

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Berlin Dog River Solar LLC for)
certificates of public good, pursuant to 30 V.S.A. §)
248, authorizing the ownership, installation, and) 23-2561-PET
operation of a 2.2 MW solar electric generation)
facility in Berlin, Vermont)

Order Entered:

FINAL ORDER GRANTING CERTIFICATE OF PUBLIC GOOD

In this Order, the Vermont Public Utility Commission (“Commission”) adopts the following proposal for decision.

PROPOSAL FOR DECISION

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I. INTRODUCTION

This case involves a petition filed by Berlin Dog River Solar LLC (“Petitioner”) with the Vermont Public Utility Commission (“Commission”) for a certificate of public good (“CPG”), pursuant to 30 V.S.A. § 248, to install and operate a 2.2 MW solar electric generation facility off State Route 12, at the end of First Street, in Berlin, Vermont (the proposed “Project”).

Based on the below findings and subject to conditions, I recommend that the Commission conclude that the Project does not raise a significant issue with respect to the applicable criteria of 30 V.S.A. § 248 and will promote the general good of the State of Vermont. Therefore, I recommend that the Commission grant the Petitioner’s petition for a CPG, subject to the conditions set forth in this Proposal for Decision.

II. PROCEDURAL HISTORY

On August 9, 2023, the Petitioner filed a complete application for the Project with the Commission.

On September 7, 2023, I held a scheduling conference at which I approved a schedule agreed upon by the Petitioner, the Vermont Department of Public Service (“Department”), the Vermont Agency of Natural Resources (“ANR”), and the Vermont Agency of Agriculture, Food & Markets (“AAFM”), with slight revisions.

On January 25, 2024, ANR filed a motion for summary judgement.

On February 23, 2024, I issued an order determining that the Commission has jurisdictional authority to review the potential impacts from the distribution line that will be constructed by Green Mountain Power Corporation (“GMP”) for the sole purpose of serving the Project and to impose conditions in any CPG issued for the Project to protect against undue adverse impacts from the distribution line’s construction.

On March 8, 2024, the Petitioner filed a memorandum of understanding with ANR agreeing to certain CPG conditions to protect natural resources (“ANR MOU”).

On March 13, 2024, the Petitioner filed supplemental prefiled testimony to address the distribution line extension to the Project.

On March 22, 2024, the Petitioner filed a proposed Order and CPG, together with a list of stipulated evidence.

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: the petition; prefiled direct and supplemental testimony of Martha Staskus (“Staskus pf.”) and exhibits BDR MS-1 through 9; prefiled direct testimony of Doris Barton (“Barton pf.”) and exhibits BDR DB-1 and 2; and the ANR MOU, Exhibit BDR ANR-1.

III. FINDINGS

Based on the petition and the accompanying record in this proceeding, I have determined that this matter is ready for decision. Based on the evidence of record, I report the following proposed findings to the Commission in accordance with 30 V.S.A. § 8(c).

Description of the Project

1. The Petitioner is a Vermont limited liability company with a business address of 15 Railroad Street, Suite 101, White River Junction, Vermont 05001. Petitioner is registered to do business in Vermont and is in good standing (Business ID No. 0390663). Petition at 1.

2. Petitioner is a single-purpose entity established by Norwich Technologies, Inc. (“Norwich Technologies”) for the purpose of permitting, installing, owning, and operating the Project. Norwich Technologies, the sole member of Petitioner, is a Vermont corporation registered to do business in Vermont and in good standing (Business ID 281930). Petition at 1.

3. The Project is being developed under Vermont's "Standard Offer" program. The Petitioner was awarded a Standard Offer contract by VEPP, Inc., the Standard Offer Facilitator, that required a petition for a CPG to be filed with the Commission by January 17, 2024, and Project commissioning by January 17, 2025. Petition at 1.

4. When commissioned, the renewable energy generated by the Project will be sold pursuant to the terms of the Standard Offer contract to VEPP, Inc. for the benefit of the Vermont retail utilities participating in the Standard Offer program. Petition at 1-2.

