

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Norwich Upper Loveland Solar LLC)
for a certificate of public good pursuant to 30)
V.S.A. §§ 248 and 8010, authorizing) Case No. 21-3587-NMP
installation and operation of a 500 kW (AC))
photovoltaic group net-metering system in)
Norwich, Vermont)

**Affidavit of Martha Staskus Confirming No Project Interference with
Host Parcel Act 250 Permit Conditions**

1. My name is Martha Staskus. I am the Chief Development Officer at Norwich Technologies, Inc., aka Norwich Solar ("Norwich Solar") which has an office at 15 Railroad Row, Suite 101, White River Junction, Vermont 05001.
2. On August 31, 2021, Norwich Upper Loveland Solar LLC (the "Applicant"), with the assistance of Norwich Solar, filed a petition with the Vermont Public Utility Commission ("Commission") requesting a certificate of public good for a proposed 500 kW solar facility at 201 Upper Loveland Road in Norwich, Vermont (the "Project").
3. I serve as the Project Manager for the Project, and filed prefiled testimony and exhibits supporting the Applicant's August 31, 2021 petition.
4. On September 8, 2021, the Commission Reviewer issued a memorandum to the Applicant informing that he had deemed the petition incomplete, indicating that because the host parcel is subject to an Act 250 Land Use Permit as stated in my prefiled testimony the Applicant must file a document describing whether the construction of the proposed net-metering system will interfere with the satisfaction of any condition contained in the Act 250 Land Use Permit. The memorandum requested the Applicant to file the appropriate information or documents with the Commission to complete the application.
5. The Project Site Plan, Exhibit NUL MS-2, documents that the Project limit of disturbance is outside of the cell tower area on the host parcel, which is the subject of the Act 250 Permit.
6. In addition, I have confirmed with the Act 250 District Coordinator that the construction of the proposed net-metering system will not interfere with the satisfaction of any condition contained in the Act 250 Permit. The construction of this electric generation facility, which requires a certificate of public good under 30 V.S.A. § 248, is not a "development" pursuant to 10 V.S.A. § 6001(3)(D)(ii).

On this 22nd day of September, 2021, I, Martha Staskus, do hereby swear and affirm that the information provided herein is true and accurate to the best of my knowledge and that I

have personal knowledge of, and am able to testify as to the validity of the information contained herein. I declare that the statements in this Affidavit are true and accurate to the best of my knowledge and belief. I understand that if the above statements are false, I may be subject to sanctions by the Commission pursuant to 30 V.S.A. § 30.



Martha Staskus

The Petition filing included the prefiled testimonies of Martha Staskus and Dori Barton, together with thirteen supporting exhibits, including a detailed Project Site Plan with description. The prefiled testimony of Ms. Staskus stated that the host parcel for the Project site is subject to an Act 250 Land Use permit (number 3W0917) for the cellular communications tower, and referenced the accompanying Project Site Plan, Exhibit NUL MS-2, which described and depicted the location of the “ex. tower and buildings” for the cell tower.

On August 8, 2021, a Commission Staff Reviewer issued a procedural memorandum deeming the Petition incomplete “[b]ecause the host parcel is subject to an Act 250 Land Use Permit, the applicant must file a document describing whether the construction of the proposed net-metering system will interfere with the satisfaction of any condition contained in the Act 250 Land Use Permit.”

Standard of Review & Analysis

Commission Rule 2.00 governs the Commission’s “Rules of Practice.” Rule 2.100. “These rules shall apply in all proceedings before the Commission.” Rule 2.100. Scope and Rule 2.106 expressly provides that the Commission’s rules of practice “shall be ***liberally construed to secure the just*** and timely ***determination*** of all issues presented to the Commission.” Rule 2.106 (emphasis added).

In addition to rule 2.106’s directive that the Commission liberally, not strictly, construe its rules in order to secure just determinations, the Commission has enacted several other rules that give the Commission broad flexibility to grant an exception to or waive the application of its rules for good cause. Specifically, Rules 1.200 and 2.107 provide:

1.200 Exceptions to Rules

Except where prohibited by statute or by the terms of the rule, itself, the Commission may for good cause grant exceptions in particular cases to any provision of these rules.

2.107 Waiver of Rules

In order to prevent unnecessary hardship or delay, in order ***to prevent injustice, or for other good cause***, the Commission may waive the application of rule upon such conditions as it may require, unless precluded by the rule, itself, or by statute.

(emphasis added).

In this case, the Applicant's Petition was thorough and contained all requisite information prescribed by Commission Rule 5.107. The language on the Project Site Plan, Exhibit NUL MS-2, identifies the location of the cell tower and the Project limit of disturbances ("LOD")¹, and both describes (via the locational hatch in the Site Plan identifying the cell tower relative to the LOD) and illustrates via the orthophotography used, that the cell tower is outside of the Project LOD. Implicit, if not explicit, from the descriptions in these documents is confirmation that the Project will not interfere with the cell tower and therefore any Act 250 conditions imposed relative to the installation of the cell tower. A liberal interpretation of Rule 5.108(C), which is what Rule 2.106 requires, would lead to this construction and the conclusion that the Petition is complete in all material respects.

Alternatively, the Petition qualifies for waiver and if so treated would be deemed complete when filed. Waiver of the Commission's rules is appropriate where it will "materially advance[e] the interests of fair process." *See Petition of SSE New Haven Solar II, LLC for a certificate of public good, pursuant to 30 V.S.A. §§ 219a and 248, to install and operate a 350 kW group net-metered solar electric generation facility in New Haven, Vermont*, CPG #NMP-5978, Order of 3/4/2016 at 3 (waiving application of Commission Rule 5.110(C) re 45 days advance notice to adjoining landowners). Again, the Petition is thorough and detailed and meets the requirements of Rule 5.107(C) in all other material respects. With respect to Rule 5.107(C)(8), the Petition materials clearly identify the Act 250 permit, include the Act 250 Permit, and the Project Site Plan has

¹ LOD is defined in Rule 5.103 as:

"Limits of Disturbance" means the boundary within which all construction, materials storage, grading, landscaping, and any other activities related to site preparation, construction, operation, maintenance, and decommissioning take place as a result of the net-metering system, including areas disturbed due to the creation or modification of access roads, utility lines, and the clearing or management of vegetation.

written, graphic and orthophotographic information that describes and fixes the location of the cell tower outside of the Project LOD, such that the Project clearly would not interfere with any Act 250 permit condition for the cell tower.

Failure to grant a waiver in these circumstances would cause unnecessary hardship and injustice to the Applicant and other stakeholders, including host landowner, the Project net meter oftakers, the Town of Norwich and Regional Planning Commission, and the State of Vermont, all of whom will benefit from the greenhouse gas emissions reductions that this Project will provide the State and global community, consistent with the climate mitigation mechanisms called for by the Vermont Global Warming Solutions Act of 2020, the Paris Agreement, and the U.S. Climate Alliance.

For all of these reasons, good cause exists for the Commission to grant an exception to or waive its rules in this case.

DATED at Burlington, Vermont, this 22nd day of September, 2021.

By:

A handwritten signature in black ink, appearing to read 'Kim K. Hayden', with a long horizontal flourish extending to the right.

Kimberly K. Hayden, Esq.
Paul Frank + Collins P.C.

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