

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-2412-PET

Petition of GRH Growth, LLC, pursuant to 30 V.S.A § 248, authorizing the construction and operation of a 3.5 MW solar array in Vernon, Vermont	
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Order entered:

PROPOSAL FOR DECISION

I. INTRODUCTION

This case involves a petition filed by GRH Growth LLC (“GRH Growth” or the “Petitioner”) with the Vermont Public Utility Commission (“Commission”) requesting a certificate of public good (“CPG”) under 30 V.S.A. § 248 authorizing the construction and operation of a 3.5 MW solar electric generation facility on a parcel of land off Governor Hunt Road in Vernon, Vermont (the proposed “Facility”).

In this proposal for decision, I recommend that the Commission approve the Facility and issue a CPG, subject to conditions.

II. PROCEDURAL HISTORY

On October 7, 2025, the Petitioner filed a petition with supporting testimony and exhibits (the “Petition”) requesting a CPG to install and operate a 3.5 MW solar electric generation facility in Vernon, Vermont.

On October 31, 2025, I held a scheduling conference.

On November 24, 2025, I conducted a site visit. Later the same day, the Vermont Department of Public Service (“Department”) conducted an information session, after which I held a public hearing. Several dozen members of the public attended the public hearing and provided public comments.

On November 25, 2025, the Vermont Agency of Commerce and Community Development’s Division for Historic Preservation (“DHP”) filed a motion to intervene. On the same day, the Town of Vernon filed a notice of intervention.

On December 9, 2025, I issued an order acknowledging the Town of Vernon's intervention and granting DHP's motion to intervene. In the order, I also directed GRH Growth to respond to several information requests.

On December 31, 2025, I issued an order directing GRH Growth to respond to several additional information requests.

On March 2, 2026, GRH Growth filed a stipulated agreement with the Vermont Agency of Agriculture, Food, and Markets ("AAFM") ("AAFM Stipulation"), a memorandum of understanding with the Vermont Agency of Natural Resources ("ANR") ("ANR MOU"), and a memorandum of understanding with DHP ("DHP MOU").

On May 26, 2026, I held an evidentiary hearing. The following documents were admitted into the evidentiary record: the prefiled testimony and prefiled supplemental testimony of Nils Behn ("Behn pf." and "Behn supp. pf.") and exhibits GRH-NB-1 through GRH-NB-20; the prefiled testimony and prefiled supplemental testimony of Suzanne Cherau ("Cherau pf." and "Cherau supp. pf.") and exhibits GRH-SC-1 through GRC-SC-5rev; the prefiled testimony and prefiled supplemental testimony of Krista Clark ("Clark pf." and "Clark supp. pf.") and exhibits GHR-KC-1 through GHR-KC- 15; the prefiled testimony of Craig Martin ("Martin pf.") and exhibits GHR-CM-1 through GHR-CM- 10; the prefiled testimony and prefiled supplemental testimony of Jeremy Owens ("Owens pf." and "Owens supp. pf.") and exhibits GHR-JO-1 through GHR-JO-2e; the prefiled testimony and prefiled supplemental testimony of Patrick Retelle ("Retelle pf." and "Retelle supp. pf.") and exhibits GHR-PR-1 through GHR-PR-3; the prefiled testimony of Stephan Olausen ("Olausen pf.") and exhibits GHR-SO-1 through GHR-SO-3, the prefiled testimony of Bill Jordan ("Jordan pf.") and exhibit DPSBJ-1; the prefiled testimony and prefiled supplemental testimony of Gordon Perkins ("Perkins pf." and "Perkins supp. pf.") and exhibits DPS-GP-1 through DPS-PG-2; and the prefiled testimony of Scott Wheeler ("Wheeler pf."). Additionally, I admit the Department's Section 202(f) Determination, the AAFM Stipulation, the ANR MOU, and the DHP MOU.¹

****BRIEFS, REPLY BRIEFS?****

¹ If any party has an objection to any of these documents being entered into evidence, the party must submit its objection by the comment deadline set for the circulation of this proposal for decision.

III. PUBLIC HEARING AND COMMENTS

Members of the public submitted comments in this case in writing and at a public hearing. I convened the public hearing on November 24, 2025, in Vernon, Vermont. Approximately 40 people attended the public hearing, and approximately 20 people spoke. The Commission also received one written comment via ePUC from Stephen McAvoy.

Vermont law requires the Commission to base its decisions on the evidence presented by the parties in prefiled testimony and during evidentiary hearings.² Even though I cannot rely on them as evidence, public comments can play a crucial role in offering important perspectives and identifying issues that the Commission should take into consideration. I reviewed all the comments made at the public hearing and the public comment submitted via ePUC and appreciate the concerns expressed by interested individuals. I provide a general summary of the primary issues raised by the comments below. To the extent that comments focus on issues related to specific Section 248 criteria, I address the applicable criteria in detail throughout this order.

The written comment submitted by Stephen McAvoy raised aesthetic concerns with the Facility, both with respect to the visual impact of the Facility on his property as an adjoining landowner, as well as concerning site screening more generally, especially with regard to the potential aesthetic impact of the Facility on the Connecticut River Paddlers Trail. Comments at the public hearing also addressed the aesthetics and visual impact of the Facility in the context of the surrounding landscape, the economic benefits to the Town of Vernon in the form of municipal taxes, the loss by the Town of Vernon of a 1-acre parcel containing primary agricultural soils, and the environmental impacts of the Facility's development. Other comments conveyed the opinion that the Facility is poorly sited and raised concerns with vehicular traffic to and from the Facility site. Some comments provided support for the Facility based on contentions that construction and operation of the Facility will provide much-needed job opportunities and tax revenue for the Town of Vernon.

² See 3 V.S.A. § 809(g) ("Findings of fact shall be based exclusively on the evidence and on matters officially noticed.").

IV. 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 findings to the Commission in accordance with 30 V.S.A. § 8(c).

Description of the Facility

1. GRH Growth is a limited liability company registered in the State of Delaware, with a business address at 69 Milk Street, Suite 308, Westborough, MA 01581. Petition at 1; Martin pf. at 3.
2. GRH Growth is an affiliate of Great River Hydro, LLC (“Great River Hydro”), which owns and operates 13 hydroelectric generating stations on the Connecticut and Deerfield Rivers in Vermont, New Hampshire, and Massachusetts. Martin pf. at 3.
3. GRH Growth will be operated and managed by Great River Hydro through an operations and management agreement. Martin pf. at 3.
4. The Facility will be installed and operated on approximately 17.39 acres on a parcel of land that totals 25 acres off Governor Hunt Road in Vernon, Vermont. Martin pf. at 4; Behn pf. at 5.
5. The Facility will consist of approximately 7,536 individual 635-watt bifacial solar panels installed on 20 rows of fixed tilt steel racking within a perimeter fence with ground screws, twelve string inverters, and electrical collector system components consisting of underground conduit, wire, an AC combiner panel, and AC disconnects. GRH Growth proposes to install an 8-foot-high black wire agricultural fence with a 6” by 6” square grid pattern along the north and south sides of the array and a stockade fence along the east and west sides of the array to assist with mitigation of views of the array from those directions. Martin pf. at 4; Behn pf. at 6-9; Behn supp. pf. at 2-3.
6. Panels will be installed in approximately 20 rows running east to west ranging from 127 feet to 1,170 feet in length. The rows will be connected via underground cable in conduit to string inverters, which convert electricity from direct current to alternating current, and will then run at 800 volts through protected underground conduit into the three-phase pad mounted transformer. Behn pf. at 7.

7. The Facility will feature tree and shrub plantings interspersed along the northeast and western sides of the array both on top of berms and along the stockade fence to provide aesthetic mitigation. Behn pf. at 7; Owens pf. at 6.

8. The Facility will require minimal tree clearing. Construction of the Facility will involve approximately 0.69 acre of tree clearing with removal of stumps, 0.71 acre of tree clearing with stumps remaining, and 2.08 acres of vegetation management, with tree trimming to a maximum height of 15 feet. Behn pf. at 14; Clark pf. at 12.

9. From the transformer, electricity will run underground to a 40-foot wooden riser pole at the eastern boundary of the Facility site and interconnect to six overhead power lines, and then it will cross Governor Hunt Road and run southeasterly to the Great River Hydro Powerhouse where it will tie into an existing breaker. Behn pf. at 8; Behn supp. pf. at 2-3.

10. The electricity generated from the Facility will be combined with the electricity generated by Great River Hydro's hydroelectric facility and transmitted directly to National Grid using existing interconnection facilities at the substation adjacent to the Great River Hydro facility, which ties into National Grid's transmission system. Retelle pf. at 6.

11. Access to the Facility site will make use of existing roads in the area, including Governor Hunt Road. A new 12-foot-wide gravel road of 10,570 square feet will be extended from the existing curb cut to access the Facility's equipment pad. Agricultural soils along the path of the road will be stripped and stockpiled on the site. Behn pf. at 10.

12. A temporary access road will be constructed approximately 115 feet north of the existing curb cut to allow equipment deliveries to the site. This temporary road will be removed after completion of the Facility, at which point the area of the Facility site disturbed by the construction of the temporary road will be returned to its natural state. Permission for the temporary curb cut will be requested through the Town of Vernon. Behn pf. at 10.

13. Construction will be limited to the hours of 7:00 am to 7:00 pm on Mondays through Fridays and the hours of 8:00 am to 5:00 pm on Saturdays. No construction activities will occur on Sundays or state or federal holidays. Behn pf. at 13.

Review of Facility Under the Section 248 Criteria

Orderly Development of the Region
[30 V.S.A. §§ 248(b)(1) and 248(b)(1)(C)]

14. The Facility will not unduly interfere with the orderly development of the region. In making this finding, due consideration has been given to the recommendations of the municipal and regional planning commissions and the recommendations of the municipal legislative bodies. Substantial deference has been given to the applicable land conservation measures and specific policies contained in the duly adopted regional plan. This finding is supported by the additional findings below.

15. The Facility would not violate any specific land conservation measures contained in the Windham Regional Plan or the Vernon Town Plan. The Facility will not conflict with the development goals and policies within these plans. Owens pf. at 6-7; Behn pf. at 20.

