

May 14, 2024

TO: Vermont Public Utility Commission (“Commission”)

RE: Petition of Norwich Upper Loveland Solar LLC, Case No. 21-3587-NMP
Public Comment regarding Petitioner’s Motion for Relief from Judgment

This public comment by Norwich resident Christopher Katucki is to express support for that portion of the April 26, 2024, order of the Commission that requires the Applicant to obtain confirmation from the Norwich Planning Commission and the Norwich Selectboard (“Municipal Entities”) of support for the Upper Loveland Road solar project.

In addition, this public comment suggests the Municipal Entities need to clarify the applicability and scope of the presumption in the town plan, which is referenced in footnote 42 and ¶87 of the Proposal for Decision.

It appears that the Municipal Entities apply an irrebuttable or conclusive presumption that all or nearly all of Norwich is a preferred site. The text of the town plan contains an exception for the Ridgeline Protection Overlay Area, where the Applicant’s site is located. However, that exception may be limited only to issues specific to that Overlay Area, namely, visual impact on ridgelines. To demonstrate, in this case, the Municipal Entities were apparently advised that certain concerns were off-limits, likely because of the continued reach of presumption. Exh. NN-JK 16 (Planning Commission minutes of July 13, 2021; wetland impacts were “outside the scope of their review”); Exh. NN-JK 18 (Selectboard minutes of August 11, 2021; board “lacks authority to evaluate the project on wildlife habitat grounds”).

If an irrebuttable or conclusive presumption is used, then that presumption is not consistent with the text and purpose of the definition of preferred site in Commission Rule 5.103 for several reasons. First, the old definition of a preferred site allowed a municipality to designate a “specific location” in its municipal plan. All or nearly all of Norwich is not a specific location. Second, such a blanket grant of preferred site status swallows all the other crafted definitions of a preferred site, making them a nullity.

Finally, a blanket grant of preferred site status completely undermines the rationale for and purpose of limiting larger net-metering projects only to preferred sites. The main objective of the preferred site criteria is to minimize the environmental impacts on the land. Minimal environmental impact is the quid pro quo required of merchant generators to take advantage of the procedural and financial incentives of the net-metering program.¹ Designating all or nearly

¹ *Report to the Vermont General Assembly on the Net-Metering Program Pursuant to Act 99 of 2014* at page 21. See also *In re: Proposed revisions to Vermont Public Utility Commission Rule 5.100*, Case No. 19-0855-RULE, Order Responding To Participant Comments of 05/17/2023 at page 4 (addressing comments to significant forest clearing in context of minimal environmental impact and ratepayer subsidy of net-metering projects).

all of a town as a preferred site circumvents the application of the rule, to the detriment of ratepayers and Commission policy.

In sum, in addition to confirming whether the site is preferred, the Municipal Entities should also clarify the applicability and scope of the presumption in the town plan.

Thank you in advance for considering my public comment.

Sincerely,
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