

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-1655-NMP

Petition of Norwich Turnpike Solar, LLC for a certificate of public good pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 150 kW group net-metering solar system in Norwich, Vermont	
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Order entered: 10/29/2020

FINAL ORDER GRANTING NET-METERING CERTIFICATE OF PUBLIC GOOD

In this Order, the Vermont Public Utility Commission (“Commission”) adopts the following proposal for decision as modified by the Commission discussion below.

PROPOSAL FOR DECISION

I. INTRODUCTION

This case involves an application (“Application”) filed by Norwich Turnpike 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 150 kW solar group net-metering system at a municipally designated preferred site at 645 Turnpike Road in Norwich, Vermont (the proposed “Project”).

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

II. PROCEDURAL HISTORY

On June 26, 2020, the Applicant filed an application for the Project 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 August 6, 2020.

On July 24, 2020, the Vermont Division for Historic Preservation (“DHP”) filed a motion to intervene. No objections to the motion have been filed with the Commission, therefore the motion is granted.

On August 3, 2020, the Vermont Agency of Natural Resources (“ANR”) filed a motion to extend the comment deadline for the Project until August 17, 2020. No objections to the motion have been filed with the Commission, therefore the motion is granted.

On August 5, 2020, DHP filed a Memorandum of Understanding (MOU”) between itself and the Applicant regarding the protection of archeological resources.

On August 6, 2020, the Vermont Department of Public Service (“Department”) filed comments on the Project. The Department stated that it would file final comments on the Project once the feasibility study for the Project is filed with the parties.

On August 10, 2020, the Applicant filed a feasibility study for the Project.

On August 18, 2020, ANR filed comments on the Project. ANR recommends certain conditions related to protection of riparian zones and wetlands be added to the CPG issued for the Project.

On August 21, 2020, the Applicant filed a response to ANR’s comments. The Applicant objects to the recommended conditions requiring additional flagging and a photograph of the flagging as overly burdensome and unnecessary given that the Project must obtain and comply with a stormwater permit.

On August 28, 2020, the Department filed supplemental comments on the Project. The Department states that it has no concerns regarding the Project.

On September 11, 2020, ANR filed a reply to the Applicant’s August 21 response. ANR no longer recommends additional flagging for the Project given that the Applicant’s flagging required for its stormwater permit will be sufficient. However, ANR continues to recommend that the Applicant submit a photograph of the flagging to ANR prior to commencing construction.

On September 25, 2020, the Applicant filed a response to ANR’s September 11 reply. The Applicant continues to oppose ANR’s recommendation requiring a photograph of the flagging as unnecessary and not verifiable.

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

No party has requested an evidentiary hearing or objected to the prefiled testimony and exhibits. Accordingly, the following prefiled testimony and exhibits are admitted as if presented at a hearing: prefiled testimony of Martha Staskus and exhs. 1-8; prefiled testimony of Dori Barton and exhs. 1-2; the prefiled testimony of Mark Kane and exhs. 1-2; and the MOU between the Applicant and DHP filed August 5, 2020.

III. SUMMARY OF COMMENTS

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. 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 this condition as unnecessary and unverifiable.

I agree with the Applicant that a condition requiring a photograph of the flagging is unnecessary and of little value. The Applicant is required to comply with all permit and CPG conditions or face the prospect of fines and penalties, or revocation, as is the case in any CPG proceeding. The Applicant's stormwater permit requires that the entire limits of Project disturbance be demarcated with a continuous line of flagging. I fail to see how an unsubstantiated photograph of flagging in a field provides any additional assurance that the Applicant is in compliance with its permit or CPG conditions. Accordingly, I recommend that the Commission decline to include this condition as part of the CPG.

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 Project

1. The Project consists of a solar electric system with a total capacity of 150 kW AC located at 645 Turnpike Road in Norwich, Vermont. The Project will be interconnected with Green Mountain Power Corporation's ("GMP") electric distribution system with a line extension to a pole mounted transformer. Staskus pf. at 3.

2. The Project will occupy 1.25 acres at the southern end of a larger 8.5 acre parcel and will include 6 rows of ground-mounted solar panels, an access drive from Turnpike Road, underground cabling connecting the panel rows. Staskus pf. at 2; exh. MS-2.

3. Project construction activity will occur between 7:00 AM and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays, with no construction allowed on state or federal holidays or Sundays. Staskus pf. at 8.

Applicable Rate Adjustors

4. The Applicant has elected to transfer the Project's renewable energy credits ("RECs") to GMP. Application at 5.

5. The Project will be located on a preferred site, as defined in Commission Rule 5.103, because the Town of Norwich has designated the Project as a preferred site in its municipal plan. Staskus pf. at 11; exh. MDK-2.

Discussion

Pursuant to Commission Rule 5.127(C)(2), because the Project is less than or equal to 150 kW and is located on a “preferred site,” a siting adjustor of plus one cent per kilowatt hour shall apply to all energy generated by the net-metering system for 10 years from the date the system is commissioned.