16. There are no specific land conservation measures in the Vernon Town Plan that would be affected by the Facility, and the Facility is not located in protected conservation areas or open space. In addition, the Facility is not located in the resource future land use area where the Town discourages energy generation facilities. Owens pf. at 6-7.

17. The Regional Plan does not contain any specific land conservation measures or policies that would be affected by the Facility. Owens pf. at 7.

18. The Windham Regional Commission determined that the Facility is in compliance with the Windham Regional Plan. Owens pf. at 7-8; exh. GRH-NB-17.

19. The Facility is consistent with the Town Plan's support for "solar facilities that are properly sited and where the development conforms with the siting policies outlined in [the] Town Plan." Perkins pf. at 4, quoting the Vernon Town Plan, adopted November 7, 2018, at 23.

Discussion

Section 248(b)(1) requires the Commission to find that the Facility does 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.³

³ 30 V.S.A. § 248(b)(1).

Under Section 248(b)(1), the Commission is required to give due consideration to the recommendations of the municipal planning commission and legislative body and to the “applicable land conservation measures and specific policies” contained in the municipal plan when assessing a proposed facility’s impact on the orderly development of the region.⁴ Land conservation measures are provisions “that are specifically directed toward land conservation, and not general policy statements that apply indiscriminately throughout the municipality.”⁵ Further, 30 V.S.A. § 248(b)(1) does not directly require the Commission to determine whether a project complies with a town plan. Instead, in making the orderly development finding, the Commission must only consider compliance with town plans to the extent they qualify as land conservation measures or where there are screening requirements of a municipal ordinance or bylaw.⁶ If there are not applicable land conservation measures or screening requirements, the Commission must consider only the recommendations of the municipal and regional planning commissions and the recommendations of the municipal legislative bodies.⁷ Even if a provision qualifies as a land conservation measure, non-compliance with the provision is not a decisive factor in the orderly development analysis.⁸

The Town of Vernon has not framed its opposition to the Facility as an orderly development issue, but the arguments raised in its brief focus on the language contained in the Vernon Town Plan. I have reviewed the portions of the Vernon Town Plan cited in the Town of Vernon’s brief and find that the cited language is not specific enough to create an actionable regulatory standard for purposes of an orderly development analysis. The Vernon Town Plan expresses a general preference for “preserving rural landscapes and agricultural resources” but does not identify the Facility parcel as being subject to specific development restrictions.⁹ In *Apple Hill*, the Vermont Supreme Court held that “[g]eneral language about preserving the rural character of the entire Rural Conservation District is not the kind of specific, clear, written

⁴ 30 V.S.A. § 248(b)(1). The Commission must give substantial deference to municipal plans that have received a determination of energy compliance from the Department. The Vernon Town Plan has not received such a determination.

⁵ *Petition of Acorn Energy Solar 2, LLC for a certificate of public good*, Case No. 17-4049-NMP, Order of 7/26/19 at 24 n.92 (quoting *In re Vermont Elec. Power Co., Inc.*, Docket No. 6860, Order of 1/28/05 at 201-202, *aff’d*, 2006 VT 69); see also *In re Apple Hill Solar LLC*, 2021 VT 69, ¶¶ 44-45, 215 Vt. 523, 280 A.3d 44.

⁶ *In re Acorn Energy 2, LLC*, 2021 VT 3, ¶ 92, 214 Vt. 73, 251 A.3d 899.

⁷ 30 V.S.A. § 248(b)(1); *In re Acorn Energy 2, LLC*, 2021 VT 3, ¶ 92, 214 Vt. 73, 251 A.3d 899.

⁸ *In re Randolph Davis Solar LLC*, 2025 VT 63, ¶ 24, 350 A.3d 411, 420.

⁹ Town of Vernon Brief at 4.

standard that can render an adverse impact undue.”¹⁰ Here, the Vernon Town Plan identifies the Facility parcel as “Mixed Use,”¹¹ and further states that it is a policy of the plan to “[p]romote the siting of renewable energy generation facilities within compatible Land use districts, namely within Mixed Use” provided that such development does not cause undue adverse impacts.¹² Therefore, the Vernon Town Plan specifically permits renewable energy facility siting on the Facility parcel.

The Vernon Town Plan also includes Policy 7.25, which “[d]iscourage[s] any renewable energy generation facilities in [] identified unsuitable areas,” such as “prime agricultural soils.”¹³ However, the word “discourage” is not mandatory and does not prohibit solar development. The non-mandatory nature of Policy 7.25 makes it ineligible for consideration as a land conservation measure under Section 248(b)(1).¹⁴ Accordingly, I recommend that the Commission find that the Facility will not violate any land conservation measures in the Vernon Town Plan.

Section 248(b)(1) requires that the Commission give due consideration to both the language included in the Vernon Town Plan and the Town of Vernon’s written recommendations. Here, there is no formal recommendation from the Town of Vernon in the record of this case. The Town of Vernon did, however, file a brief, which is not part of the evidentiary record. That said, to the extent the Town of Vernon’s brief could be construed as a recommendation against the Facility, then there is a conflict between the lack of land conservation measures in the Vernon Town Plan that the Facility would violate on the one hand, and the Town of Vernon’s opposition to the Facility in its legal brief on the other.

In this case, the Town of Vernon had ample opportunity — no less than six months — to file a formal, written recommendation into the evidentiary record in this case. Instead, the

¹⁰ *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 42, 215 Vt. 523, 280 A.3d 44.

¹¹ GRH-JO-2d at 66.

¹² *Id.* at 47.

¹³ Exh. GRH-JO-2d at 47. For the sake of argument, I am assuming that the Vernon Town Plan uses the words “prime agricultural soils” interchangeably with the term “primary agricultural soils.” Under Vermont law, primary agricultural soils are defined in 10 V.S.A. § 6001. The term “prime farmland” is defined under 7 C.F.R. § 657.5. Though related, the definitions are not interchangeable. The Vernon Town Plan’s use of inconsistent language creates uncertainty about what soils are actually covered by the policy. The record in this case shows that there are primary agricultural soils on the Facility site, but the record does not address whether those soils are also prime farmland under the federal rules.

¹⁴ *In re Apple Hill Solar LLC*, 2021 VT 69, ¶¶ 39 and 43, 215 Vt. 523, 540 (2021).

Town of Vernon filed only a legal brief in opposition to the Facility; as noted above, the brief did not refer to the orderly development criterion. In contrast, the Vernon Town Plan contains distinct policies that pertain to orderly development, and, as analyzed above, those policies function either to merely discourage renewable energy generation facilities in certain areas or to outright promote the siting of renewable energy generation facilities in other areas. As such, in the event the Town of Vernon's brief could be construed as a recommendation against the Facility in tension with the Vernon Town Plan's lack of a clear, written community standard that would prohibit the Facility's construction, I recommend the Commission give more weight to the Vernon Town Plan for the reasons explained above.

Next, I address the Windham Regional Plan within the context of the orderly development criterion under 30 V.S.A. § 248(b)(1). The Windham Regional Plan does not contain any specific land conservation measures or policies that would be violated by the Facility, and the Windham Regional Planning Commission determined that the Facility is compliant with the Windham Regional Plan. No party raised issues with respect to the Windham Regional Plan or the Windham Regional Planning Commission's determination.¹⁵ As such, I recommend that the Commission find that the Facility will not violate any land conservation measures in the Windham Regional Plan.

In conclusion, I recommend that the Commission find that the Facility will not unduly interfere with the orderly development of the region.

Municipal Screening Requirements

[30 V.S.A. § 248(b)(1)(B)]

20. The Town of Vernon has not adopted screening requirements for ground-mounted solar electric generation facilities pursuant to either 24 V.S.A. § 4414(15) or 24 V.S.A. § 2291(28) with which the Facility would have to comply. Owens pf. at 8.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

¹⁵ While the Town of Vernon referenced the Windham Regional Planning Commission meeting with the Petitioner in February of 2025 in its legal brief, this reference was not elaborated on. Brief of the Town of Vernon at 2.

21. The Facility will meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and load management measures, including but not limited to those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of Title 30. This finding is supported by the additional findings below.

22. GRH Growth is looking to sell its generation and environmental attributes to a Vermont distribution utility. Martin pf. at 6.

23. The Facility will help Vermont meet the demand for renewable energy generation and assist in meeting the energy goals outlined in the Vermont Comprehensive Energy Plan. Martin pf. at 6; Owens pf. at 7.

Discussion

Under Section 248(b)(2), the Commission must find that the Facility:

is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of this title.

The Commission has previously found that the addition of new renewable energy and capacity to ISO-New England (“ISO-NE”) markets from a renewable energy facility in Vermont serves to place downward pressure on wholesale energy and capacity costs for the whole region, irrespective of whether generation and environmental attributes are sold to a Vermont distribution utility.¹⁶ In addition, as in the Shaftsbury Solar case, here the Facility will also likely be operational during summer-peak hours, which should allow for the displacement of oil- and natural-gas-fired peaking units and therefore result in reduced emissions.¹⁷ Allowing merchant generators located in Vermont to contribute additional renewable energy and capacity to other ISO-NE markets should help reduce wholesale energy and renewable energy attribute costs, which in turn should help Vermont distribution utilities to meet their renewable energy obligations through the availability of lower-cost renewable energy credits. As such, I

¹⁶ See VT Real Estate Holdings 1 LLC, Case No. 23-1447-PET, Order of 9/15/25 at 21.

¹⁷ *Id.*

recommend the Commission conclude that the Facility will meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures.

Impact on System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

24. The Facility will not have an adverse effect on system stability and reliability. This finding is supported by the additional findings below.

25. The Facility will not introduce power into the ISO-NE transmission system above the existing Great River Hydro hydroelectric facility's interconnection limit of 34.9 MW. Retelle pf. at 9; Jordan pf. at 3, n. 1 (quoting a discovery response from GRH Growth in which GRH Growth noted that the correct combined, net solar and hydroelectric AC limit would be 34.9 MW).