5. The Petitioner is a self-certified qualifying facility under the Public Utility Regulatory Policies Act (“PURPA”) pursuant to 18 C.F.R. § 292.207(a). Petition at 2.

6. The Project will be located on a site previously disturbed for quarrying and crisscrossed by electric utility (VELCO and GMP) power line corridors. The Project site area is in a combination of open land and successional vegetation, all sloping to the west. Staskus pf. at

4.

7. Access will be off State Route 12 through the property's 50' right-of-way on First Street in Berlin, Vermont. The solar array will be set back over 1,150± feet from Vermont Route 12, and 790± feet from the end of First Street, a private road. Interstate 89 southbound, the nearest public traveled way is approximately 270± feet to the east, separated by an approximately 50± foot high topographic berm. Staskus pf. at 4.

8. The solar array footprint will occupy approximately 9.2± acres, with panels set back approximately 350± feet from the nearest residence downslope and southwest. Staskus pf. at 4.

9. The solar array is typical of an installation of its type and size, comprised of photovoltaic panels secured to fixed-tilt ground mounted racks, anchored to the ground using purpose-built posts. The bottom of the solar panels will be approximately 3 feet above existing grade and the top of the solar panels at approximately 15 feet. The panel racking will be arranged in multiple rows generally running east-west with panels facing to the south. The solar array equipment, other than the crystalline panels themselves, will be galvanized metal and will have a light gray finish. The panels will have an anti-glare coating and are expected to be a dark color. Staskus pf. at 4-5; exh. BDR MS-2; exh. BDR MS-4.

10. The Project site is not subject to an Act 250 permit. Staskus pf. at 5.

11. The Project's design includes an 8 foot-high, fixed-knot wildlife fence with 6" x 6" openings and a locked gate compliant with NEC code "Guarding of Live Parts." Staskus pf. at 5.

12. The solar array rows will be connected electrically by underground cable in conduit, to the Project inverters, AC combiner panel, and AC discontnet to interconnect to GMP's distribution system at GMP's pole and pad-mounted transformer located next to the array. Staskus pf. at 5.

13. Six new GMP distribution poles will interconnect the Project to GMP's existing distribution line along Route 12. A GMP existing pole along Route 12 will be replaced, and from there the line extension will cross Route 12, to a new pole along First Street, and the four remaining poles be located within the Project's limit of disturbance ("LOD") extending from the Project access to adjacent to the array. Staskus second supp. pf. at 1-2; exh. BDR MS-2 (rev. 3-11-24).

14. The solar inverters will be compliant with IEEE 1547 Standard for Interconnection and Interoperability of Distributed Resources with Associated Electrical Power Systems

Interfaces (2018) and UL 1741 SB. The transformer will be installed on a concrete vault with secondary oil containment systems capable of holding 110% of the transformer fluid volume plus 5 inches of freeboard. The transformer is typical of what GMP uses throughout its distribution system and will be compliant with GMP's specifications (Distribution Standard #T-01, 3.1, 12/13) that meet or exceed ANSI C57.12.00-2010, C57.12.20-2005, C57.12.90-2006 and all other applicable ANSI, IEEE, EEI, NEMA, and OSHA Standards. Staskus pf. at 5; exh. BDR MS-4.

15. Installation activities and related deliveries will occur between 7:00 AM and 7:00 PM Monday through Friday, and on Saturdays between 8:00 AM and 5:00 PM if required to meet the Project schedule. No installation activities or deliveries will occur on Sundays or on state or federal holidays. Staskus pf. at 7.

Review of the Project Under the Section 248 Criteria

As required by 30 V.S.A. § 8007(b), the Commission has implemented procedures governing the application and review of renewable energy projects with a plant capacity that is greater than 150 kW and is 2.2 MW or less by adopting standards and procedures for such projects that include the conditional waiver of several Section 248 criteria.¹ Because the Project will have a plant capacity not to exceed 2.2 MW, the Project meets the requirements for conditional waivers of certain Section 248 criteria pursuant to 30 V.S.A. § 8007(b) and the Commission's Section 8007(b) Order.

