



State of Vermont

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Agency of Natural Resources

October 15, 2020

Via ePUC
Judith Whitney, Clerk
Vermont Public Utility Commission
112 State St., Drawer 20
Montpelier, VT 05620-2701

Docket 20-1655-NMP:

Petition of Norwich Turnpike Solar, LLC (“Applicant”) for a Certificate of Public Good (“CPG”) Pursuant to 30 V.S.A. §§ 248 and 8010, authorizing installation and operation of a 150 kW (AC) Photovoltaic Group Net-Metering System at 645 Turnpike Road, Norwich, Vermont (“Project”)

The Vermont Agency of Natural Resources (ANR) submits the following comments in response to the Proposal for Decision issued by the Hearing Officer on September 30, 2020. The ANR seeks to clarify its comments filed on September 11, 2020. Page 3 of the Proposal for Decision states:

ANR, in its original comments on the Project, recommended that the Applicant include flagging to demarcate wetlands and riparian zones, and requested that the Applicant provide a photograph of the flagging to the agency one month prior to commencement of construction. ANR subsequently withdrew its request for additional flagging as unnecessary given that the Applicant is already required by its stormwater discharge permit to demarcate the limits of Project disturbance with a continuous line of flagging and the limits of disturbance are outside of or coterminous with the riparian and wetland buffer zones in the area.

The ANR’s September 11 comments were not intended to signal a withdrawal of its request for a CPG condition requiring wetland and riparian buffer flagging. The ANR’s comments intended only to respond to the Applicant’s concern that two sets of flagging may be

“redundant and confusing”. The CPG flagging condition preserves the ANR’s interests to protect resources under Criteria 1E/F/1G within Section 248. The ANR’s comments intended to explain how these interests are not sufficiently protected by a stormwater Construction General Permit 3-9020 (“CGP”) flagging condition. As discussed in the ANR’s comments, the wetland and riparian buffer flagging is meant to demarcate “project limits,” which are different from “limits of disturbance” marked by the flagging required by the stormwater permit. However, the “project limits” may, in some cases, be the same as the “limits of disturbance”; a single set of flagging would satisfy both flagging requirements in such a case. The ANR notes that it is the Applicant’s burden to determine the appropriate installation boundaries and timing to meet both the CPG and CGP flagging requirements.

The ANR therefore requests that page 2 of the Proposal for Decision be changed as follows:

On September 11, 2020, ANR filed a reply to the Applicant’s August 21 response. ANR ~~no longer recommends additional flagging for the Project~~ continues to recommend wetland and riparian buffer flagging under the CPG given that the Applicant’s flagging required for its stormwater permit may be different. will be sufficient. ~~However,~~ ANR also continues to recommend that the Applicant submit a photograph of the flagging to ANR prior to commencing site preparation and construction.

The ANR also requests that page 3 of the Proposal for Decision be changed as shown below:

ANR, in its original comments on the Project, recommended that the Applicant include flagging to demarcate wetlands and riparian zones, and requested that the Applicant provide a photograph of the flagging to the ~~ANR agency~~ one month prior to commencement of construction. ~~ANR subsequently withdrew its request for additional flagging as unnecessary given that the Applicant is already required by its stormwater discharge permit to demarcate the limits of Project disturbance with a continuous line of flagging and the limits of disturbance are outside of or coterminous with the riparian and wetland buffer zones in the area. However, ANR continues to request that the Applicant be required to submit a photograph of the flagging prior to commencement of construction.~~ The Applicant opposes ~~theis~~ condition to photograph flagging as unnecessary and unverifiable.

In addition, the ANR requests that any CPG issued for the Project include the ANR's requested wetland and riparian buffer flagging condition as written in its August 18 comments:

Where the Project is within 100 feet of any riparian zone or Class II wetlands buffer zone boundaries, prior to site preparation and construction, maintenance involving earth disturbance, and decommissioning, the CPG Holder shall install a continuous line of visible flagging on the Project limits¹ identifying the undisturbed riparian zones, wetlands, and buffers as protected areas.

Thank you for the opportunity to comment. Please do not hesitate to contact me at (802) 505-0396 or karin.mcneill@vermont.gov.

Sincerely, /s/ Karin McNeill

Karin McNeill
Regulatory Policy Analyst, Agency of Natural Resources

¹ The Agency notes that the term "Project Limits" frequently used in our comments refers to the "Limits of Disturbance" defined in Net Metering Rule 5.103.