26. GRH Growth is obtaining an ISO-NE Surplus Interconnection Service study. Jordan pf. at 3.

27. A Real Time Automation Controller — SEL-3505 RTAC — will be used as a power plant controller to coordinate output between the new solar and existing hydroelectric facilities to comply with Great River Hydro's existing ISO-NE tariff. Retelle pf. at 7.

28. While it is technically possible for the combined output of the proposed solar and existing hydroelectric facilities to exceed the Network Resource Capability rating authorized under Great River Hydro's existing Large Generator Interconnection Agreement, GRH Growth will set the MW output control algorithm to a level slightly below the Network Resource Capability rating if the ISO-NE Surplus Interconnection Service study identifies this as a problem. This adjustment to the algorithm will eliminate the possibility that any polling error would be capable of causing an excursion above the Network Resource Capability of the governing Large Generator Interconnection Agreement. Jordan pf. at 3-4; exh. DPS-BJ-1.

29. Because the Facility will be subject to ISO-NE interconnection rules, Rule 5.500 does not apply to the Facility. Retelle pf. at 10.

Discussion

I recommend that the Commission find that the analysis provided by the Department, along with ISO-NE's forthcoming Surplus Interconnection Study and the conclusions therein, provide a sufficient basis for determining the Facility's satisfaction of this criterion. The Petitioner will be responsible for ensuring that the output of new solar and existing hydroelectric facilities will comply with Great River Hydro's existing ISO-NE tariff and the governing Large Generator Interconnection Agreement.

The Department requested that the Commission include the following condition in the Facility's CPG:

Prior to commencing construction of the Project, the Petitioner must file the results of the ISO-NE Surplus Interconnection Service study. Any CPG granted for this Project shall be conditioned on the Commission's approval of the results of the Study after a two-week review and comment period.¹⁸

The Department represents that the Petitioner has consented to this condition. I recommend that the Commission include the proposed condition, subject to non-substantive modifications that are spelled out in the attached proposed CPG.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

30. The Facility will result in an economic benefit to the State and its residents. This finding is supported by the additional findings below.

31. Once operational, the Facility will generate tax revenue for the State of Vermont and the Town of Vernon. Martin pf. at 6.

32. The solar energy produced by the Facility will result in less electricity needed in the New England region from plants that use fossil fuels. The reduction of greenhouse gas emissions that will result if this Facility displaces fossil fuel generation will help in a small but measurable way to reduce global warming, acid rain, and the negative public health effects associated with the use of fossil fuels, all of which result in savings to Vermont residents in terms of the social cost of carbon. Martin pf. at 7.

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

¹⁸ Department's Reply Brief at 12.

[30 V.S.A. § 248(b)(5)]

33. Subject to the conditions described below, the Facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, or 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 the additional findings below, which give due consideration to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

Outstanding Resource Waters

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

34. The Facility will not affect any outstanding resource waters as defined by 10 V.S.A. § 1424a(d) because there are no outstanding resource waters in the Facility area. Clark pf. at 8.

Air Pollution and Greenhouse Gas Impacts

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

35. The Facility will not result in undue air pollution or greenhouse gas emissions. This finding is supported by the additional findings below.

36. The Facility will not involve any industrial or manufacturing emissions, excessive dust and smoke during construction, noise from blasting, odors, or excessive noise from construction activity. Behn pf. at 23.

37. The Facility will contribute to the reduction of greenhouse gas emissions because electricity from this Facility will be generated from renewable solar power. Behn pf. at 23.

Water Pollution

[10 V.S.A. § 6086(a)(1)]

38. The Facility will not result in undue water pollution. This finding is supported by the additional findings under the criteria of headwaters through soils, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

39. The Facility will not have an undue adverse impact on headwaters. This finding is supported by the additional findings below.

40. The Facility site is located in a headwaters area because of its proximity to one non-transient, non-community source protection area (“SPA” Water Supply ID VT0006642) located to the north of the Facility site. Clark pf. at 9.

41. The Facility’s northern boundary is within the vicinity of the southern boundary of the SPA. The transformer pad will be located approximately 256 feet away from the boundary of the SPA. Clark pf. at 9; exh. GRH-KC-2.

42. The SPA is located to the north of the Facility site and existing and proposed topography is oriented to the south. Stormwater runoff from the Facility site will discharge to the south and away from the SPA. Clark pf. at 9.

43. Stormwater runoff from the construction and operational phases of the Facility will be adequately managed to prevent an undue adverse impact. Clark pf. at 9.

44. The Facility’s construction will result in greater than one acre of earth disturbance and will require authorization by the Vermont Department of Environmental Conservation (“DEC”) for coverage under construction general permit 3-9020. As part of the permitting process, GRH Growth will utilize best management practices for Erosion Prevention and Sediment Control as required to ensure no adverse impact on the quality of groundwater and surface waters, including the SPA. Clark pf. at 9-10; exhs. GRH-KC-2a, GRH-KC-5.

45. The DEC requires GRH Growth to obtain an operational stormwater discharge permit. Based on the Facility site’s location on a larger parcel that houses Great River Hydro’s existing hydroelectric facility, the DEC Stormwater Program has made a preliminary determination that the Facility requires authorization for coverage under operational stormwater discharge general permit 3-9050 as a common plan of development. As part of a common plan of development, existing impervious surfaces from the adjacent Great River Hydro hydroelectric facility and proposed impervious surfaces from the Facility site will result in more than one acre of impervious area, requiring a stormwater operation permit under general permit 3-9050. Clark pf. at 10; exh. GRH-KC-4.

46. The Facility will generate approximately 0.24 acre of impervious surface. Clark pf. at 10.

47. Required stormwater management standards will be met with implementation of non-structural practices such as disconnection and infiltration, which will provide adequate water

quality treatment per the requirements of the 2017 Vermont Stormwater Management Manual and will not result in an undue adverse impact. Clark pf. at 10-11.

48. The Facility will also implement a spill prevention control and countermeasure plan to include secondary containment for the Facility's transformer, thereby avoiding impacts on the SPA. Clark pf. at 11.

49. The Facility will avoid direct discharges to headwaters, including wetlands, wetland buffers, and surface waters. Clark pf. at 10-11.

50. As described in detail under the waste disposal and soils criteria below, the Facility will meet applicable DEC regulations regarding the quality of the groundwater or surface waters in a headwaters area.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

51. The Facility will meet all applicable health and DEC 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. This finding is supported by the additional findings below and the findings under the headwaters criterion above.

52. The construction of the Facility will not create toxic materials and will not involve the disposal of wastes or injection of any material into groundwater or wells. Clark pf. at 11-12.

53. Waste generated from construction of the Facility will be disposed of in standard and approved trash and recycling methods consistent with Vermont Department of Health or DEC regulations. There will be no buildings associated with the Facility, so there is no need for an on-site wastewater disposal system required for the Facility nor for wastewater system or portable water supply permitting. Clark pf. at 11.

54. GRH Growth will obtain requisite permits for waste disposal and will meet the required stormwater management standards. Clark pf. at 11.

55. Tree trunks and large limbs will be removed from the Facility site for proper disposal. Tree stumps will be chipped or ground and used to fill minor depressions in areas where trees are removed, dispersed so as not to form piles, or transported offsite for proper disposal. Clark pf. at 12.

56. As noted above, the Facility will involve the implementation of a spill prevention control and countermeasure plan to include secondary containment for the Facility's transformer. Clark pf. at 11.

Water Conservation

[10 V.S.A. §§ 6086(a)(1)(C)]

57. The Facility may use a small amount of water during construction for dust control and final stabilization, and occasional cleaning of panels during the operational phase. The small amounts of water needed for these activities will be brought to the Facility site. Behn pf. at 25.

Flood Hazard Areas and River Corridors

[10 V.S.A. § 6086(a)(1)(D)]

58. The Facility is located within a flood hazard area or river corridor but will not restrict or divert the flow of floodwaters, cause or contribute to fluvial erosion, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. This finding is supported by the additional findings below.

59. The eastern edge of the Facility site is within the designated floodway and floodplain (Zone AE) of the Connecticut River. Clark pf. at 12; exh. GRH-KC-3.

60. The Facility's permanent equipment pads, access roads, and supporting infrastructure will be located outside of mapped floodplain areas. Clark pf. at 13.

61. A single utility pole that is part of the Facility will be placed within an existing floodway area in the existing developed Great River Hydro facility area. Clark pf. at 13; exh. GRH-KC-2.

62. DEC staff confirmed that river corridor protections do not apply to the two delineated streams on the Facility site because their associated drainage areas are below the 2-square-mile minimum threshold for river corridor protections. Clark pf. at 13; exh. GRH-KC-6.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

63. The Facility will maintain the natural condition of all streams and will not endanger the health, safety, or welfare of the public or adjoining landowners because no work is required or proposed in any streams. This finding is supported by the additional findings below.

64. There are riparian buffers associated with two delineated streams on the Facility site that flow south of the Facility.

65. Vegetation clearing associated with the Facility is planned in a portion of the forested area south of the Facility site and will fall within the 50-foot buffers for the delineated streams, including maintaining trees at a maximum height of 15 feet to reduce potential shading of the Facility. This vegetation clearing activity will result in approximately 3,926 square feet of impact on the riparian buffer of stream SC-2, of which 573 square feet is also wetland buffer. Clark pf. at 14; exh. GRH-KC-2.

66. There will be no undue adverse impact on the riparian buffers associated with stream SC-2 because of the limited scope of the vegetation management needed to reduce shading, with limited impacts on the natural conditions of streams and riparian areas on the Facility site due to the vegetation being maintained at a 15-foot maximum height. There will not be any significant alterations or impacts on aquatic habitat as a result of these vegetation management activities. Clark pf. at 14; exh. GRH-KC-3.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

67. The Facility will not have an undue adverse effect on shorelines because the Facility is not located on a shoreline. Clark pf. at 15.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

68. The Facility will not have an undue adverse effect on wetlands. This finding is supported by the additional findings below.

69. Wetlands were mapped to the south and northeast of the Facility site. Clark pf. at 15; exh. GRH-KC-3.

70. All Facility components will remain outside wetlands. Clark pf. at 15; exh. GRH-KC-2.

71. Vegetation management in the forested area south of the Facility site will result in approximately 573 square feet of impact on a wetland buffer to reduce shading potential on the Facility. Clark pf. at 16.