Orderly Development, Solar Setbacks & Municipal Screening

[30 V.S.A. § 248(b)(1), § 248(s)]

16. The Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. Substantial deference has been given to the land conservation measures and specific policies contained in any duly adopted municipal or regional plan. This finding is supported by findings 17 through 26, below.

17. Criterion 248(b)(1) "relates to the orderly development of the region, not to a

¹ *In Re: Simplified Procedures for Renewable Energy Plants with a Capacity Between 150 kW and 2.2 MW*, Order of 8/31/10 ("Section 8007(b) Order").

particular municipality within the region.”² The Central Vermont Regional Planning Commission (“CVRPC”) regional planning area encompasses 23 municipalities in Washington and Orange Counties. Staskus supp. pf. at 2.

18. On a regional basis, the Project’s impacts are localized and minimal. The solar array footprint will occupy approximately 9.2± acres, has a low profile in the landscape, and the character and components of the array and associated equipment are visually consistent with similar solar projects seen throughout Vermont. Staskus supp. pf. at 2.

19. The CVRPC is the regional planning entity for Berlin. The CVRPC has adopted a Regional Energy Plan the was certified by the Department of Public Service on August 6, 2018, and as such its land conservation measures are entitled to substantial deference. Exh. MS-6 at 14, 17.

20. The CVRPC Regional Plan does not contain any land conservation measures specific to the Project site, nor does it identify any specific scenic, cultural, historic, natural, or other resources that would be adversely affected by the proposed Project. The CVRPC Regional Plan’s Energy Element, which has been certified by the Vermont Department of Public Service (“DPS”), notes that the Regional Plan does not specify or prescribe siting locations for renewable energy infrastructure, noting that instead it allows “opportunities for each municipality to identify locations that are preferred or restricted based on local insights and interests.” Staskus supp. pf. at 2-3 (quoting CVRPC Regional Plan at 3-7).

21. Importantly, the Regional Plan provides as a “Guiding Principle”: “The Central Vermont Regional Planning Commission will support the state’s comprehensive energy plan goal of having 90% of the state’s energy needs generated from renewable sources by the year 2050.” Staskus supp. pf. at 3 (quoting CVRPC Regional Plan at 3-9).

22. Based upon these stated considerations and principles in the Regional Plan, the Project does not unduly interfere with orderly development of the region, and in fact will further the CVRPC support for achieving the State’s 90% renewable energy goal. Staskus pf. at 3.

23. At the municipal local level, while some areas within the Town of Berlin are specifically identified in the Berlin Town Plan for conservation or other protection, the Project site is not located in these areas. The Project is not located in a specific, unique, or protected

² *In re Petition of Rutland Renewable Energy, LLC. for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 VT 50, ¶ 9.

open space or scenic resource identified in the Town Plan. Staskus supp. pf. at 3-4.

24. The Project makes efficient use of public infrastructure in that it is located adjacent to a State highway and co-located with existing electric transmission lines. With respect to the latter point, the Town Plan emphasizes: “The availability of three-phase power and proximity to the transmission grid are important considerations for siting renewable energy projects.” The Project is consistent with these considerations. Staskus supp. pf. at 4-5.

25. The Town of Berlin has not adopted a screening ordinance or temporary bylaw requirement for ground-mounted solar electric generation facilities pursuant to either 24 V.S.A. §§ 2291(28) or 4414(15). Staskus pf. at 4, 9.

26. The Project will comply with Vermont’s statutory setback requirements for ground-mounted solar electric generation facilities because the Project’s solar panels or support structures for the solar panels are set back at least 100 feet from the nearest road and at least 50 feet from the nearest property boundary line. Staskus pf. at 12; exh. BDR MS-2.

Impact on System Stability and Reliability/Impact on Transmission Facilities

[30 V.S.A. § 248(b)(3) & 30 V.S.A. § 248(b)(10)]

27. The Project will not have an adverse effect on system stability and reliability and the Project can be served economically by existing or planned transmission facilities without undue adverse effects on Vermont utilities or customers. This finding is supported by finding 28, below.

