

**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 installation	)	21-3587-NMP
and operation of a 500 kW (AC) photovoltaic	)	
group net-metering system in Norwich, Vermont	)	

**REBUTTAL TESTIMONY OF
MARTHA STASKUS
ON BEHALF OF PETITIONER**

January 18, 2023

Ms. Staskus' rebuttal testimony responds to portions of Landowners' direct prefiled testimony and exhibits.

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Exhibit NUL MS-20 Overview Map of Norwich Trails

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**REBUTTAL PREFILED TESTIMONY OF
MARTHA STASKUS
ON BEHALF OF PETITIONER**

1. Introduction

Q1. Please state your name, occupation, and business address.

A1. My name is Martha Staskus. I am Chief Development Officer of Norwich Technologies, Inc. (“Norwich Solar”), which has offices at 15 Railroad Row, Suite 101, White River Junction, Vermont 05001. I have previously submitted testimony and exhibits on behalf of Norwich Upper Loveland LLC (the “Petitioner”) in this proceeding.

Q2. What is the purpose of your rebuttal prefiled testimony?

A2. My rebuttal testimony responds to portions of Joy Kenseth’s and Jenn Goulet’s direct prefiled testimony and exhibits.

2. Rebuttal

a. Rebuttal to Joy Kenseth re Potential Aesthetics Impacts

Q3. Answer 8 of Ms. Joy Kenseth’s testimony and page 2 of her Aesthetics Report, Exhibit NN-JK-2, both state that “the project is incompatible and out of character with its surroundings, it adversely impacts and diminishes the scenic and natural beauty of a designated Resource and Ridgeline protection area, and it is visually offensive, even

1 shocking, to the sensibilities of average people who make use of nearby public spaces and
2 travel public roads on the east side of the town.” How do you respond?

3 A3. There are several important observations regarding the Ridgeline Protection Overlay
4 District. First, the Town’s map delineating the areas covered by this district are shown in
5 Exhibit NN-JK-4, labelled “Zoning Map 5 Ridgeline Overlay District.” This map is and
6 remains a *DRAFT* as indicated in its title: “5-21-08 DRAFT.” See Exhibit NN-JK-4:

**ZONING MAP 5
RIDGELINE OVERLAY DISTRICT
NORWICH ZONING REGULATIONS
5-21-08 DRAFT**

**NORWICH PLANNING OFFICE
May 21, 2008**

7
8 Further, the map includes the following disclaimer on the lower left face of the map:

9
10
11
12
13
14
Maps are to be used for display or planning purposes only; data is not
survey quality and is therefore, not to be used as a basis for legal
decisions. The data layers have been developed from the best available
sources at the time of their creation. These original sources vary in scale
and accuracy which determines the relative map accuracy of the digital
data layers. For information regarding data layer accuracy or update
schedules, please check with the Norwich Planning Office.

10 A map that is not intended to be used for legal decisions and that is a draft only, does not
11 rise to the level of constituting a clear community standard under Quechee.

12
13 The map itself is also very coarse in the way it identifies the ridgelines covered. Even so,
14 the Petitioner requested and received a Preferred Site Letter from the Norwich Town

1 Selectboard and Planning Commission, notwithstanding that the Town Energy Plan
2 provision for preferred siting expressly states that the entire Town is presumed to be a
3 preferred site, regardless of whether it is in a Ridgeline Protection Overlay District:

4 ***For solar generation projects sized from 15kW to 500kW the presumption is that***
5 ***all of Norwich meets the Public Utility Commission definition of ‘preferred site’,***
6 ***notwithstanding the existing areas of local concern including the Ridgeline***
7 ***Protection Overlay Area*** and the historic village district as identified in the
8 Norwich Land Use Regulations.
9

10 Exhibit NUL MS-6, App. A, App. C, Section 3.2.h (emphasis added). While Landowners
11 have highlighted Section 3.8 of the Town Plan, which is worded slightly differently (using
12 the word “except” rather than “notwithstanding”), at most this creates an ambiguity, not a
13 clear community standard.
14

15 Finally, while the Town went on to conduct a preferred site process and determine the site
16 as such, including addressing review of the Ridgeline Protection Overlay District, the
17 Ridgeline Protection Overlay District is a zoning district created under the Town of
18 Norwich zoning regulations. See Exhibit NN-JK-2 at Figure 3. Because it is part of a local
19 zoning ordinance, I understand this district zoning designation to be preempted under
20 Section 248¹, which should be handled in a legal briefing. I raise it here for context.
21

¹ *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 41 (citing *Rutland Renewable Energy, LLC*, 2016 VT 50, ¶¶ 17-18) (“Act 250 and § 248 involve distinct regulatory regimes, and ... tests imported from Act 250 may apply differently in the § 248 context. For that reason, [the Court has] modified the Quechee test in the context of § 248 proceedings so that local standards that might otherwise appear to be clear, written community standards cannot operate to preclude a certificate of public good under § 248 for a solar development project”).

