

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Essex A North Lot Solar, LLC for a)
certificate of public good pursuant to 30 V.S.A. §)
248, authorizing the installation a 3.5 MW ground-)
mounted solar array located off Robinson Parkway in) Case No. 24-1898-PET
Essex Junction, Vermont)

**MEMORANDUM OF UNDERSTANDING BETWEEN
ESSEX A NORTH LOT SOLAR LLC AND
THE VERMONT AGENCY OF NATURAL RESOURCES**

With respect to the above referenced petition, Essex A North Lot Solar LLC (“Petitioner” or “EANL” or “CPG Holder”), and the Vermont Agency of Natural Resources (“ANR”) (collectively “Parties”) hereby agree and stipulate as follows:

WHEREAS, on June 19, 2024, Petitioner filed a petition for a certificate of public good (“CPG”) pursuant to 30 V.S.A. § 248 (the “Petition”) to construct and operate a 3.5 MW solar electric generation facility in Essex Junction, Vermont (the “Project”);

WHEREAS, the Public Utility Commission (“Commission”) held a scheduling conference on August 9, 2024, and established a schedule by order dated August 19, 2024;

WHEREAS, the Parties have engaged in discovery; and

WHEREAS, the Parties, having had an opportunity to review and assess the Petition and discovery responses provided by Petitioner, have resolved all outstanding issues between them related to the Project, and have agreed that the conditions set forth in this Memorandum of Understanding (“MOU”) should be included in any CPG issued by the Commission.

THEREFORE, in consideration of the above and the undertakings and covenants set forth below, the Parties hereby agree as follows:

- I. Petitioner shall submit to the Commission supplemental prefiled testimony and revised exhibits to describe and depict any Project changes, if any, necessitated by the CPG conditions specified in this MOU and to conform the Project to those conditions.

- II. The following conditions shall be included in any CPG issued by the Commission in this matter, and that the terms and conditions of this MOU shall supersede any inconsistent prefiled testimony and exhibits.
1. Before beginning site preparation or construction of the Project, the CPG Holder shall obtain from the Agency's Department of Environmental Conservation an Individual Construction Stormwater Permit. All Project work shall be performed in accordance with the terms and conditions of the Individual Construction Stormwater Permit.
 2. Before beginning site preparation or construction of the Project, the CPG Holder shall ensure that GlobalFoundries, the owner of the Project site, updates the stormwater pollution prevention plan required by the NPDES Direct Discharge Permit #3-1295, issued by the Vermont Department of Environmental Conservation, to include all new impervious surfaces associated with the Project. The CPG Holder shall design and construct the Project so that all impervious surfaces associated with the Project are captured by the existing GlobalFoundries stormwater system and ultimately discharge to the Winooski River from stormwater outfall S/N 013 covered under the NPDES Direct Discharge Permit #3-1295.
 3. Before beginning site preparation or construction of the Project and of the Project-related interconnection upgrades and extensions, the CPG Holder shall obtain from the Agency's Department of Environmental Conservation a Vermont Wetlands Permit. All impacts associated with the Project-related interconnection upgrades and extensions will be considered by the Agency's Wetlands Program as cumulative impacts together with the impacts associated with the Project activities for purposes of the Vermont Wetlands Permit. All Project work, including all Project-related interconnection upgrades and extensions, shall be performed in accordance with the terms and conditions of the Wetlands Permit.
 4. No later than six months in advance of the Project's decommissioning, the CPG Holder shall complete and provide to the Vermont Department of Environmental Conservation Wetlands Program, an updated wetlands assessment to determine if any of the Project infrastructure is located within any Class I or II wetlands or their buffer zones.
 5. If, at the time of Project decommissioning, any Project infrastructure is determined to be located within a Class I or II wetland or its buffer zone, then the CPG Holder shall obtain from the Wetlands Program a jurisdictional determination as to whether the decommissioning activities require a Vermont Wetland Permit. If, at the time of decommissioning, any Project infrastructure is determined to be located within a Class