28. GMP completed the Project’s Feasibility Study dated September 22, 2021. The Petitioner has budgeted and will be responsible for paying all necessary interconnection costs designated as its responsibility. Staskus pf. at 10; exh. BDR MS-7.

**Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment,
Use of Natural Resources, and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

29. Pursuant to 30 V.S.A. 248 CPG, 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, of 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 30 through 81, below.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

30. The Project will not have any undue adverse effects on the health, safety, and welfare of the public. This finding is supported by findings 31 through 33, below.

31. Unlike fossil fuels, this solar generation project will not create waste or other emissions that would be harmful to public health and safety. Staskus pf. at 11-12.

32. The Project transformer will be compliant with GMP's specifications (Distribution Standard #T-01, 3.1, 12/13) that meet or exceed ANSI C57.12.00-2010, C57.12.20-2005, C57.12.90-2006, and all other applicable ANSI, IEEE, EEI, NEMA, and OSHA Standard. The Project inverters will be compliant with IEEE 1547 Standard for Interconnection and Interoperability of Distributed Resources with Associated Electrical Power Systems Interfaces (2020) and UL 1741 SB. Staskus pf. at 12; exh. BDR MS-4.

33. Further, the Project will be enclosed by fences and secured by locked gates. The solar array equipment will be rated for outdoor use, will be securely shielded by locked enclosure covers and will be otherwise compliant with NEC code "Guarding of Live Parts". Staskus pf. at 12; exh. BDR MS-4.

Outstanding Resource Waters

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

34. The Project will not affect any outstanding resource waters as defined by 10 V.S.A. 1424a(d). Exh. BDR DB-2 at 6.

Noise, Air & Water Purity and Greenhouse Gas Impacts

[30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1)]

35. The Project will not cause undue noise. The nearest residence to any solar array panels is approximately 350 feet. This same residence is approximately 460 feet from the nearest sound producing component of the array – an inverter. Other inverters will be of further distance to the nearest residence. Staskus supp. pf. at 8.

36. The total combined sound level impact of the inverter at 460 feet as well as the other twenty-one inverters at greater distances, and the transformer is modeled to be 31.8 dBA from the

nearest residence. Staskus supp. pf. at 8; exh. BDR MS-9.

37. During the limited installation period sounds typical of construction equipment will be generated by the light installation activities. Staskus pf. at 11.

38. As a renewable energy source powered by the sun, this Project will contribute to reducing greenhouse gas emissions. Any limited air emissions or greenhouse gas emissions associated with installation will be primarily from fossil-fueled vehicles and equipment used for deliveries, worker transportation, and installation activities. The emissions will be typical of construction projects, will be short-term, subject to state regulations, and will not be adverse. Staskus pf. at 11.

39. Throughout its operation, the Project will generate no air pollution, with the exception of minimal vehicle emissions associated with periodic site and equipment maintenance visits. Staskus pf. at 11.

Water Pollution

[10 V.S.A. § 6086(a)(1)]

40. The Project will not result in undue water pollution. This finding is supported by findings 41 through 57, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

41. The Project will not have an undue adverse impact upon headwaters. This finding is supported by findings 42 through 46, below.

42. The Project is located in a watershed with drainage area greater than 20 square miles and is located below 1,500 feet elevation. The Project is located in a headwater as it is located in the watershed of a public water supply and is characterized by steep slopes. Exhibit BDR DB-2 at Section IV.

43. The Project is within the groundwater Source Protection Area (“SPA”) of the Weston Mobile Home Park Public Community water system (WSID VT0005258) that extends onto the Project parcel. The Weston Mobile Home Park wells are located on the west side of VT Route 12 and the SPA zones extend to the east, beyond VT Route 12, and the mobile homes into the Project parcel. SPA Zone 2 extends into the area of First Street and Project access road and

SPA Zone 3 extends beyond Zone 2 to the eastern side of the Project area and beyond Interstate 89. Staskus pf. at 13.

