

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Otter Creek Solar LLC, pursuant to	)	
30 V.S.A. § 248, for a certificate of public good	)	
authorizing the installation and operation of the	)	Case No. 19-0516-PET
“Warner Solar Project,” a 2.2 MW solar electric	)	
generation facility located off Rice Lane in	)	
Bennington, Vermont		

**SUPPLEMENTAL RESPONSES OF THE AGENCY OF NATURAL RESOURCES TO
OTTER CREEK SOLAR’S FIRST SET OF INFORMATION REQUESTS**

NOW COMES the Agency of Natural Resources (ANR or Agency) by and through its attorney, Donald J. Einhorn, and hereby provides these supplemental responses to the February 10, 2020 request for information by Otter Creek Solar, LLC (“Petitioner” or “OCS”).

PROPOUNDING PARTY: Otter Creek Solar, LLC

RESPONDING PARTY: Vermont Agency of Natural Resources

SET NO: First

GENERAL OBJECTIONS

The following General Objections are made in response to each interrogatory, request to admit, or request to produce (the “Requests”) as if the objections were fully set forth therein. Any response is given without waiver of any objection, whether or not an objection is stated. The Agency reserves the right to later raise any additional, available objections.

1. The Agency objects to the Requests on the grounds and to the extent they call for responses that exceed the scope of the Agency’s testimony and exhibits or are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.
2. The Agency objects to the Requests on the grounds and to the extent that they seek responses that are subject to any or all of the following privileges: (a) the attorney-client privilege; (b) attorney work product and trial preparation privileges; (c) executive or deliberative process privilege, or that are otherwise privileged or protected from disclosure. The Agency construes each of the Requests so as not to seek any information or materials that falls within each of these privileges. To the extent any information or materials protected by these privileges is inadvertently produced, such production is not to be construed as a waiver of such privilege or protection.
3. The Agency objects to the Requests on the grounds and to the extent that they are overbroad, unduly burdensome or oppressive, unreasonably cumulative or duplicative, and not proportional to the needs of the case.
4. The Agency objects to the Requests on the grounds and to the extent that they are vague, unintelligible, contain undefined terms, require speculation, or are otherwise incapable of a reasonable response.
5. The Agency objects to the Requests on the grounds and to the extent that they purport to impose obligations on the Agency that are beyond the scope of the Public Utility Commission Rules or the Vermont Rules of Civil Procedure or other applicable law, request information and/or documents that require an unreasonable investigation on the part of the Agency, or purport to require the Agency to create documents or perform new analyses responsive to any such Requests.
6. The Agency objects to the Requests to the extent that they seek the production of documents and information already in the possession of, or publicly available to, or readily obtainable to the Petitioner and its counsel, on the ground that with respect to such production, the Requests are thereby rendered unduly burdensome.

7. The Agency objects to the Requests to the extent that they seek the production of documents and information not within the Agency's possession, custody, or control.
8. The Agency objects to the Requests to the extent that they call for a legal conclusion.

The Agency expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses herein at any time. By making any response to the Requests, the Agency does not waive and hereby expressly reserves, the right to assert any and all objections as to the admissibility of such responses into evidence at the time of trial of this action, or in any other proceeding, on any and all grounds, including but not limited to competency, relevance, materiality, and privilege. The Agency also does not waive and hereby expressly reserves the right to object on any ground at any time to a demand for further responses to these requests or any other discovery procedures involving or relating to the subject matter of the Requests responded to herein. Further, the Agency provides the responses herein without in any manner, express or implied, admitting that the items in the Requests or in any response thereto are relevant or material to the subject matter of this proceeding.

Supplemental Responses to First Set of Information Requests

Q.1-5. If an Aster is transplanted to a conservation area and survives, is it considered to be “impacted” for purposes of the 248 Guidance? If so, explain why and produce all evidence on which you rely to support that conclusion.

A.1-5. Objection, the term “evidence” is vague and to the extent it calls for a legal conclusion. Without waiving the objection, yes. Survival of transplanted individuals is typically low when plants are transplanted to a natural setting as opposed to a garden where they would be regularly watered, weeded, etc. The Agency requires watering of all transplants throughout the initial growing season and three to five years of monitoring since transplanted individuals often experience delayed mortality. If the transplants survive through this initial 3-5 year period, they would not count towards the threshold for further mitigation. See **Attachment 1-5**.

Person Responsible: Robert Popp
Title: Botanist, Vermont Fish and Wildlife Department

Supplemental A.1-5. Objection, the term “evidence” is vague and to the extent it calls for a legal conclusion. Without waiving the objection, see **Attachment 1-5. Supp.**

Person Responsible: Robert Popp
Title: Botanist, Vermont Fish and Wildlife Department

Q.1-12. Please refer to Exhibit ANR-RP-2 (the “Plant List”). The Plant List states that “These species may be rare because they have very particular habitat requirements, are subject to habitat loss, are at the edge of their range, are vulnerable to disturbance or collection, or have difficulty reproducing for unknown reasons.” Please state (i) the date that the Aster was added to the Plant List, (ii) the State rank assigned to the Aster for each year it has been on the Plant List, (iii) the reasons why it was assigned such rank, and (iv) all evidence relied on by ANR to justify the rank it was assigned.

A.1-12. Objection, the term “evidence” is vague and to the extent it calls for a legal conclusion. Without waiving the objection, the Aster was included on Vermont’s Rare, Threatened and Endangered Plant Species as of July 1989 as *Aster sagittifolius*. No ranks were assigned to this initial list. The Aster was subsequently ranked as S1 in 1993 and retained at that rank subsequently although the scientific name was changed to *Symphyotrichum urophyllum* to reflect currently accepted taxonomic revision. For one year, beginning in 2009 the Aster was considered as Historic which indicates that no extant populations were known in the state. This rank is applied when a species has not been observed for 20 or more years and the location is vague or has been unsuccessfully searched. In 2010 it was again ranked as S1, the status which continues thru the present. The ranking as S1 was established based on the limited number of known populations in the state as explained in my testimony. See **Attachment 1-12** for the various plant lists.

Person Responsible: Robert Popp
Title: Botanist, Vermont Fish and Wildlife Department

Supplemental A.1-12. Objection, the term “evidence” is vague and to the extent it calls for a legal conclusion. Without waiving the objection, see **Attachment 1-12. Supp.** which is an earlier list from 1985 on which the Aster also appears as *Aster sagittifolius*.

Person Responsible: Robert Popp
Title: Botanist, Vermont Fish and Wildlife Department

Dated at Waterbury, Vermont, this 6th day of March, 2020.

As to objections:

A handwritten signature in blue ink, appearing to be 'Donald Einhorn', written over a horizontal line.

By: _____

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