverse effect on the natural environment. As ANR has noted, the Facility requires a significant amount of clearing relative to its generation capacity. Although ANR has proposed conditions to prevent undue adverse effects on streams, wetlands, and necessary wildlife habitat, ANR has not requested any limitations on or reduction of the amount of clearing.

I also recommend that the Commission find that the impact on the natural environment will not be undue. In 2020, the Commission reviewed a project with facts similar to those present here, ultimately approving the clearing of 8.97 acres.[101] The Commission reasoned:

> the forest has a habitat block value of 4 out of 10 (with 10 being the best) and is not a priority or high priority forest block. Additionally, the Applicant has agreed to

[99] *Petition of Otter Creek Solar*, Case Nos. 8797 and 8798, Order of 2/27/18 at 29-30.
[100] *Id.*
[101] *Petition of Norwich Tech., Inc. for a certificate of public good*, Case No. 18-1730-NMP, Order of 1/22/20 ("*Norwich Windsor*").

> all of the conditions requested by ANR, which are discussed in the preceding sections and concern soil erosion and stormwater; streams; wetlands; and rare, threatened, and endangered plants. ANR did not request any additional conditions related specifically to forest clearing. Further, the Applicant took reasonably available mitigating steps to reduce the adverse effects of the clearing on the natural environment, including avoiding wetlands in the forest block, working with ANR to minimize the clearing within the 50-foot riparian buffer for Hubbard Brook to the removal of a few trees, and developing a non-native invasive species plan to protect the Virginia bugleweed and prevent the spread of non-native invasive species.[102]

Like *Norwich Windsor*, the Facility site here is proposed in a forest block with a habitat value of 4 out of 10 and is not a priority or high-priority block. The Applicant has agreed to all ANR's proposed conditions to protect the natural environment related to streams, wetlands, and necessary wildlife habitat. Unlike *Norwich Windsor*, however, neither the Applicant nor ANR have proposed any plan to restrict the spread of invasive species—a concern that the Landowner Parties have raised based on the current presence of invasive species in the adjacent transmission corridor.[103] Also unlike the *Norwich Windsor* facility, the Facility site is shared with a communications tower and bounded on one side by a transmission corridor.

Although the Commission approved the *Norwich Windsor* facility, the Commission and ANR both expressed concern about "the recent trend of renewable energy projects requiring greater amounts of forest clearing, a concern that ANR has again raised in this case."[104] In *Norwich Windsor*, the Commission explained that it had initiated a proceeding to review the net-metering rule and had requested comments on the relevance of tree clearing to preferred-site status for net-metering systems and expected further discussions with stakeholders as part of the rulemaking process.[105]

On March 1, 2024, a revised net-metering rule went into effect.[106] Among the changes included in the revised rule was an exclusion of sites requiring "significant forest clearing" from the definition of "preferred site."[107] In the revised rule, significant forest clearing "means clearing more than three acres of forest," with additional clarification on what qualifies as

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[102] *Id.* at 21.
[103] Exh. NN-JG-2 at 22.
[104] Case No. 18-1730-NMP, Order of 1/22/20 at 23.
[105] *Id.*; *see also Proposed revisions to Vermont Public Utility Commission Rule 5.100*, Case No. 19-0855-RULE.
[106] Commission Rule 5.100 (effective 3/1/24).
[107] Commission Rule 5.103.

"forest." The new rule took effect after this case was filed and does not apply here, but is the culmination of the concern articulated in *Norwich Windsor* and will reduce the amount of forest clearing associated with renewable energy projects going forward.

The Landowner Parties have raised several arguments related to the impacts on the natural environment due to the clearing of the approximate 8.2 acres required for the Facility. These arguments relate to the effect of the clearing on carbon sequestration, area wildlife, and the public health benefits of natural spaces.

I have addressed the Landowner Parties arguments related to carbon sequestration in the greenhouse gas section above.[108] To summarize here, the Landowner Parties have not shown that the emissions savings due to the Facility are exceeded by the emissions increases that might result due to clearing, construction, and decommissioning, and therefore have not shown that the Facility will have an undue adverse effect on greenhouse gas emissions.

I have also addressed some of the Landowner Parties' wildlife concerns in the discussion of necessary wildlife habitat.[109] The Commission's review of the natural environment under Section 248(b)(5) is broader than the Act 250 criteria, including necessary wildlife habitat, and the Landowner Parties have shown that there is a wildlife presence on and around the Facility site.[110] As discussed in the findings above, the Facility will affect the movement patterns of wildlife in the Facility area. However, the Facility area is not a wildlife corridor, and the evidence shows that movement patterns will adapt as needed.