72. Due to the proposed wetland buffer impact, GRH Growth intends to apply for a permit from the DEC Wetlands Program under general permit 3-9025. Receipt of this permit will ensure that the Facility complies with Vermont Wetland Rules and that the Facility will not result in any adverse or undue effect to any significant wetland or buffer area. Clark pf. at 16.

Discussion

The ANR MOU contains conditions requiring GRH Growth to, among other things, obtain a Vermont wetland permit and to complete an updated wetlands assessment. These conditions are necessary to ensure that the Facility does not have an undue adverse effect on wetlands, and I recommend that the Commission include those conditions in the Facility's CPG.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2) and (3)]

73. The Facility may use a small amount of water during construction for dust control and final stabilization, and occasional cleaning of panels during the operational phase. The small amounts of water needed for these activities will be brought to the Facility site. Behn pf. at 25.

74. The Facility will not cause an unreasonable burden on an existing water supply because it will require minimal water that will be brought to the Facility site from off-site. Behn pf. at 25.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

75. The Facility will not cause unreasonable soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition may result. This finding is supported by the additional findings below.

76. Earth disturbance that will occur during construction is limited to excavation for installation of a permanent 12-foot-wide access road, temporary access road, laydown area, trenching of electrical conduit, grading for placement of the equipment pad and transformer, installation of solar panel support posts and fencing, tree clearing, and other work to establish landscape berms. Clark pf. at 16.

77. The total amount of earth disturbance is estimated to be less than five acres. Clark pf. at 16.

78. Because the Facility will result in more than one acre of earth disturbance, it will require a construction stormwater permit from the DEC under general permit 3-9020, which GRH Growth has applied for. Clark pf. at 17; exh. GRH-KC-5.

79. The Facility will implement a plan for erosion prevention and sediment control (“EPSC Plan”) that is in compliance with the Vermont Standards and Specifications for Erosion Prevention and Sediment Control. Clark pf. at 17; exh. GRH-KC-2a.

80. Stormwater runoff and EPSC measures to be implemented include: installation of Facility-specific best management practices such as silt fencing, limiting open area at one time to 2 acres, and conducting temporary or permanent stabilization within 14 days. Following earth disturbing activities, all areas will be stabilized and restored in adherence with general permit 3-9020 and the approved EPSC Plan. Clark pf. at 17.

81. The Facility will require an operational stormwater permit, which GRH Growth has applied for. Clark pf. at 17; exh. GRH-KC-4.

82. The operational stormwater management standards will be met with non-structural practices such as disconnection and infiltration because only 0.24 acre of impervious surface will be created by the Facility. Clark pf. at 17.

Transportation

[10 V.S.A. § 6086(a)(5)]

83. The Facility will not cause unreasonable congestion or unsafe conditions with respect to the use of highways, waterways, railways, airports, airways, or other means of transportation, existing or proposed. Behn pf. at 26-27.

Educational Services

[10 V.S.A. § 6086(a)(6)]

84. The Facility will not place an unreasonable burden on the ability of a municipality to provide educational services because the Facility will not require or affect educational services. Behn pf. at 27.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

85. The Facility will not place an unreasonable burden on the ability of the affected municipality to provide municipal or government services because the Facility will not require or affect local services. Behn pf. at 28.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

86. The Facility will not have an undue adverse impact on aesthetics or on the scenic or natural beauty of the area, nor will the Facility have an undue adverse effect on historic sites or rare and irreplaceable natural areas. This finding is supported by the additional findings below.

Aesthetics

87. The Facility site is largely separated from the greater surrounding area by vegetation, and existing mature trees and other vegetation that will remain around the Facility site and will screen the Facility from all views except for views from the east. Owens pf. at 5.

88. The Facility would be visible from a very small percentage of the 2-mile visual study area due to screening provided by topography, vegetation, and structures, with visibility of the panels screened from 99.3 percent of the visual study area. Perkins pf. at 2.

89. The majority of potential visibility occurs along Governor Hunt Road and Fort Bridgman Road, which flank the east and west boundaries of the Facility site, respectively. The Facility will be visible from Governor Hunt Road and potentially from Fort Bridgman Road during leaf-off conditions. Visibility of the Facility site is less obscured along Governor Hunt Road in the area immediately adjacent to the Facility. Owens pf. at 5; exh. GRH-JO-2; Perkins pf. at 2-3.

90. Due to the low profile of the Facility and the presence of mature vegetation in the landscape, other areas farther from the Facility are not expected to have visibility of the Facility elements. Owens pf. at 5; exh. GRH-JO-2.

91. The Facility will result in a significant visual change to a localized portion of the viewshed in the area due to the presence of development in an open agricultural field, the line, form, and color contrasts resulting from the Facility components, and the removal of vegetation along the eastern and southern portions of the Facility site. Perkins pf. at 1.

92. The Facility will adversely affect the visual character of the area. Owens pf. at 5; Perkins pf. at 3.

93. The Facility will not violate any clear, written community standard intended to preserve the aesthetics or beauty of the area, and the Facility incorporates several mitigating elements that reduce adverse aesthetic impacts, including landscape mitigation and a proposed screening fence. Owens pf. at 6; Perkins pf. at 3.

94. The Facility will not offend the sensibilities of the average person, in that it would not be offensive or shocking because it would not appear significantly out of character with its surroundings or significantly diminish the scenic qualities of the area in which it is proposed. Owens pf. at 6; exh. GRH-JO-2; Perkins pf. at 3.

95. The Facility has an aesthetic mitigation plan that involves the use of a vinyl stockade fence and deciduous tree and shrub plantings along the northern, eastern, and western Facility site boundaries. Owens pf. at 6; exh. GRH-JO-2.

96. The stockade fence is out of character with the context of the surrounding area. The Facility also includes an extensive earthen berm and landscape plantings along the perimeter of the fence at the most sensitive viewing positions. The berm and landscape plantings will help integrate the Facility into the existing visual environment when viewed from foreground vantage points, thereby minimizing line and form contrast. Perkins pf. at 3.

97. Initial plantings will range from 5 to 7 feet in height and grow to between approximately 9 and 75 feet high. Owens pf. at 6; exh. GRH-JO-2.

98. GRH Growth and the landowners abutting the northeastern and southwestern corners of the Facility executed screening agreements. Behn pf. at 19; exh. GRH-CM-10.

99. Vernon's Town Plan notes that the site is an important agricultural resource that occupies a prominent position within the community's rural landscape. Town Plan of Vernon at 5, 64-65; exh. GRH-JO-2.

Discussion

In determining whether a proposed facility satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Commission applies the so-called "Quechee test."

The first step in the two-part Quechee test is to determine whether a facility would have an adverse impact on aesthetics and the scenic and natural beauty of an area because the facility would not be in harmony with its surroundings. Specific factors used in making this evaluation

include the nature of the facility's surroundings, the compatibility of the facility's design with those surroundings, and the suitability of the facility's colors and materials with the immediate environment, the visibility of the facility, and the impact of the facility on open space. If the facility does not have an adverse effect on aesthetics because it is in harmony with its surroundings, then the facility satisfies the aesthetics criterion.

If a facility would have an adverse effect on aesthetics, such adverse impact will be found to be undue if any one of the three following questions is answered affirmatively: (a) Would the facility violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? (b) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed facility with its surroundings? (c) Would the facility offend the sensibilities of the average person?

In addition, the Commission's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."¹⁹

The parties agree that the Facility will have an adverse impact on the aesthetics and natural beauty of the area. After reviewing the record evidence, I agree that the Facility will have an adverse impact on aesthetics or on the scenic or natural beauty of the area because the Facility is not in harmony with its surroundings, introduces novel colors and materials into the immediate environment, is prominently visible from certain public vantage points, and has an impact on open space. Because there is no dispute that the Facility will have an adverse impact on aesthetics or on the scenic or natural beauty of the area, I move directly to an analysis of whether the impact is unduly adverse under step two of the *Quechee* test.

Clear, Written Community Standard

The first prong in the second step of the *Quechee* test asks: Would the facility violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? The sources of such community standards are town and regional plans.²⁰ "In order for a provision to be considered a clear, written community standard, it must be 'intended to preserve the aesthetics or scenic beauty of the area' where the proposed facility is located and

¹⁹ *In re: Northern Loop Facility*, Docket No. 6792, Order of 7/17/03, at 28.

²⁰ *In re Apple Hill Solar LLC*, 2021 VT 69, ¶ 32, 215 Vt. 523, 280 A.3d 44.

must apply to specific resources in the proposed facility area.”²¹ Generalized statements and general scenic resource policies that are not focused on a particular scenic resource or that fail to offer specific guidance or measures to protect the resource cannot be considered “clear, written community standards.”²² For example, a plan that “designate[s] areas and resources that need protection” would constitute a clear, written community standard.²³

The Town Plan includes general statements and policies concerning scenic landscapes within the Town of Vernon, but does not contain a specific written standard designed to preserve the aesthetics or scenic, natural beauty of the area that would apply to the Facility. For example, the Town Plan articulates an expectation that the scenic and rural character of the Town will be maintained, and that agricultural lands should be preserved for farming.²⁴ The Facility site is also identified on the Existing Land Use Map as important agricultural land.²⁵ However, these elements of the Town Plan are generalized and broad in scope, rather than being particularized with respect to the Facility site. There are no clear, written standards that apply to specific scenic resources in Vernon near or at the Facility site.

The Town of Vernon contends that the Facility “cannot reasonably be characterized as consistent with the scale and pattern of solar development that has occurred in the Town to date” and, therefore, the Facility is inconsistent with the Solar Energy Potential Map of the Vernon Town Plan.²⁶ This argument is unpersuasive because consistency with scale of existing development is not the standard. The standard under *Quechee* is whether there is a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area. I recommend the Commission conclude that the Facility does not violate any clear, written community standards contained in the Town Plan.

The Windham Regional Commission determined that the Facility is compliant with the Windham Regional Plan. Moreover, the Windham Regional Plan does not contain any specific land conservation measures or policies that would be violated by the Facility. No party raised

²¹ *Georgia Wind*, Docket No. 7508, Order of 6/11/10 at 52.