44. If a spill or release of any toxic substance were to occur within an SPA, the Petitioner will immediately report the event to the Vermont Department of Environmental Conservation Spills Program and the SPA's water system owner or operator. The Petitioner will provide instructions, with contact phone numbers, for reporting a toxic substance release to all contractors for the Project. Staskus pf. at 13.

45. The proposed Project will not result in a reduction of the quality of ground or surface waters in the area. The Project will be constructed in accordance with the Vermont Standards & Specifications for Erosion and Prevention and Sediment Control, 2020, and prior to construction will apply for and obtain coverage under the Agency of Natural Resources Department of Environmental Conservation Construction General Permit as a moderate risk or individual permit. Exhibit BDR DB-2 at Section IV; Staskus second supp. pf. at 3.

46. The Project site, including space between the solar panels, will remain vegetated and managed. The Project has no onsite sanitary wastewater systems, and therefore no associated injection of sanitary wastewater into the ground. Staskus pf. at 6 and 14; exh. BDR DB-2 at 5.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

47. The Project will meet all applicable 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 13.

48. There are no onsite sanitary wastewater systems, and therefore no associated injection of sanitary wastewater into the ground. Staskus pf. at 14.

49. Metal or cardboard generated from Project construction will be recycled. All construction waste that cannot be recycled will be disposed of in an approved sanitary landfill. Contractors will be instructed not to leave waste from meals or otherwise at the site. Trees cut that have no marketable value will be used as grindings in application of the stormwater requirements. Staskus supp. pf. at 9.

Water Conservation & Burden on Existing Water Supply

[10 V.S.A. § 6086(a)(1)(C) & § 6086(a)(2) & (3)]

50. The Project itself will not utilize water. Use of water will be limited to what is necessary to control dust during installation and to promote germination of seed. Staskus pf. at 13.

51. The Project will not unreasonably burden existing water supply. Staskus pf. at 14.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

52. The proposed Project is not located within a flood hazard area, floodway or a floodway fringe and will not restrict or divert the flow of floodwaters or significantly increase the peak discharge of a river or stream within or downstream from the Project, or endanger health, safety, or welfare of the public or of riparian owners during flooding. Exh. BDR DB-2 at Section V.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

53. The Project will have no adverse impact on streams. There are no surface waters within the Project area. The closest stream is an unnamed tributary to the Dog River located ~200' south of the Project. The Project will not result in any clearing of forest vegetation within the riparian buffer zones (as measured 50' from top of bank/top of slope/ and edge of wetland) of stream resources. Exh. BDR DB-2 at 6.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

54. The Project will have no adverse impact on a shoreline of a river, lake, pond, or reservoir. The closest shoreline to the Project is that of the Dog River approximately 1400' to the west of the Project. The Project will not result in any clearing of forest vegetation along the shores of the River. Exh. BDR DB-2 at 6.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

55. The Project will not violate the rules of the Secretary of Natural Resources, as adopted under chapter 37 of Title 10, Vermont Statutes Annotated, relating to significant

wetlands. This finding is supported by findings 56 and 57, below.

56. The Arrowwood Environmental (“AE”) field review confirmed the presence of two presumed Class III wetlands adjacent to the Project area. Per the wetland survey protocol, AE flagged wetland boundaries in the field and mapped the boundary with a GPS unit capable of sub-meter accuracy. The wetlands are presumed Class III wetlands due to small size (<0.5 acres) and lack of connection to a stream. Exh. BDR DB-2 at 7.

57. The Project array has been designed to avoid the presumed Class III wetlands. Exh. BDR DB-2 at 7.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

58. 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. This finding is supported by findings 59 through 60, below.

59. Total Limit of Disturbance (“LOD”) for purposes of the stormwater Construction General Permit for installation activities will be approximately 21.10± acres. Staskus pf. at 14; exh. BDR MS-2.

60. Project installation will be performed in accordance with the Vermont Standards and Specifications for Erosion Prevention and Sediment Control (2020) and will obtain coverage under the Vermont DEC Construction General Permit as a moderate risk or individual permit. Staskus second supp. at 3.