Because the Applicant has elected to transfer the ownership of the RECs generated by the net-metering system, the Project is entitled to receive a REC adjustor of plus one cent per kilowatt hour for 10 years from the date the system is commissioned, pursuant to Commission Rule 5.127(B).

The siting and REC adjustors will be stated in the Project’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)]

6. The Project 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 and the recommendations of the municipal legislative bodies. Substantial deference has been given to the land conservation measures and specific policies contained in the duly adopted regional and municipal plans. The Project is consistent with the permitted land uses and renewable energy goals described in the Norwich Town Plan and the Two-Rivers Ottauquechee Regional Plan. Kane pf. at 2.

Municipal Screening Requirements

[30 V.S.A. § 248(b)(1)(B)]

7. The Town of 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 Project would have to comply. Kane pf. at 3.

Impact on System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

8. The Project will not have an adverse effect on system stability and reliability. The Applicant has executed a Feasibility Study Agreement with GMP whereby the Applicant has agreed to pay for all necessary interconnection costs required by GMP's Feasibility Study. Staskus pf. at 13; exh. MS-8.

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)]

9. Subject to the conditions described below, the Project 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 findings 10 through 33, below.

Outstanding Resource Waters

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

10. The Project 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 Project area. Exh. DB-2 at 5-6.

Air Pollution and Greenhouse Gas Impacts
[30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1)]

11. The Project will not result in undue air pollution or greenhouse gas emissions. The Project will produce only temporary emissions associated with Project construction and maintenance. Staskus pf. at 14.

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

12. The Project will not result in undue water pollution. This finding is supported by findings 13 through 22, under the criteria of headwaters through soils, below.

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

13. The Project site is located in a headwaters area because it is located in a watershed of less than 20 square miles. However, the Project site is not characterized by other features that define headwaters as set forth in 10 V.S.A. § 6086(a)(1)(A). It is not characterized by steep slopes and shallow soils, is not above 1,500 feet in elevation, is not in a watershed of a public water supply as designated by ANR, and is not in an area that supplies significant amounts of recharge water to aquifers. Exh. DB-2 at 4-5.

14. The Project will obtain a construction stormwater permit from the Department of Environmental Conservation prior to commencement of construction. Staskus pf. at 15

Waste Disposal
[10 V.S.A. § 6086(a)(1)(B)]

15. The Petitioner represents that the Project will meet all applicable health and Vermont Department of Environmental Conservation regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Staskus pf. at 14-15.

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

16. The Project will not have an undue adverse effect on water conservation because the Project will not involve the use of water. Staskus pf. at 16

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

17. The Project 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 Project, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Exh. DB-2 at 5.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

18. The Project will not have an undue adverse effect on streams because there are no streams in the Project area. Exh. DB-2 at 5-6

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

19. The Project is not located on or near a shoreline. Exh. DB-2 at 6

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

20. The Project will not have an undue adverse effect on wetlands. There are two Class II wetlands in the Project area. However, the Project has been designed to avoid impacts to the wetlands and associated buffer zones and will not require a Wetlands Permit. Exh. DB-2 at 6-7.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2) and (3)]

21. There is sufficient water available for the reasonably foreseeable needs of the Project. Staskus pf. at 16.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

22. The Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. The Project will be constructed in compliance with the Vermont Standards and Specifications for Erosion Prevention and Sediment Control. Staskus pf. at 17.

Transportation

[10 V.S.A. § 6086(a)(5)]

23. The Project will not result in undue traffic or congestion because the Project 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 18.

Educational Services

[10 V.S.A. § 6086(a)(6)]

24. The Project will not place a burden on the ability of a municipality to provide educational services because the Project will not require or affect educational services. Staskus pf. at 18

Municipal Services

[10 V.S.A. § 6086(a)(7)]

25. The Project will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services because the Project will not require or affect local services. Staskus pf. at 18.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

26. The Project will not have an undue adverse impact on aesthetics or on the scenic or natural beauty of the area, nor will the Project have an undue adverse effect on historic sites or rare and irreplaceable natural areas. This finding is supported by findings 27 through 29, below.

Aesthetics

27. The Project has very limited visibility from nearby vantage points due to surrounding vegetation and topography. The Project does not violate a clear, written community standard intended to preserve the aesthetics of the area. Given its limited visibility, the Project will not be considered shocking or offensive to the average person. The Applicant has proposed reasonable additional landscape plantings to further mitigate the visibility of the Project. Kane pf. at 2-4; exh. MDK-2.

Historic Sites

28. The Project will not have an undue adverse effect on historic properties. The Applicant has entered into a Memorandum of Understanding (“MOU”) with DHP and stipulated to all the conditions therein so as to avoid any impacts to archeological resources in the area. MOU dated August 5, 2020.