²² *Id.* at 53.

²³ *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 19, 202 Vt. 59, 147 A.3d 621; *In re UPC Vermont Wind, LLC*, 2009 VT 19, ¶ 38, 185 Vt. 296, 969 A.2d 144; *Petition of UPC Vermont Wind, LLC*, Docket No. 7156, Order of 8/8/07 at 65.

²⁴ Town Plan of Vernon at 37-41.

²⁵ *Id.* at 75.

²⁶ Town of Vernon Brief at 8.

issues with respect to either the Windham Regional Plan or the Windham Regional Planning Commission's determination. To the extent the Windham Regional Plan contains general scenic-resource policies that do not specifically identify the Facility site as an area for protection, are not focused on a specific scenic resource, and fail to offer specific guidance or measures to protect a specific resource, these policies cannot be considered "clear, written community standards."²⁷ The Town of Vernon did not provide any argument in its brief about the Windham Regional Plan with respect to the Facility. For the foregoing reasons, I recommend that the Commission conclude that the Facility does not violate any clear, written community standards contained in the Windham Regional Plan.

In sum, I recommend that the Commission conclude that the Facility does not violate a clear, written community standard in either the Vernon Town Plan or the Windham Regional Plan.

Reasonable Aesthetic Mitigation

Under the second prong in the second step of the *Quechee* test, the Commission must find that a petitioner has taken generally available mitigating steps that a reasonable person would take to improve the harmony of the Facility with its surroundings. The Commission does not require renewable energy to be invisible.²⁸ A petitioner "is not required to eliminate all visibility" of a facility "but must provide sufficient mitigation to prevent the [facility] from having an unduly adverse aesthetic impact."²⁹

Overall, the Petitioner and the Department identify site selection, vegetative, structural, and landform screening, screening agreements with adjacent private landowners, and a proposed landscape mitigation plan as evidence that the Petitioner has taken generally available mitigating steps to improve the harmony of the Facility with its surroundings. Views of the Facility will be screened from the north and south by existing vegetation, structures, and landforms.³⁰ For views

²⁷ *Georgia Wind*, Docket No. 7508, Order of 6/11/10 at 53.

²⁸ *Petition of MHG Solar LLC for a certificate of public good*, Case No. 20-1261-NMP, Order of 11/19/21 at 3.

²⁹ *Petition of Acorn Energy Solar 2, LLC*, Case No. 17-4049-NMP, Order of 7/26/19 at 40; *see also* *Petition of Next Generation Solar Farm, LLC*, Docket No. 8523, Order of 4/6/17 at 9 ("Petitioners are not required to completely 'harmonize' their projects, and they are not required to abandon their projects if some adverse scenic impacts.").

³⁰ Exh. GRH-JO-2c.

from the west and east, the Petitioner has proposed mitigating steps to help reduce potential adverse aesthetic impacts from public and private properties, including a stockade fence, an earthen berm, and landscape plantings.³¹

The Town of Vernon argues that the proposed mitigation measures do not eliminate the impact of the Facility on its surroundings and that the proposed stockade fence will exacerbate it. According to the Town of Vernon, the stockade fence “would create a hard visual barrier along portions of the roadway, fundamentally altering the open character of the corridor and drawing attention to the very industrial use it is intended to conceal.”³²

The proposed stockade fence would screen views of the Facility from several adjoining properties and from Governor Hunt Road. The fence would stretch approximately 400 feet along Governor Hunt Road.³³ Additional sections of stockade fencing are proposed for the western and northern boundaries of the array near adjoining residences. The Commission has previously approved stockade fencing as mitigation in substation projects, telecommunications projects, and at least two solar facilities.³⁴ However, none of the past cases I have reviewed involved a fence as long as the one proposed in this case. Additionally, some of the approved stockade fences were constructed of natural-colored wood. The proposed fence would be made of white vinyl, which will cause the proposed fence to stand out more against the surrounding fields and hedgerows, as shown in Figure 1, below.

Fig. 1 Specifications for the Proposed Stockade Fence. Exh. GRH-NB-12.

³¹ *Id.*

³² Town of Vernon Brief at 10.

³³ Exhs. GRH-JO-2c and GRH-NB-12.

³⁴ See e.g., *Petition of New Cingular Wireless Pcs, LLC, d/b/a AT&T Mobility (AT&T), for A Certificate of Pub. Good, Pursuant to 30 V.S.A. § 248a, for the Installation of Telecommunications Equip. in the Town of Killington, Vermont*, Docket No. 7758, Order of 8/31/2011; *Petition of the Town of Colchester for A Certificate of Pub. Good, Pursuant to 30 V.S.A. §§ 248 & 8010 for A 150 Kw (Ac) Grp. Net-Metered Solar Generation Facility in Colchester, Vermont*, Case No. 18-2364-NMP, Order of 9/18/2018 at 9.



The Commission has previously found that proposed aesthetic mitigation does not “fulfill[] the basic intent” of mitigation if it is “out of character with the surroundings” and does not “improve the harmony” of a proposed facility with its surroundings.³⁵ Here, both the Town of Vernon and the Department’s independent expert contend that the proposed stockade fence is out of character within the context of the adjacent village.³⁶ I agree with this characterization because of the size, materials, and appearance of the proposed fence. Aesthetic mitigation does not need to completely screen a proposed facility from view, so there is no need for an opaque fence.³⁷ Therefore, I recommend that the Commission find that the proposed stockade fence is not reasonable mitigation because it creates more aesthetic harm rather than ameliorate it. Additional vegetative screening would be more effective at harmonizing the Facility with its surroundings. Similarly, a fixed-knot agricultural fence like the one proposed for the north and

³⁵ *Application of Ryegate GLC Solar*, Case No. 16-0037-NMP, Order of 8/21/18 at 22.

³⁶ Brief of the Town of Vernon at 11-12; Perkins pf. at 3.

³⁷ Exh. GRH-JO-2c.

south boundaries of the Facility (see Figure 1 for a comparison of the two fence styles) is less obtrusive and a better fit for the landscape.³⁸

For these reasons, I recommend that the Commission require the Petitioner to file a revised aesthetic mitigation plan that eliminates or reduces the proposed stockade fencing for Commission approval before beginning construction. The Petitioner may need to propose additional vegetative screening to ensure adequate mitigation in areas where the fence was the only proposed mitigation. However, the current aesthetic mitigation plan, without the stockade fence, provides appropriate screening through the proposed vegetation and the berm, which will screen the most significant views from Governor Hunt Road.³⁹ Therefore, I recommend that the Commission grant a CPG subject to the approval of a final aesthetic mitigation plan because the current aesthetic mitigation plan is generally appropriate but for the stockade fence. The parties should be given a two-week opportunity to comment and request a hearing on the final aesthetic mitigation plan before any Commission approval is given.

It may still be appropriate for the Petitioner to retain limited portions of stockade fence in certain areas of the Facility. The Petitioner has reached agreements with at least two adjoining landowners concerning aesthetic mitigation, and the agreements includes provisions for the construction of a stockade fence.⁴⁰ The Petitioner may propose stockade fencing to screen specific views from adjoining residences if the landowner has requested stockade fencing or if stockade fencing is the only reasonable method of providing mitigation. The limited use of stockade fencing near the residences abutting the western and northern boundaries of the array would not raise the same aesthetic concerns because they would be limited in scope and not particularly visible from public roads.⁴¹ Subject to this proposed condition, I recommend that the Commission conclude that the Petitioner has taken reasonably available mitigating steps to improve the harmony of the Facility with its surroundings.

³⁸ Exhs. GRH-JO-2c, GRH-NB-12.

³⁹ Exh. GRH-JO-2c.

⁴⁰ Exhs. GRH-NB-14, GRH-CM-10.

⁴¹ *See id.* (showing locations of residences and proposed stockade fences).

Shocking or Offensive

Finally, I turn to the third prong in the second step of the *Quechee* test, under which the Commission considers whether the Facility would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. For purposes of this analysis, the “average person” is defined as a neutral party viewing the facility from both public and private vantage points, applying an objective rather than a subjective standard.⁴² The Commission has recognized in previous cases that “scenic qualities of the area are important to its residents and there will always be some resistance to any change in the landscape. However, the *Quechee* test does not guarantee that the aesthetic qualities of an area will not change.”⁴³ The Commission has also acknowledged that the greater the distance a viewer is from a facility, the less overwhelming the facility is and consequently the less likely “an average viewer would find [the Facility’s] observation shocking or offensive” even if the facility “may be seen as ‘out of character’ with the surrounding area.”⁴⁴

Much of the Town of Vernon’s arguments about whether the Facility has the potential to shock or offend focuses on impacts caused by the stockade fence. I have recommended that the Commission require the Petitioner to revise this portion of the Facility’s plans because the fence is not necessary and reasonable mitigation. If the Commission accepts that recommendation, it is not necessary to further address the Town’s argument that the stockade fence would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person.

The Town of Vernon also argues that the Facility will “substantially alter existing viewsheds and introduce a prominent industrial feature into an otherwise rural landscape, particularly during leaf-off conditions.”⁴⁵ There will be limited views of the Facility from private and public vantage points. These viewpoints include Governor Hunt Road and Fort Bridgman Road, two major public roads in Vernon.⁴⁶ However, views of the Facility will not be widespread, and even during leaf off season the views will be partially obscured by vegetation.⁴⁷

⁴² *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶¶ 21-22, 202 Vt. 59, 147 A.3d 621.

⁴³ *UPC Vt. Wind, LLC*, Docket 7156, Order of 8/8/07 at 69.

⁴⁴ *In re UPC Vt. Wind, LLC*, 2009 VT 19, ¶¶ 33-34, 185 Vt. 296, 969 A.2d 144.

⁴⁵ Town of Vernon Brief at 8.

⁴⁶ Exhs. GRH-JO-2 at 4-5, GRH-JO-2b, GRC-JO-2c.

⁴⁷ Perkins pf. at 2; exh. DPS-GP-2 at 8-10.