I or II wetland or its buffer zone and a Vermont Wetland Permit is not required, the CPG Holder shall submit a wetlands restoration plan to the Wetlands Program for review and approval as an Allowed Use under the Vermont Wetland Rules (see Section 6.23 of the current Vermont Wetland Rules). The restoration plan shall address the removal of the solar array and other Project infrastructure located in any wetland, and shall, at a minimum, contain the following elements:

- a. Identification of phasing and staging areas;
- b. Utilization of methods that prevent rutting in the wetland, including removal of structures during frozen or dry conditions, or use of construction mats or similar techniques to minimize soil disturbance;
- c. Revegetation of all disturbed areas within the wetland and buffer zone with appropriate conservation seed mix(es); and
- d. Provisions for inspection by the Agency prior to and following site restoration.

6. If any Project infrastructure is located within a Class I or II wetland or its buffer zone at the time of Project decommissioning, then decommissioning of the Project shall not take place until the Agency's Wetland Program has issued a Vermont Wetland Permit or has approved a wetlands restoration plan as an allowed use under the Vermont Wetland Rules, whichever is applicable, and all decommissioning activities shall be performed in accordance with the Vermont Wetland Permit or the approved wetlands restoration plan.

7. The CPG Holder shall allow the Agency, through its authorized representatives, to enter upon and inspect the Project area upon reasonable notice, in a reasonable manner, and at reasonable times during ordinary business hours to determine compliance with the above conditions.

III. The Parties agree that, subject to compliance with the above conditions, the Project will avoid an undue adverse effect on the natural environment and the use of natural resources under section 248(b)(5), with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and greenhouse gas impacts.

IV. The Parties agree that this MOU shall be admitted into evidence as **Exhibit EANL-ANR-1**.

V. The Parties agree that the Commission may approve the Project and issue an Order and CPG in this matter in accordance with the plans and specifications submitted with the Petition, as modified by any the supplemental prefiled testimony and exhibits that are specified in this MOU and including the terms and conditions of this MOU. The Parties agree that to the extent any testimony or evidence submitted in this proceeding differs

from the provisions of this MOU, the provisions of the MOU shall control.

- VI. This MOU may be modified only upon mutual written agreement by the Parties and is subject to any necessary Commission approvals.
- VII. The Parties agree that this MOU shall not be construed by any party or tribunal as having precedential impact on any future proceeding involving the Parties, except as necessary to implement this MOU or to enforce an order of the Commission resulting from this MOU.
- VIII. Nothing in this MOU shall bind the Parties to take or refrain from taking any position on any issue not addressed herein, including any issue raised by any other party to this docket, or in any future docket.
- IX. This MOU is expressly conditioned upon the Commission's acceptance of all of its provisions, without material change or condition. The Parties agree that, should the Commission fail to approve this MOU in all material aspects, the Parties' agreements set forth herein shall terminate, this MOU shall not constitute any part of the record in this proceeding, and this MOU shall not be used for any other purpose. The Parties' agreements in this MOU shall not be construed by any party or tribunal as having precedential impact on any testimony or positions that may be advanced in these proceedings. Each Party shall be placed in the position that it enjoyed in this proceeding before entering into the MOU and shall have the right to submit filings in this docket, including testimony.
- X. Any disputes arising under this MOU shall be resolved by the Commission under Vermont law.
- XI. The Parties hereby waive their rights under 3 V.S.A. § 811 to review and comment upon a Proposal for Decision with respect to the issues addressed herein, and to present oral argument thereon, provided that the Proposal for Decision is consistent in all material respects with this MOU and contains conditions substantially similar to those set forth in this MOU.

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Dated at Southwest Harbor, Maine, this 15th day of November 2024.

ESSEX A NORTH LOT SOLAR LLC

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Dated at Waterbury, Vermont, this 14th day of November 2024.

VERMONT AGENCY OF NATURAL RESOURCES



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