Transportation

[10 V.S.A. § 6086(a)(5)]

61. There will be no long-term transportation impacts, and only short-term, periodic traffic impacts due to deliveries of Project equipment to the site during installation. Staskus pf. at 14.

62. Such deliveries will use existing roads with vehicles that commonly use public roads. No oversized or overweight trucks or permits are necessary. Staskus pf. at 14-15.

Educational Services

[10 V.S.A. § 6086(a)(6)]

63. The Project will not place an unreasonable burden on the ability of a municipality to provide educational services because the Project will not require or affect educational services. Staskus pf. at 15.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

64. The Project will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services. Use of municipal roads to transport equipment and materials will be limited in duration and similar to many other small-scale projects. Staskus pf. at 15.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

65. 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 66 through 81, below.

Aesthetics

66. The Project will not result in an adverse impact to aesthetics. This finding is supported by findings 67 through 76, below.

67. The Project array footprint will be approximately 9.2± acres in the northern portion of the larger 49.65 ± acre private parcel. The remaining 28.5± property acres, outside of transmission corridors, are woodlands. The nearest property boundary is 105± ft. on the eastern side of the array to Interstate 89. The nearest residence will be downslope 350± feet away and 70± lower in elevation. The area is generally bound by the Interstate to the north and east, and remaining, undeveloped lands to the south. Exh. BDR MS-6 at 3-4.

68. Through careful site selection, the array is compatible and in character with its surroundings. The Project footprint, installed partially in a previously quarried area, with multiple transmission line corridor infrastructure crossing the Project area, utilizes previously disturbed and currently sited infrastructure and relative to the surrounding built environment is minimal and localized. Its low-profile and structural elements are consistent with activities

occurring on and around the parcel. Exh. BDR MS-6 at 10.

69. The Project will appear similar to other renewable energy solar arrays commonplace in Vermont. Neither the regional nor municipal plans have designated the area as open space or conservation lands. Exh. BDR MS-6 at 10.

70. The Weston Mobile Home Cooperative, Inc. lands, an 83-unit resident-owned community, is west, between the Project area and VT State Route 12. The western side of the solar array will be approximately 1,150± feet from State Route 12 and 790± feet from the private First Street. The eastern side of the solar array will be 270± feet from Interstate 89. An approximately 50± foot high ledge berm also separates the array from Interstate 89. Exh. BDR MS-6 at 4.

71. Much of the existing vegetation along the property boundary will be maintained. In particular, the Project has been designed to retain the existing mature vegetation separating the Weston Mobile Home Park and VT State Route 12 from the array footprint. This choice of siting provides reasonable mitigation, reducing the Project's potential visual impact. Exh. BDR MS-6 at 10.

72. The Project does not violate any clearly written community standard to preserve the aesthetics or scenic, natural beauty of the area. To constitute a clear community standard under Quechee, a town or regional plan provision must "identif[y] the area of th[e] project for special protection to protect aesthetics or scenic beauty."³ Neither the municipal or regional plans identify the Project site as needing special protection for aesthetics or scenic beauty. Exh. BDR MS-6 at 10.

73. While the Project would create a change to the surrounding landscape, the Project would be an addition to the this built environment from the earlier quarrying activities, transportation and electrical infrastructure and commercial and residential elements. As such, the Project would not create an adverse impact under the first step of the Quechee Analysis on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. The retained vegetation on the Project site periphery and surrounding landscape

³ *In re Petition of Rutland Renewable Energy, LLC. for a Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 19.

as well as the topographic changes work to minimize views both foreground and distant, from most public vantage points. Exh. BDR MS-6 at 11.

74. The Project will not be shocking or offensive to the average person. “[T]he Quechee test did not guarantee that the aesthetic qualities of an area would not change.”⁴ As used in Quechee, the “average person” means “the average member of the viewing public who would see a particular project from the vantage point of the public” and “from an objective, as opposed to subjective and neighborly, perspective.”⁵ To reach the threshold of being “shocking or offensive,” the size or scale of the project would need to be “overwhelming.”⁶ Exh. BDR MS-6 at 11.