1 Q4. At page 8 of her aesthetic report, Ms. Kenseth states that “for the purpose of ‘shade
2 management,’ cutting down all forest between the project and the transmission corridor to
3 the west, thus opening up a view of the transmission poles and wires, and making all the
4 solar panels and racking system visible from the adjoining Town Forest immediately to the
5 west.” How do you respond?

6 A4. Nothing in Ms. Kenseth’s report documents or demonstrates that “all of the solar panels
7 and racking system” would become visible from the Town land to the west due to the
8 Project. Ms. Kenseth also did not produce any documentation that the Town Plan has
9 designated the Town land to the west for scenic protection, or as to the location of trails
10 relative to the Project array. Also, trails are not identified in the Town of Norwich trail
11 map. See Exhibit NUL MS-20. Lastly, the array is sited roughly 50 feet lower in elevation
12 from the utility transmission powerline, which itself is more prominent and visible than
13 may be portions of the array.
14

15 Q5. Do you agree with Ms. Kenseth that the Project is shocking and offensive to the average
16 person?

17 A5. No, I do not. “[T]he Quechee test did not guarantee that the aesthetic qualities of an area
18 would not change.” Exhibit NUL MS-6 at 7 (quoting *In re Amended Petition of UPC Wind*,
19 2009 VT 19, ¶ 27). More often, what I hear and see is that average people are shocked and
20 offended that we in Vermont and as members of a global community, are not deliberately
21 acting to deploy more renewable energy projects in-state to combat climate change.

1 Protecting the natural resources is important, and working with the Agency on Natural
2 Resources, we have addressed their comments filed for this location.

3 As far as visual impacts, as I have addressed and documented in my report, Exhibit NUL
4 MS-6, that views of the Project will be limited. I also note in my report that the “average
5 person” under Quechee is not viewed from the perspective of those with a “neighborly”
6 interest, such as Ms. Kenseth and her neighbors. As used in Quechee, the average person
7 means “the average member of the viewing public who would see a particular project from
8 the vantage point of the public” and “from an objective, as opposed to subjective and
9 neighborly, perspective.” Exhibit NUL MS-6 at 7 (quoting *In re Petition of Rutland*
10 *Renewable Energy, LLC. for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016
11 Vt. 50, ¶ 22). To reach the threshold of being “shocking or offensive,” the size or scale of
12 the project would need to be “overwhelming.” *Id.* That is not the case here.

13
14 Q6. Pages 16 and 17 of Exhibit NN-JK-2 include photographs of the Project area from New
15 Hampshire. Are these views intended to be protected under Norwich’s Ridgeline
16 Protection Overlay District?

17 A6. No. I attempted to verify these photographs in the field and found them to be apparently
18 taken from private residences at distant locations in the Town of Hanover, New Hampshire.
19 See also Exhibit NUL MS-19 (Joy Kenseth’s discovery admission). While these locations
20 are not within the Town of Norwich, more importantly they are not within the intended
21 scope of the Ridgeline Protection Overlay District, the stated purpose of which is to

1 “protect ... and minimizes adverse visual impact on designated ridgelines and adjacent
2 slopes as viewed from **public** roads (Class I, II, and III town highways, state highways and
3 interstate highways ***within the town***).” Exhibit NN-JK-2 at 28 (emphasis added).
4

5 Q7. Do you have any other comments on Ms. Kenseth’s aesthetics testimony or report?

6 A7. Yes, Ms. Kenseth’s report includes no acknowledgement that the Commission’s Section
7 248 aesthetic assessment is significantly informed by the societal benefits of the Project.²
8 As the Petitioner has demonstrated in its evidence, the societal benefits of this renewable
9 energy project are significant and do inform the Commission’s aesthetics findings that the
10 Project will not result in an undue adverse aesthetic impact.
11

12 **b. Rebuttal to Joy Kenseth re Potential Orderly Development Impacts**

13 Q8. Have you reviewed Exhibit NN-JK-3, Report on Orderly Development by Ms. Kenseth?

14 A8. Yes.
15

16 Q9. Do you have any comments on this report?

17 A9. Several. As an initial matter, the majority of Ms. Kenseth’s report is devoted to cataloguing
18 Sections of the Town Plan and Zoning & Subdivision Regulations, but none that express
19 the Town’s desire to switch to more renewable energy in Norwich. See Exhibit NUL MS-
20 6 at 8. Importantly, Section 248(b)(1)’s orderly development criterion “relates to the

² Exhibit NUL MS-6 at 4 (citing *Joint Petition of Green Mountain Power Corp., Vt. Elec. Coop., Inc., Vt. Elec. Power Co., Inc., and Vt. Transco LLC*, Docket No. 7628, Order of 5/31/2011 at 82-83).

1 orderly development of the region, not to a particular municipality within the region.”³

2 There was no evidence offered to suggest that the Project will unduly interfere with the
3 orderly development of the region.