Further, the Facility has been designed to mitigate potential views from the aforementioned viewpoints by incorporating vegetative plantings and a berm.⁴⁸ Additionally, the Petitioner has agreed to plant white spruce evergreens for screening of a residence to the northeast of the Facility site.⁴⁹ Subject to this mitigation and the revised mitigation plan that is discussed above, I recommend that the Commission conclude that the Facility will not be shocking and offensive to the average person.

Aesthetics Conclusion

The Town of Vernon also argues that the Commission should consider the Facility's impacts on agricultural soils when evaluating whether the Facility's aesthetic impact is unduly adverse. I have considered the agricultural character of the field and any impacts on soils and do not find that these factors would cause the construction of the Facility to be unduly adverse. The surrounding area contains a mix of fields, residential areas, the village of Vernon, and the Vernon Dam. While the facility is not in character with the existing scheme of development, the Facility's limited visibility and the use of appropriate vegetative screening will prevent the Facility's aesthetic impact from being undue.

In conclusion, and subject to the condition described above, I recommend that the Commission find that the aesthetic impacts of the Facility will be adverse but will not be unduly so.

Historic Sites

100. The Facility will not have an undue adverse effect on historic properties. This finding is supported by the additional findings below.

101. A Phase IB study conducted on the Facility site identified 91 pieces of pre-contact cultural materials located in two activity areas. Cherau pf. at 4; exh. GRH-SC-2.

102. The cultural materials were distributed into two activity areas, Locus A and Locus B, in the wooded southern portions of the Facility site. Cherau pf. at 4.

⁴⁸ Perkins pf. at 3.

⁴⁹ Owens supp. pf. at 2-3.

103. A Phase II study involved additional subsurface testing in the agricultural field and wooded southern area and resulted in recovery of an additional 177 pieces of pre-contact cultural materials. Cherau pf. at 4.

104. One archaeological site identified at the Facility site — the Hemlock Spring Site — meets the historic site definition. Cherau pf. at 5.

105. The combined results of the Phase IB and Phase II investigations indicate that Locus A and Locus B of the Hemlock Springs Site have yielded and have the potential to yield important archaeological deposits including lithic artifact assemblages, faunal remains, and cultural features with good integrity. Cherau pf. at 5.

106. The Facility was redesigned so that its components do not fall within the archaeological site boundaries for Loci A and B. Cherau pf. at 5.

107. An archaeological site avoidance and protection plan has been developed in consultation with DHP to ensure that significant pre-contact cultural deposits within the Loci A and B site boundaries are avoided and protected during the construction phase of the Facility. Cherau pf. at 6; DHP MOU.

108. GRH Growth will ensure that the construction contractor implements the site avoidance and protection measures described in the archaeological site avoidance and protection plan prior to the start of construction. Cherau pf. at 6; exh. GRH-SC-4.

Discussion

The DHP MOU specifies the procedures for additional archaeological work at the Facility site to protect historic resources. I recommend that the Commission include the parties' proposed CPG conditions in the CPG for the Facility.

Rare and Irreplaceable Natural Areas

109. The Facility will not have an undue adverse effect on rare and irreplaceable natural areas because there are no rare and irreplaceable natural areas within the Facility area. Clark pf. at 18; exh. GRH-KC-3.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

110. The Facility will not have an undue adverse effect on any endangered species or necessary wildlife habitat. This finding is supported by the additional findings below.

111. According to a database and field surveys, no necessary wildlife habitat is present within the Facility site. Clark pf. at 17-18; exh. GRH-KC-3.

112. A database review of known occurrences of rare, threatened, or endangered (“RTE”) species within, adjacent to, and within one mile of the Facility site was conducted. Clark pf. at 18.

113. One RTE animal species’ habitat was identified as located along the edges of the Facility site. Clark pf. at 18.

114. Based on guidance provided by ANR, tree removals will not be performed on the Facility site during the breeding season (May 1 through August 31) for this species. Additionally, vegetative clearing that does not involve tree removal during the breeding season for this species may be conducted so long as such activities are within the limits of the Facility site and contained by acceptable erosion and sediment controls. With these restrictions in place, there will be no adverse impact on the species. Clark pf. at 18.

115. According to the United States Fish and Wildlife Service, the Facility site is within the known range of an additional RTE animal species, but there are no known occurrences of the species’ summer or winter habitat in the Facility site, so the Facility site is assumed to fall within the potential summer habitat range of the species. Clark pf. at 18-19.

116. To mitigate potential impacts on the habitat of the species, the Facility will adhere to time-of-year restrictions for tree clearing activities to avoid tree clearing between April 15 and October 31. Based on available database reviews and field surveys, this mitigation approach will not destroy or significantly imperil the RTE species with potential summer habitat range in the Facility site. Clark pf. at 19.

117. RTE plant survey results also indicated that two rare plant species are found along the west and north sides of the Facility site. The Facility design accommodates these locations with 25-foot buffers around each RTE plant location, which will prevent adverse impacts on these species. Clark pf. at 19; exh. GRH-KC-3.

Discussion

The Petitioner and ANR have entered into an MOU with requirements that will protect wetlands and RTE species. I recommend that the Commission condition the Facility’s CPG on compliance with the requirements contained in the ANR MOU.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

118. The Facility will not unnecessarily or unreasonably endanger any public or quasi-public investment in a 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. This finding is supported by the additional findings below.

119. The Facility will involve limited and temporary use of the roads near the Facility site during construction and operation. Behn pf. at 28.

120. GRH Growth will pay for any necessary improvements or repairs to the roads that are Facility-related. Behn pf. at 28.

121. The Facility design includes supplemental landscaping to mitigate the already limited views of the Facility. Behn pf. at 28.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

122. The Facility will not have any undue adverse effects on the health, safety, and welfare of the public. This finding is supported by the additional findings below.

123. All switchgear equipment will be inside a locked, UL-listed, code-approved electrical enclosure. Behn pf. at 21.

124. A perimeter fence with a minimum height of 8 feet will prevent unauthorized persons from accessing the Facility and potentially causing damage to the Facility or harm to themselves. The fence will be posted with appropriate electrical warning signs. Behn pf. at 21-22.

125. The solar panels are designed to absorb rather than reflect the sun's energy or will have anti-reflective coating to reduce glare, which will prevent undue glare. Behn pf. at 22.

126. The transformers will be installed with a secondary containment structure capable of holding 110% of the volume of oil in each. Behn pf. at 22.

127. The transformers will have a minimum of five inches of freeboard so that the surrounding land and water resources will be protected in the event that any transformer fluid leaks from the transformer. Behn pf. at 22; exh.GRB-NB-11.

128. The Facility will utilize silicon-based bi-facial panels which are glass-on-glass. These panels are encapsulated in glass which further reduces the already low fire risk as compared to some older generations of panels. Behn pf. at 22.

129. The Facility will comply with both the National Electric Safety Code and the National Electric Code, as well as applicable regulations under the National Fire Protection Association Fire Code. Behn pf. at 22.

Primary Agricultural Soils

[30 V.S.A. § 248(b)(5)]

130. The Facility will not have an undue adverse effect on primary agricultural soils (“PAS”) as defined in 10 V.S.A. § 6001. This finding is supported by the additional findings below.

131. The Facility is located on approximately 16.51 acres of PAS. Clark pf. at 20; exh. GRH-KC-3.

132. Planned construction activities will result in a total impact of 1.75 acres of PAS that includes 1.11 acres of minimal excavation for access routes, staging areas, transformer pads, and electric conduit trenching, along with 0.64 acre of tree clearing with stump removal. Clark pf. at 20; exh. GRH-KC-2a; exh. GRH-KC-3.

133. Where impacts on PAS occur within the Facility site, the Facility will comply with guidance provided by AAFM in a letter dated January 15, 2025, including all the following: providing a site plan that depicts PAS, limits of disturbance, and locations of proposed PAS stockpiles; stockpiling PAS separately by soil horizon, making sure piles are located and planted with ground cover to prevent erosion and preserve integrity; stockpiling PAS within the Facility fence or a similarly secure location on slopes with less than a 15% grade; where installing conduit or other Facility features using fill or other imported material in areas of PAS, removing PAS in a manner that separates soil horizons, stockpiling the displaced soil, and replacing remaining soil horizons in their original sequence to fill the trench after installation of the conduit or other feature; replacing PAS in the original sequence at the conclusion of construction or Facility decommissioning; limiting grading of PAS except where necessary for Facility construction, like in roadways and for stormwater management; placing a suitable barrier, like geotextile fabric, between soil or gravel and native soils where road construction and staging

areas are located; limiting soil compaction where possible during construction and in areas where tree clearing and cutting will occur; and conducting bulk density testing on each mapped PAS soil unit within the Facility's limits prior to construction and at the end of decommissioning. Clark pf. at 20-21; exh. GRH-KC-3; Case No. 24-3714-AN, Letter from AAFM of 1/15/25.

Discussion

The Town of Vernon argues that the construction of the Facility will have an undue adverse impact on primary agricultural soils because the Petitioner has not mitigated the impact on such soils to the maximum extent feasible as required by Act 250 criterion 9(B) and 10 V.S.A. § 6093. Specifically, the Town is concerned that the Petitioner has not proposed “a detailed and enforceable plan describing how primary agricultural soils will be segregated, preserved, protected from degradation, and ultimately restored following decommissioning.”⁵⁰

This argument is unpersuasive because it relies on the wrong statutory standard. The Commission is required to make a finding that a proposed facility will not have an undue adverse effect on “the natural environment . . . 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) [and] impacts to primary agricultural soils as defined in 10 V.S.A. § 6001.”⁵¹ While Section 248 requires consideration of several Act 250 criteria, the statute does not incorporate the specific standards of 10 V.S.A. §§ 6086(a)(9)(B) and 6093. Instead, the statute requires the Commission give due consideration to “primary agricultural soils as defined in 10 V.S.A. § 6001.”⁵² The Commission's determination of whether impacts on primary agricultural soils are undue focuses on whether an applicant has taken reasonable steps to minimize impacts on primary agricultural soils and whether the applicant will take reasonable steps to preserve and restore primary agricultural soils but Section 248 does not require compliance with the “maximum extent feasible” standard advocated by the Town of Vernon.⁵³

⁵⁰ Town of Vernon Brief at 12.

⁵¹ 30 V.S.A. § 248(b)(5).