Rare and Irreplaceable Natural Areas

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

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

30. The Project will not have an undue adverse effect on any endangered species or critical wildlife habitat because there are none in the Project area.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

31. The Project 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. The Project will result in only a temporary impact on public roads during construction and operation. Staskus pf. at 19.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

32. The Project will not have any undue adverse effects on the health, safety, and welfare of the public. The Project will follow all applicable electrical safety codes. Sensitive electrical equipment will be in locked enclosures or fenced in. Staskus pf. at 15; exh. MS-4.

Primary Agricultural Soils

[30 V.S.A. § 248(b)(5)]

33. The Project will not have any undue adverse effects on primary agricultural soils as defined in 10 V.S.A. §6001. The Project will impact 0.01 acres of primary agricultural soils

where the underground line extension will be located. Primary agricultural soils will be excavated and backfilled in a manner preserving the soils. Staskus pf. at 18; exh. MS-2.

Minimum Setback Requirements

[30 V.S.A. § 248(s)]

34. The Project will comply with Vermont's statutory setback requirements for ground-mounted solar electric generation facilities because the Project is set back more than 40 feet from the nearest road and more than 25 feet from the nearest property boundary line. Staskus pf. at 15; exh. MS-2.

VI. CONCLUSION

Based upon the certifications of the Applicant and the findings made herein, I recommend that the Commission conclude that, subject to conditions, the Project 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 pursuant to 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 30th day of September 2020.



Gregg Faber
Hearing Officer

VII. COMMISSION DISCUSSION

On October 15, 2020, ANR filed comments on the proposal for decision (“PFD”). ANR requests that portions of the hearing officer’s summary of ANR’s comments in the PFD be revised and now requests the addition of a condition in the CPG requiring flagging of wetland and riparian zones in addition to the flagging required by a stormwater permit.

On October 16, 2020, the Department filed comments on the PFD stating that it had no objection or further comment on the PFD.

On October 16, 2020, the Applicant filed a response to ANR’s October 15 comments. In its response, the Applicant objected to the inclusion of an additional CPG condition, as proposed by ANR, as unnecessary given that it would, in some cases result in two overlapping lines of flagging to meet both the requirements of a stormwater permit flagging and wetlands flagging condition. The Applicant suggests that a condition requiring it to flag the outermost boundaries of the Project’s limits of disturbance closest to the array would protect the wetland and riparian boundaries and avoid having two lines of flagging.

We conclude that requiring two overlapping lines of flagging for the Project would be redundant and potentially confusing for construction workers. The Applicant is required by its stormwater permit to install a continuous line of flagging along the limits of disturbance caused by the construction of the Project. The site plan provided by the Applicant clearly shows that this line of flagging is either outside of or contiguous with the boundaries of the wetland and riparian zones.¹ Therefore, we will add a condition requiring flagging along the boundaries of the Project’s limits of disturbance as depicted on the Project site plans. With respect to the hearing officer’s summary of ANR’s comments, we conclude that the summary is not inaccurate and is intended to provide the hearing officer’s interpretation of the comments. Accordingly, it is unnecessary to revise this portion of the PFD and we decline to do so.

¹ Exh. MS-2.

VIII. ORDER

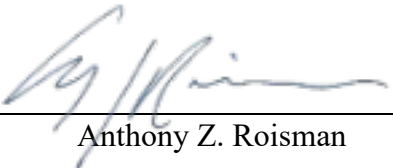
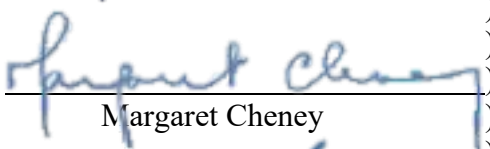
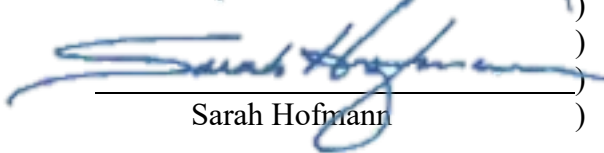
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

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 150 kW AC solar group net-metering system (the “Project”) proposed for construction and operation by Norwich Turnpike Solar, LLC (the “CPG Holder”) at 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 shall be issued in this matter.

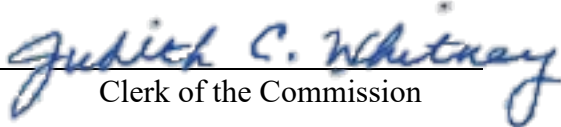
3. As a condition of this Order, the CPG Holder shall comply with all terms and conditions set out in the CPG issued in conjunction with this Order.

Dated at Montpelier, Vermont, this 29th day of October, 2020.

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Anthony Z. Roisman)	PUBLIC UTILITY
)	
)	
Margaret Cheney)	COMMISSION
)	
)	
Sarah Hofmann)	OF VERMONT

OFFICE OF THE CLERK

Filed: October 29, 2020

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.

PUC Case No. 20-1655-NMP - SERVICE LIST

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