4
5 On the other hand, the Two Rivers-Ottauquechee Regional Commission (“TRORC”)
6 Energy Plan does promotes the region’s achievement of the 2016 Comprehensive Energy
7 Plan renewable energy targets to “[m]eet 25% of remaining energy need from renewables
8 by 2025, 40% by 2035 and 90% by 2050” and to “[m]eet end use sector goal of 67%
9 renewable electric by 2025.” Exhibit NUL MS-6 at 8 (quoting the TRORC Plan, Exhibit
10 NUL MS-6, Appendix B at 220). The TRORC Plan states that “[t]o reach the state’s
11 renewable energy generation targets, more renewable generation will need to be developed
12 and we believe most of this will be in the form of solar.” Exhibit NUL MS-6 at 8 (quoting
13 the TRORC Plan, Exhibit NUL MS-6, Appendix B at 225). The TRORC Plan notes that
14 the amount of renewable energy generation in the TRORC region must increase from 2015
15 levels by 163 MW by 2050. Exhibit NUL MS-6 at 8 (quoting the TRORC Plan, Exhibit
16 NUL MS-6, Appendix B at 229).

17 The Norwich Town Plan provides the following overarching goal supporting renewable
18 energy: “[P]rovide for the development of renewable energy resources, and reduce
19 emissions of greenhouse gases.” Exhibit MS-6 at 8, citing Town Plan at 3. It also provides:

20 Shift energy use in Norwich from non-renewable to renewable sources”,
21 “[i]ncrease the amount of renewable energy being produced in Norwich in

³ Exhibit NUL MS-6 at 9 (quoting *In re Petition of Rutland Renewable Energy, LLC for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 9).

1 a manner that is consistent with the goals, objectives and policies of th[e]
2 Town Plan”, and “[p]ursue strategies identifies in the State Energy Plan.

3 Exhibit NUL MS-6 at 8, citing Town Plan at 21.

4 The Energy Chapter of the Town Plan also observes:

5 We have understood for at least fifty years that human dependence on fossil
6 fuels is not sustainable. Only now are we beginning to grapple with the
7 climate crisis resulting from burning fossil fuels.

8 Exhibit NUL MS-6 at 8, citing Town Plan at 22. The Town Energy Plan seeks to achieve
9 the objectives of Vermont’s Comprehensive Energy Plan “90 percent renewable by 2050”
10 energy goal. The Town Plan expresses the Town’s strong desire to shift away from fossil
11 fuel use to renewable power for consumers in Norwich. Exhibit NUL MS-6 at 8, citing
12 Town Plan at 24. Ms. Kenseth is silent on these important provisions, as she has also not
13 weighed the substantial societal benefits of the project with respect to potential negative
14 aesthetics impacts.

15
16 **c. Rebuttal to Jenn Goulet’s Erosion Control Claims**

17 Q10. At pages 24 through 27 of Ms. Goulet’s Exhibit NN-JG-2, she suggests concerns that the
18 Project will cause undue erosion and stormwater runoff. How do you respond?

19 A10. Please refer to the rebuttal testimony of Mr. Homsted, P.E. of Krebs & Lansing, the civil
20 engineering firm that assisted Petitioner in the development of the Project site plan, erosion
21 prevention and sediment control plan, and the Department of Environmental Conservation
22 (“DEC”) Construction General Permit 3-9020 Notice to Proceed as a “Low Risk” project,
23 issued December 27, 2022 (Exhibit NUL MS-17). The Vermont Low Risk Handbook for

1 Erosion Prevention and Sediment Control dated February, 2020 (the “Low Risk
2 Handbook”) is included with my rebuttal testimony as Exhibit NUL MS-18. The Low Risk
3 Handbook is incorporated by reference into the Notice to Proceed. I would note that we
4 also prepared a revised Project Site Plan to reflect that the cumulative impermeable surface
5 will be 0.10 acres, as Mr. Homsted discusses in his testimony. See Exhibit NUL MS-2
6 (rev 1-17-23). Additionally, it should be noted that Ms. Goulet has admitted in her
7 discovery responses that her qualifications do not include civil engineering, preparation of
8 erosion protection and sediment control plans, or Construction General Permit applications
9 for stormwater. See Exhibits NUL MS-14 through MS-16.

10
11 **d. Rebuttal to Jenn Goulet re Greenhouse Gas Emissions**

12 Q11. At page 23 of her report, Exhibit NN-JG-2, Ms. Goulet states the following:

13 One study estimated that over the lifecycle of a multi-crystalline solar array,
14 such as this one, an average of 44.3 grams of GHGs were released per kWh
15 of electricity generated (Nugent and Sovacool 2013). Assuming that
16 900,000 kWh/year of electricity are generated at the Upper Loveland
17 location for a period of 25 years (Staskus 2022), the estimated carbon
18 footprint of the panels and equipment is 997 metric tons of carbon dioxide
19 equivalents.

20 How do you respond?

21 A11. When compared with the 15,950 MT CO₂e avoided emissions over the 25-year period of
22 the Project as stated in my prefiled testimony and referenced in Ms. Goulet’s report, Ms.
23 Goulet herself demonstrates that the Project avoids more than 15 times the lifecycle
24 emissions its equipment creates ($15,950 / 997 = 15.997994$ times more avoided emissions).

25

1

2 **3. Conclusion**

3 Q12. Does this conclude your testimony?

4 A12. Yes.

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