Finally, the Landowner Parties argue that natural areas provide a benefit to physical and mental health.[111] The record demonstrates that the host parcel contains some trails that have been used by community members. The host parcel is, however, private property and public access to the parcel, even if historically permitted, was never guaranteed. The Town Forest west of the Facility parcel will remain available to those seeking engagement with the natural surroundings and, as public land, can continue to be preserved in its natural state at the discretion of the Town and its residents.

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[108] *Supra* p. 25.
[109] *Supra* p. 41.
[110] *Petition of Georgia Mountain Community Wind, LLC*, Docket 7508, Order of 6/11/10 at 26-29.
[111] Landowner Parties' Br. at 41, 47.

Based on the findings and discussion above, I recommend that the Commission find that the Facility will not have an undue adverse impact on the natural environment.

**Minimum Setback Requirements**
[30 V.S.A. § 248(s)]

121. The Facility will comply with Vermont's statutory setback requirements for ground-mounted solar electric generation facilities because the Facility's solar panels or support structures for the solar panels are set back at least 100 feet from the nearest road and at least 50 feet from the nearest property boundary line. Staskus pf. at 18.

Discussion

Section 248(s) of Title 30 requires that the nearest portion of a facility's solar panels or support structure for a solar panel be set back at least 100 feet from any state or municipal highway and at least 50 feet from any property boundary that is not a state or municipal highway. The setbacks proposed for the Facility's solar panels or support structures for the solar panels meet these minimum requirements.

## VI. DECOMMISSIONING PLAN

122. The Applicant has developed a decommissioning plan for the Facility. Staskus pf. at 22.

123. At the end of the Facility's useful life, the Facility materials will be removed and the site will be restored to its current condition to the greatest extent practicable. Staskus pf. at 22; exh. NUL-MS-9.

Discussion

Commission Rule 5.107(C)(12) requires that all applications for net-metering systems with capacities greater than 150 kW must include a plan for decommissioning the facility at the end of its useful life. The decommissioning plan must provide for the removal and safe disposal of facility components and the restoration of any primary agricultural soils, if such soils are present within the net-metering system's limits of disturbance.

Commission Rule 5.904(A) requires that a facility with a capacity equal to or greater than 150 kW and less than or equal to 500 kW must be removed once it is no longer in service, and

the site must be restored to the condition it was in before installation of the facility to the greatest extent practicable.

The Applicant has provided a detailed plan for decommissioning the Facility. I recommend that the Commission approve that plan and require, as a condition of approval, that the Applicant comply with the terms and conditions of its proposed decommissioning plan, identified in the evidentiary record as exhibit NUL-MS-9.

## VII. CONCLUSION

Based upon the certifications of the Applicant and the above findings, I recommend that the Commission conclude that, subject to conditions, the Facility will comply with the requirements of Commission Rule 5.100 and will promote the general good of the State.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Date: March 27, 2024

Micah Howe
Hearing Officer

## VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted. All other findings proposed by parties, to the extent that they are inconsistent with this Order, were considered and not adopted.

2. In accordance with the evidence and plans submitted in this proceeding, the 500 kW AC solar group net-metering system proposed for construction and operation by Norwich Upper Loveland Solar LLC (the "CPG Holder") at 201 Upper Loveland Road in Norwich, Vermont, will promote the general good of the State of Vermont pursuant to 30 V.S.A. §§ 248 and 8010, and a certificate of public good ("CPG") to that effect will be issued in this matter.

3. As a condition of this Order, the CPG Holder must comply with all terms and conditions set out in the CPG issued in conjunction with this Order.

Dated at Montpelier, Vermont, this _____.

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| _____ Edward McNamara | PUBLIC UTILITY |
| _____ Margaret Cheney | COMMISSION OF VERMONT |
| _____ J. Riley Allen | |

OFFICE OF THE CLERK

Filed:

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)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.*

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-3587-NMP

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|---|---|
| Petition of Norwich Upper Loveland Solar, LLC. for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 500 kW (AC) group net-metering solar electric generation system in Norwich, Vermont | |

Order entered:

**CERTIFICATE OF PUBLIC GOOD ("CPG") ISSUED PURSUANT TO 30 V.S.A. SECTIONS 248 & 8010**

IT IS HEREBY CERTIFIED that the Vermont Public Utility Commission ("Commission") this day found and adjudged that the site preparation, construction, operation, and maintenance of a 500 kW solar group net-metering system by Norwich Upper Loveland Solar LLC ("CPG Holder") at 201 Upper Loveland Road in Norwich, Vermont (the "Project"), in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State, subject to the following conditions.

1. Site preparation, construction, operation, and maintenance of the Project must be in accordance with the plans and evidence submitted in this proceeding. Any material deviation from these plans or a substantial change to the Project must be approved by the Commission. Failure to obtain advance approval from the Commission for a material deviation from the approved plans or a substantial change to the Project may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.

2. The net-metering system must comply with all applicable existing and future statutory requirements and Commission Rules and Orders.