75. The scale of the Project is not overwhelming or excessive; it is proposed adjacent to existing public infrastructure and is intermittently screened from views by topography and surrounding vegetation. Its low-profile presence is compatible with its surroundings and will appear like other fixed-tilt, ground mounted renewable energy solar arrays commonplace in Vermont. Exh. BDR MS-6 at 11.

76. Moreover, the Project furthers the goals of each plan to encourage the development of renewable energy sources. Exh. BDR MS-6 at 11.

Historic Sites

77. Applicant’s historic sites assessment and VDHP’s assessment confirm that the Project will not result in an adverse effect on historic sites. Staskus supp. pf. at 6-7; exh. BDR MS-6 at 17-18; exh. BDR MS-5.

Rare and Irreplaceable Natural Areas (“RINA”)

[10 V.S.A. § 6086(a)(8)(A)]

78. There are no Rare and Irreplaceable Natural Areas present within the Project area. Exh. BDR DB-2 at 7.

Necessary Wildlife Habitat and Endangered Species

⁴ *In re Amended Petition of UPC Wind*, 2009 VT 19, ¶ 27.

⁵ *In re Petition of Rutland Renewable Energy, LLC. for Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 VT 50, ¶ 22.

⁶ *Id.*

[10 V.S.A. § 6086(a)(8)(A)]

79. The Project will not destroy or significantly imperil necessary wildlife habitat or any endangered species. This finding is supported by findings 80 and 81, below.

80. The Project site does not contain VT Fish and Wildlife Department white-tailed deer winter habitat, nor will the Project unduly adversely impact any other necessary wildlife habitat. Exh. BDR DB-2 at 8-9.

81. The Northern Long Eared Bat (“NLEB”) became a federally listed endangered species in March of 2023. To avoid undue adverse impacts to NLEB, Petitioner will adhere to avoidance and minimization conditions specified in the ANR MOU. Exh. BDR ANR-1.

Primary Agricultural Soils

[10 V.S.A. § 6086(a)(9)(B)]

82. There are no NRCS-identified prime agricultural soils within the Project limit of disturbance (“LOD”) therefore there will be no negative impact. Staskus pf. at 15; exh. BDR MS-2.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

83. 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. Staskus pf. at 16-17.

Decommissioning

[Rule 5.900]

84. At the end of the Project’s useful life, the Petitioner will remove the Project’s infrastructure and restore the site to its current condition to the greatest extent practicable. Exh. BDR MS-9.

85. The Petitioner submitted a decommissioning plan detailing the steps and cost estimate for decommissioning activities. Exh. BDR MS-9.

Discussion

The Project decommissioning plan included a form letter of credit and drawing certificate that are consistent with the requirements of Commission Rule 5.904(B), and therefore I recommend that the Commission include in any CPG issued for the Project conditions requiring compliance with the terms and conditions of the proposed decommissioning plan and relevant provisions of Commission Rule 5.904(B).

IV. CONCLUSION

Based upon the above findings, I recommend that the Commission conclude that, subject to conditions, the Project will promote the general good of the State.

This Proposal for Decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it is not adverse to any party.

Hearing Officer

V. 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 proposed 2.2 MW solar electric generation facility for construction and operation by Berlin Dog River Solar LLC (the “CPG Holder”) off State Route 12, at the end of First Street, in Berlin, Vermont, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 248, 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 must comply with all terms and conditions set out in the CPG issued in conjunction with this Order.
4. This final order and CPG are explicitly non-precedential with respect to any other companies or projects.

Dated at Montpelier, Vermont, this __ day of __, 2024.

_____)	
Edward McNamara)	PUBLIC UTILITY
)	
)	
_____)	COMMISSION
Margaret Cheney)	
)	
)	
_____)	OF VERMONT
Riley Allen)	

OFFICE OF THE CLERK

Filed:

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)