

MEMORANDUM

TO: Norwich Selectboard
 FROM: Marcia Calloway, Norwich Selectboard Chair
 DATE: July 25, 2023
 RE: Solar siting applications in Norwich

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Preferred Siting: Introduction

The Selectboard (“the Board”) previously submitted (together with the local and regional planning commissions) to the State of Vermont Public Utilities Commission (the “PUC”) a so-called “preferred sites” letter, dated August 20, 2021, for the proposed Upper Loveland Solar project (“the Project”). Subsequent to submitting that letter, the Board received information from neighbors of the project suggesting that there may have been multiple versions of the site plan for the solar array and that different versions of the plan were submitted to various entities at different times, and not necessarily according to the most recent plan available at the time of any such submission. In response, the petitioner, Norwich Technologies, assured the Board that the site plan reviewed by the Town and the plan submitted to the PUC were essentially the same and that the process is simply “iterative.” The parties competing claims, employee turnover, the passage of time, and the complexity of the PUC process, among other things, resulted in challenges for all involved. Ultimately, this Board heard requests by the neighbors to reopen and reconsider the preferred sites letter, but has not voted to do so. The Norwich Planning Commission similarly voted not to reopen.

As a result of this experience, this Board has hopefully learned some lessons and should be better prepared to take some steps to improve its engagement in solar net metering projects moving forward. First, the Board should consider communicating with the PUC regarding the need to develop specific rules requiring petitioners to provide municipal and other bodies with only their most current site plan and expressly stating that a petitioner must promptly notify the signatories to a preferring site letter of all material changes to a project array’s design, layout or clearing. Such rules should also set forth the remedies available to municipalities that receive notice of material changes. As discussed below, the Selectboard should also consider intervening in and, at a minimum, actively monitoring proceedings involving solar net metering petitions (and similar projects) in the future.

What is Preferred Siting

The Vermont PUC's Net Metering Rules categorize net metering systems and provide pricing for the energy generated by such systems based, in part, on whether the systems are located on a so-called "preferred site." The term "preferred site" is defined in PUC Rule 5.103 as any one of nine (9) different type of sites, including:

- (7) A specific location designated in a duly adopted municipal plan under 24 V.S.A. chapter 117 for the siting of a renewable energy plant or specific type of renewable energy plant, provided that the plant meets the siting criteria recommended in the plan for the location; *or* a specific location that is identified in a joint letter of support from the municipal legislative body and municipal and regional planning commissions in the community where the net-metering system will be located.¹

¹ In the case of Norwich Technologies, it is not clear under which prong of subsection (7) the preferred sites letter was issued and the letter makes no express reference to the Town Plan. In other words, was the letter intended to identify a specific location designated in the Town Plan (which itself appears to make the whole Town a preferred site, with certain exceptions) or did the “joint letter of support” prong apply (or both)? Further, if the former, the language of the Town Plan, which has been the focus of much discussion, is contradictory (among other things, it appears that the word “notwithstanding” is used incorrectly) and requires clarification moving forward.

Town Involvement in Solar Siting Applications

Under the PUC Rules, municipal legislative bodies are ‘involved’ in solar siting applications at only three points in the process, unless they formally intervene. Specifically, selectboards: (1) receive advance notice 45 days before the application is filed; (2) receive CPG application copies within two business days of the completed application; and (3) may be asked for a joint letter of support to confirm that the proposed location is a “preferred site” for a solar project.

Under the so-called 45-day advanced notice process, an applicant is required to provide certain persons, including the municipal legislative body and the local and regional planning commissions, with information about the project, including the “location of the project site” and “a description and site plan of the proposed project in sufficient detail to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Commission’s jurisdiction to address.” PUC Rule 5.107(B)(3) (emphasis added). The recipients of the advance submission may file inquiries and comments with the applicant, to which the applicant, in turn, must file a response, including what steps the applicant has taken to address the issues raised or why it is unable to do so. Applicants seeking approval for net-metering systems greater than 50 kW, that are not photovoltaic systems mounted on a roof, and that are proposed for a “Subsection (7)” preferred site, frequently request a “preferred sites” letter as part of the 45-day advanced notice process.

Following the expiration of the advance notice period, the applicant may file its CPG application with the PUC. The municipal legislative body and planning commission are again entitled to notice of the application and, by PUC Rule 5.116, are provided with 30 days to comment on the application. The application must include a site plan meeting the same requirements as the plan required by the advance notice. Once an applicant files a CPG application, it must provide notice of all minor amendments to all persons who were entitled to receive notice of the original application, including an amended site plan, “so that the Commission can understand the nature of the proposed change and its impact.” Where a major amendment is proposed, the applicant must withdraw its application and refile amended documentation. Rule 5.108(A) & (B).

Project Changes and Intervention

It is not unreasonable to expect that the documentation (i.e., site plans, project description) that forms the basis for a requested preferred site letter may change somewhat between the time of advanced notice and the CPG application. The purpose of the advanced notice is, in part, to allow the applicant to provide information to various persons or entities, including municipal bodies and State agencies, and receive comments back so that issues may be addressed, and project/plan adjustments made, before a CPG application is submitted to the PUC. This is part of the “iterative process” that an application goes through. Thus, the process contemplates that certain changes may occur between the advanced notice and application filing. Unless and until the rules change, municipalities must be vigilant in reviewing documentation submitted during this period and take steps to raise concerns about substantial/material changes to a net metering project that are evidenced in the application materials.

It would be a “best practice,” if not a legal requirement, for an applicant to notify the Town of material changes in the plans that formed the basis for a preferred site determination. Currently, there is nothing that precludes the Town from including in a preferred site letter conditional language requiring such notice or invalidating the letter in the event of any substantial or material change to the project that is not reviewed by the Selectboard and Planning Commission. Further, nothing legally precludes a municipality from revoking or invalidating a preferred site letter if an applicant fails to notify the municipality of substantial/material changes, supplies false or misleading information, or otherwise fails

to comply with conditions for issuance of the letter. Thus, while it is possible for the Town to take steps to put a revocation or change of position in the evidentiary record before the PUC even when it has not participated in those proceedings, better practice would be for the Town to take formal steps to intervene in the PUC review process, as discussed above.

A New Project

Michael Hennessey has provided the Board with pre-application notice of his intent to submit a CPG application to the PUC requesting approval to install and operate a 50 kW solar electric generation facility in Norwich, and that he is developing this net-metering project on a “preferred site” under PUC Rule 5.103 (9), which does not require a specific location designed in the Town Plan or a joint letter of support. Nonetheless, the Selectboard should intervene and, at least, monitor this project consistent with the discussion herein.

Suggested Motion

To direct the Interim Town Manager, through legal counsel, to exercise the municipality's right to intervene in PUC proceedings involving solar siting in Norwich and, with the consent of the Selectboard, to request a hearing and/or take other steps to protect and defend the Town's interests.