3. In the event this CPG is transferred pursuant to Commission Rule 5.110, the new CPG Holder must file the required certificate transfer form with the Commission before operating the system.

4. Pursuant to Commission Rule 5.110(C), if the net-metering system is not commissioned within one year of the date of this CPG, this CPG will be revoked unless otherwise ordered by the Commission.

5. All environmental attributes associated with the Project's output, including any renewable energy credits ("RECs"), will be transferred to Green Mountain Power Corporation pursuant to Commission Rule 5.127(B) with no REC adjustor.

6. Pursuant to Commission Rule 5.127(C), a siting adjustor of negative four cents per kilowatt hour will apply to all energy generated by the net-metering system.

7. As required by 30 V.S.A. § 248(a)(7), within 45 days of the date of this CPG, the CPG Holder must record a notice of the CPG on the form available at http://puc.vermont.gov/document/cpg-municipal-notice-form in the land records of each municipality in which a facility subject to the CPG is located. The CPG Holder must file proof of this recording with the Commission.

8. As provided in 30 V.S.A. § 248(t), despite any contrary provision of the law, primary agricultural soils as defined in 10 V.S.A. § 6001 located on the site of a solar electric generation facility approved under Section 248 must remain classified as such soils, and the review of any change in the use of the site subsequent to the construction of the facility must treat the soils as if the facility had never been constructed.

9. Before beginning site preparation or construction of the Project, the CPG Holder must obtain all necessary permits and approvals. Site preparation, construction, operation, and maintenance of the Project must be in accordance with such permits and approvals.

10. The CPG Holder must restrict construction activities and related deliveries for the Project to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays. No construction activities or deliveries are allowed on Sundays, state holidays, or federal holidays.

11. The CPG Holder must implement and must pay for any system upgrades determined by the interconnecting utility to be necessary to safely interconnect the net-metering system, other than those determined by the interconnecting utility to be necessary to correct a pre-existing condition.

12. Once the Project is no longer in service, Project facilities must be removed from the site, and the site must be restored, in accordance with Commission Rule 5.904(A).

13. The CPG Holder must pay all invoices (if any) from any State agency that (a) are related to this proceeding and (b) are not still under review by the Commission.

14. Before Project operation, the CPG Holder must file with the Commission a description of the measures used to comply with the National Electrical Code's "Guarding of Live Parts" requirements (e.g., fence, solar scrim) and prevent unauthorized access to energized equipment in the constructed Project.

15. The CPG Holder must maintain undisturbed, naturally vegetated riparian zones except for activities within the existing footprint of the access road depicted on Exhibit NUL MS-2 (4/26/23) Site Plan. The riparian zone shall be measured inland, perpendicular to and horizontally 50-feet from the stream's top-of-bank or, where a wetland is contiguous to the stream, from the upland edge of the delineated wetland, and extends to the water's edge at base flow conditions. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub, or groundcover removal; plowing or disposal of snow; grazing; and mowing.

16. Where the Project is within 100 feet of any riparian zone boundary, before site preparation and construction, maintenance involving earth disturbance, and decommissioning, the CPG Holder must install a continuous line of visible flagging along the Project Limits identifying the riparian zone as a protected area.

17. The Project must avoid impacts to Class II wetlands and 50-foot wetlands buffer zones, or the CPG Holder must obtain and comply with the provisions of a Vermont Wetlands Permit for any activity that is not an Allowed Use designated in Section 6 of the Vermont Wetland Rules.

18. The CPG Holder must leave undisturbed the vernal pool and pool envelop abutting the south Project limits. The pool envelop boundary is measured 100 feet perpendicularly around the perimeter of the vernal pool's high-water mark.

19. Where the Project is within 100 feet of the pool envelop boundary, before site preparation and construction, maintenance involving earth disturbance, and decommissioning, the CPG Holder must install a continuous line of visible flagging along the Project Limits identifying the protected vernal pool and envelop.

20. Site preparation, construction, vegetation management, maintenance activities that may cause earth disturbance, and decommissioning must only occur between May 15th and August 31st or between October 16th and March 14th.

21. Erosion prevention and sediment control measures required by the Vermont Stormwater Rules must be installed outside the pool envelop, designed to allow for amphibian passage, and designed to prevent sediment transport into the pool envelop. The CPG Holder must remove erosion prevention and sediment control measures within 30 days following final stabilization.

22. Where fencing is installed for the Project, it must be designed with a minimum six-inch by six-inch mesh extending from the ground level up to three feet or higher.

Dated at Montpelier, Vermont, this _____.

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|---|---|
| _____ Edward McNamara | PUBLIC UTILITY |
| _____ Margaret Cheney | COMMISSION |
| _____ J. Riley Allen | OF VERMONT |

OFFICE OF THE CLERK

Filed:

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)*

PUC Case No. 21-3587-NMP - SERVICE LIST

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