⁵² *Id.*

⁵³ See e.g., *Petition of Saint Albans Solar, LLC for A Certificate of Pub. Good Pursuant to 30 V.S.A. S 248 Authorizing the Installation & Operation of A 4.9 Mw Solar Elec. Generation Facility Off U.S. Route 7 in the Towns of St. Albans & Georgia, Vermont, to Be Known As the St. Albans Solar Project*, Case No. 17-3539-PET, Order of 3/7/18 at 15 (“The stipulating parties agree to proposed conditions in the CPG for the Project to minimize disturbance to primary agricultural soils and to ensure that primary agricultural soils are restored to pre-existing

Furthermore, the AAFM Stipulation establishes a detailed and enforceable plan for how agricultural soils will be segregated, preserved, protected from degradation, and ultimately restored following decommissioning. I recommend that the conditions contained in the AAFM Stipulation be included in the CPG for the Facility. Subject to these conditions, I recommend that the Commission find that the Facility will not have an undue adverse effect on primary agricultural soils.

Consistency With Company's Least Cost Integrated Plan

[30 V.S.A. § 248(b)(6)]

134. The Commission has not required non-utilities to have a least-cost integrated resource plan. Therefore, this criterion is inapplicable.

Compliance with Twenty-Year Electric Plan

[30 V.S.A. § 248(b)(7)]

135. The Facility is consistent with the 2022 Comprehensive Energy Plan approved by the Department under 30 V.S.A. § 202(f). This finding is supported by the additional finding below.

136. The Department has determined pursuant to 30 V.S.A. § 202(f) that the Facility is consistent with the 2022 Comprehensive Energy Plan. Department's Section 202(f) Determination.

Waste-to-Energy Facility

[30 V.S.A. §248(b)(9)]

137. The Facility does not involve a waste-to-energy facility; therefore, this criterion is not applicable.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

138. The Facility can be served economically by existing or planned transmission facilities without undue adverse effects on Vermont utilities or customers. This finding is supported by the additional findings below.

conditions upon decommissioning. The stipulating parties agree that the conditions are necessary to avoid undue adverse effects on primary agricultural soils.”).

139. Existing equipment and the existing National Grid substation will be utilized for the Facility's service. Retelle pf. at 10.

140. By submitting an application through ISO-NE's Surplus Interconnection Service process, GRH Growth is ensuring there will be no adverse stability or reliability impacts on the ISO-NE Power System beyond the Vernon substation. Retelle pf. at 10.

Woody Biomass Facilities
[30 V.S.A. § 248(b)(11)]

141. The Facility will not produce electric energy using woody biomass; therefore, this criterion is not applicable.

Minimum Setback Requirements
[30 V.S.A. § 248(s)]

142. The Facility complies with Vermont's statutory setback requirements for ground-mounted solar electric generation facilities because the Facility'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. Behn pf. at 29.

Discussion

30 V.S.A. § 248(s) requires that the nearest portion of a facility's solar panels or support structure for a solar panel be set back at least 100 feet from any state or municipal highway and at least 50 feet from any property boundary that is not a state or municipal highway. The setbacks proposed for the Facility's solar panels or support structures for the solar panels meet these minimum requirements.

V. DECOMMISSIONING COST ESTIMATE AND LETTER OF CREDIT

143. The Facility is expected to have a 30-year life based on standard equipment warranties available for solar panels and the anticipated growing need for renewable energy in future years. Behn pf. at 28-29.

144. At the end of the Facility's useful life, a determination will be made as to whether the Facility can be re-powered or if it will be decommissioned and the site restored. Behn pf. at 29.

145. If decommissioned, the Facility's letter of credit will cover the cost of dismantling equipment, removing it from the site, and the costs of site restoration. Behn pf. at 29.

146. The dismantled equipment will either be sold, re-used, recycled, or disposed of in accordance with the applicable waste laws and regulations in existence at that time, and the site will be restored to its condition prior to the installation of the Facility to the greatest extent practicable in accordance with the decommissioning plan and cost estimate. The cost estimate includes costs at current rates and does not take any salvage value into account. Behn pf. at 29.

Discussion

Commission Rule 5.900 establishes standard requirements for the decommissioning of electric generation, electric transmission, and natural gas facilities. Rule 5.904(B) requires that non-utility-owned generation facilities greater than 500 kW in capacity be removed once they are no longer in service and the site be restored, to the greatest extent practicable, to the condition it was in before installation of the facility. Commission Rule 5.904(B)(2) also requires that requests to construct these facilities include a draft irrevocable standby letter of credit in an amount sufficient to fund the estimated decommissioning and site restoration costs.

GRH Growth has submitted a plan for decommissioning the Facility with a detailed cost estimate of \$126,417.60 to decommission the Facility. GRH Growth has also submitted a draft irrevocable standby letter of credit that complies with our requirements regarding letters of credit.

The Department recommends that the Commission find that the Facility satisfies the Section 248 criteria and is in the general good of the State of Vermont but did not make specific recommendations about the Petitioner's decommissioning cost estimate or draft letter of credit and drawing certificate.

GRH Growth's cost estimate and the draft letter of credit and drawing certificate submitted with the cost estimate are consistent with the requirements of Commission Rule 5.904(B). Therefore, I recommend that the Commission include in the CPG for the Facility conditions requiring compliance with the terms and conditions of the proposed decommissioning plan and relevant provisions of Commission Rule 5.904(B).

VI. MEMORANDA OF UNDERSTANDING

147. On March 2, 2026, the Petitioner filed the ANR MOU, which contains provisions to protect against undue impacts on natural resources. ANR MOU.

148. On March 2, 2026, the Petitioner filed the DHP MOU, which contains provisions to protect against undue impacts on historic resources. DHP MOU.

149. On March 2, 2026, the Petitioner filed the AAFM Stipulation, which contains proposed CPG conditions to protect against potential undue impacts on a variety of resources including PAS. AAFM Stipulation.

Discussion

I recommend that the Commission accept the ANR MOU, the DHP MOU, and the AAFM Stipulation with all of their provisions and conditions without material change or conditions and require GRH Growth to comply with the terms and conditions of the MOUs and Stipulation as a condition of the Commission's approval of the Facility.

VII. CONCLUSION

Based upon the evidence in the record, I recommend that the Commission conclude that the Facility, subject to the conditions set forth herein:

(a) 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, and the recommendations of the municipal legislative bodies;

(b) complies with the screening requirements of applicable municipal bylaws or ordinances and recommendations of a municipality applying such a bylaw or ordinance;

(c) will meet a need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and load-management measures, including those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of Title 30;

(d) will not adversely affect system stability and reliability;

(e) will result in an economic benefit to the State and its residents;

(f) will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d), impacts on

primary agricultural soils as defined in 10 V.S.A. § 6001, and 6086(a)(1) through (8) and (9)(K), and greenhouse gas impacts;

(g) is a non-utility Facility and criterion 30 V.S.A. § 248(b)(6) is therefore not applicable;

(h) is consistent with the *Vermont Twenty-Year Electric Plan*;

(i) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Secretary of Natural Resources;

(j) does not involve a waste-to-energy facility;

(k) can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers;

(l) does not involve an in-state generation facility that produces electric energy using woody biomass; and

(m) is consistent with statutory minimum setback requirements.

This proposal for decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Date: August 21, 2026



Jake Marren, Esq.
Hearing Officer

VIII. PROPOSED ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

1. The findings, conclusions, rulings, 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 3.5 MW AC solar electric generation facility proposed for construction and operation by GRH Growth LLC (the “CPG Holder”) at a parcel of land off Governor Hunt Road in Vernon, 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 will be issued in this matter.
3. The CPG Holder must file a final aesthetic mitigation plan for Commission review and approval. The parties will have two weeks to submit comments and requests for hearing on the final aesthetic mitigation plan.
4. 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.

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-2412-PET

Petition of GRH Growth, LLC, pursuant to 30 V.S.A § 248, authorizing the construction and operation of a 3.5 MW solar array in Vernon, Vermont	
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Entered:

CERTIFICATE OF PUBLIC GOOD (“CPG”) ISSUED
PURSUANT TO 30 V.S.A. § 248

IT IS HEREBY CERTIFIED that the Vermont Public Utility Commission (“Commission”) this day found and adjudged that the site preparation, construction, operation, and maintenance of a 3.5 MW solar electric generation facility off of Governor Hunt Road in Vernon, Vermont (the “Facility”), by GRH Growth LLC (“CPG Holder”), in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State, subject to the following conditions:

1. Site preparation, construction, operation, and maintenance of the Facility must be in accordance with the plans and evidence submitted in this proceeding. Any material deviation from these plans or a substantial change to the Facility must be approved by the Commission. Failure to obtain advance approval from the Commission for a material deviation from the approved plans or a substantial change to the Facility may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.

2. Before beginning site preparation, construction, operation, or maintenance of the Facility, the CPG Holder must obtain all other necessary permits and approvals. Site preparation, construction, operation, and maintenance of the Facility must be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Vermont Agency of Natural Resources (“ANR”).

3. The CPG Holder must restrict construction activities and related deliveries for the Facility to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays. No construction activities or deliveries are allowed on

Sundays, state holidays, or federal holidays except where construction activities must be performed during required outages needed to maintain system reliability.

4. The CPG Holder is responsible for all costs of distribution and transmission system upgrades that are necessary in order to address adverse impacts on system stability and reliability due to the Facility, as determined by the system impact study or other applicable study.

5. Before beginning site preparation, the CPG Holder must file with the Commission, the parties, and the Town of Vernon a letter stating that it has fulfilled all pre-site preparation CPG conditions, and that it intends to begin site preparation for the Facility.

6. Before operating the Facility, the CPG Holder must file with the Commission, the parties, and the Town of Vernon a letter confirming that it has fulfilled all pre-operation CPG conditions and that it intends to begin operation of the Facility.

7. As required by 30 V.S.A. § 248(a)(7), within 45 days of the date of this Order, the CPG Holder must record a notice of the CPG on the form available at <http://puc.vermont.gov/document/cpg-municipal-notice-form> in the land records of each municipality in which a facility subject to the CPG is located.

8. As provided in 30 V.S.A. § 248(t), despite any contrary provision of the law, primary agricultural soils as defined in 10 V.S.A. § 6001 located on the site of a solar electric generation facility approved under Section 248 must remain classified as such soils, and the review of any change in use of the site subsequent to the construction of the Facility must treat the soils as if the facility had never been constructed.

9. The CPG Holder must pay all invoices (if any) from any State agency that (a) are related to this proceeding and (b) are not still under review by the Commission.

10. This CPG may not be transferred without prior approval of the Commission.

11. The CPG Holder must remove the facilities authorized by this CPG once they are no longer in service and must restore the site to its condition before installation of the Facility to the greatest extent practicable, consistent with the terms and conditions of its proposed decommissioning plan, identified in the evidentiary record as exhibit GRH-NB-20.

12. Before beginning site preparation, the CPG Holder must file with the Commission and obtain Commission approval for an executed letter of credit or other form of financial security in the amount of \$126,417.60. The letter of credit must be an irrevocable standby letter

of credit that: (i) names the Commission as the sole beneficiary of the letter of credit; (ii) is issued by an A-rated financial institution; (iii) includes an automatic extension provision or “evergreen clause”; and (iv) is bankruptcy remote. If the CPG Holder elects to establish the fund using an alternative form of financial security, that security must be established solely for the benefit of the Commission.

13. Every three years the CPG Holder must file a report with the Commission, the Vermont Department of Public Service (“Department”), and each party to this proceeding, describing any adjustments and changes to the decommissioning fund in the previous three-year period. This report must be filed no later than February 28 of the third year following the issuance of the CPG and every subsequent third year.

14. The value of the decommissioning fund must be adjusted for inflation every three years based on the net positive change in the annual average of the U.S. Bureau of Labor Statistics’ Northeast Urban Consumer Price Index for the preceding three-year period.

15. The Facility’s standby letter of credit or other form of financial security must be adjusted every three years to reflect changes to the decommissioning fund as provided in condition 14, above. Revisions must be made no later than February 28 in conjunction with the report required pursuant to condition 13, above. The Commission may require more frequent adjustments due to facility or site conditions.

16. The Commission has the right to draw on the Facility’s irrevocable standby letter of credit or other form of financial security to pay for decommissioning in the event that the CPG Holder has not begun decommissioning activities within 90 days of a Commission order directing decommissioning.

17. Upon completion of all decommissioning and site restoration activities, the CPG Holder must request a determination from the Commission that the CPG Holder’s decommissioning obligations have been satisfied. Upon the Commission’s determination that the decommissioning obligations have been satisfied, the Commission will terminate the Facility’s letter of credit or other form of financial security.

18. The CPG Holder must file a final aesthetic mitigation plan for Commission approval. The parties will have a two-week opportunity to comment on the final aesthetic mitigation plan and request a hearing.

19. The CPG Holder must fully implement the final aesthetic mitigation plan as soon as reasonably possible, and in no case more than 90 days following the completion of construction, unless such timing would require implementation between October 15 and April 15, in which case the plan must be fully implemented within 30 days of the following April 15.

20. Within 30 days following the full implementation of the final aesthetic mitigation plan, the CPG Holder must submit to the Commission and all parties in this proceeding a certification that all work has been fully implemented in a manner consistent with the approved plan. This certification must include the completion of construction date as well as the date of interconnection and must be supported by an affidavit and dated photographs of the installed mitigation measures. If construction of the facility components and/or aesthetic mitigation has deviated from the design of the Facility as approved, the CPG Holder must also file for Commission review and approval a revised final mitigation plan. Submission of a revised final mitigation plan will not relieve the CPG Holder from its obligation to request an amendment to the CPG for a substantial change.

21. For a period of three years, the CPG Holder must conduct an annual inspection of the Facility to determine the health, vigor, and continued effectiveness of the mitigation. The CPG Holder must file with the Commission and parties an annual certification documenting the results of the inspection and any corrective actions taken. Certifications required under this paragraph must be submitted by the dates one, two, and three years following the submission of the certification of completion required by condition 20, above.

22. The CPG Holder must maintain mitigation measures contained in the final aesthetic mitigation plan or revised final aesthetic mitigation plan for the life of the facility as those measures are depicted on the plan.

23. In accordance with Commission Rule 5.805(C), the Commission may conduct further process as needed to ensure compliance with the final aesthetic mitigation plan or revised final aesthetic mitigation plan.

24. The CPG Holder must comply with the terms and conditions of the Memorandum of Understanding (“MOU”) with ANR admitted into the evidentiary record as Exhibit GRH-CM-8 (“ANR MOU”).

25. The CPG Holder must allow ANR, through its authorized representatives, to enter upon and inspect the Facility area upon reasonable notice, in a reasonable manner, and at reasonable times during ordinary business hours to determine compliance with all conditions in the ANR MOU.

26. All site preparation and work must be in accordance with the terms and conditions of the authorization and any subsequent amendments to the stormwater permits and wetlands permit obtained in this matter.

27. Wetlands and Decommissioning:

- a. No later than six months in advance of the Facility's decommissioning, the CPG Holder must complete and provide to the Vermont Department of Environmental Conservation Wetlands Program, an updated wetlands assessment to determine if any of the Facility infrastructure is located within any Class I or II wetlands or their buffer zones.
- b. If, at the time of Facility decommissioning, any Facility infrastructure is determined to be located within a Class I or II wetland or its buffer zone, then the CPG Holder must obtain from the Wetlands Program a jurisdictional determination as to whether the decommissioning activities require a Vermont Wetland Permit, in which case the CPG Holder must obtain such permit prior to performing any decommissioning activities and comply with its terms and conditions. If, at the time of decommissioning, any Facility 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 must, sufficiently in advance of decommissioning, 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 must address the removal of the solar array and other Facility infrastructure located in any wetland, and must, at a minimum, contain the following elements:
 - i. Identification of phasing and staging areas;

- ii. 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;
 - iii. Revegetation of all disturbed areas within the wetland and buffer zone with appropriate conservation seed mix(es); and
 - iv. Provisions for inspection by ANR prior to and following site restoration.
- c. If any Facility infrastructure is located within a Class I or II wetland or its buffer zone at the time of Facility decommissioning, then decommissioning of the Facility must not take place until ANR'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.

28. To minimize the risk to any impact upon the whip-poor-will bird or the long-eared bat, the CPG Holder must limit tree removal from April 15 through October 31st.

29. To avoid any undue adverse impact upon the Fernald Sedge and Muehlenberg Sedge within the Facility site, the CPG Holder must maintain a 25-foot buffer around each plant location as set forth in the vegetation management plan at Exhibit GRH-KC-10.

30. The CPG Holder must abide by the conditions in the ANR MOU, including:

- a. Facility site preparation and construction:
 - i. Prior to site preparation and construction, a qualified botanist must establish a 25-foot buffer zone around each of the rare, threatened, or endangered ("RTE") plant locations. Each buffer zone must then be enclosed with high-visibility orange barrier fencing to create a barrier between Facility activities and the RTE plants, except as follows regarding sensitive archeological areas. Where the buffer zone extends into the sensitive archeological areas, the buffer zone will be demarcated during construction with stakes and orange flagging.

- ii. The plant buffer zones must be depicted on all Facility plans with instructions that these areas are to be avoided.
 - iii. All workers must be instructed that the fencing is to protect plant habitat and that workers and machinery are not to enter the areas.
 - iv. All vehicles and construction equipment must be thoroughly rinsed with high pressure wash, including wheels and tracks to remove organic matter, seeds, soil and other potential propagules prior to entering the Facility site.
 - v. The below non-native invasive species conditions must also be adhered to.
 - vi. The fencing must be inspected periodically during the duration of site preparation and construction activities to ensure that it is intact and clearly visible. Damaged or missing fencing must be promptly repaired or replaced. The fencing must not be removed until completion of all site preparation and construction activities.
- b. Facility operation:
- i. Upon completion of site preparation and construction activities, and prior to commencement of Facility operation, permanent signage at intervals of no less than 8 feet must be installed along each 25-foot RTE plant buffer zone at the Facility site indicating that the area consists of a protected natural resource and that entry into the area is prohibited except for mowing as set forth in subsection ii below.
 - ii. The signage must also clearly indicate that mowing within the RTE plant area must be performed either once per year or once every other year and only during the period of September 15 through May 1.
 - iii. Mowing equipment must be thoroughly rinsed with high pressure wash to remove all visible soil and plant material prior to entering and operating within the 25-foot RTE plant buffer zones.

- iv. The below non-native invasive species conditions must also be adhered to.
 - v. The permanent fencing and signage must be inspected periodically throughout the operational life of the Facility to ensure that the fencing and signage are intact and clearly visible. Damaged or missing fencing or signage must be promptly repaired or replaced.
- c. Facility decommissioning:
- i. Prior to Facility decommissioning, the CPG Holder must have a qualified botanist perform an updated RTE plant survey of the Facility area. Decommissioning must not occur until the CPG Holder has provided ANR with the survey results and ANR has determined that decommissioning would not result in an undue adverse impact on rare plants, or has approved appropriate avoidance, minimization, or mitigation measures, in which case all decommissioning activities must be performed in accordance with ANR approved measures.
- d. Non-Native Invasive Species.
- i. There must be no loaming or seeding conducted within the 25-foot RTE plant buffer zones, plus an additional 25-feet beyond those zones.
 - ii. A conservation seed mix must be applied in all other areas of soil or vegetation disturbance. The seed mix must be free from potential invasive species and species which are rare or uncommon in Vermont.
 - iii. Any material (*e.g.*, soil, vegetation, etc.) which contains invasive species, and is removed from the Facility site, must be disposed of in a manner (*e.g.*, incineration, burial in a landfill, etc.) that prevents the spread of invasive species to new areas.

31. The CPG Holder must dispose of all construction-related and other waste in accordance with all applicable regulations, including any unknown and unexpected contaminants or wastes encountered during construction.

32. The CPG Holder must comply with the terms and conditions of the MOU with the Vermont Department of Historic Preservation (“DHP”) admitted into the evidentiary record as Exhibit GRH-CM-6 and the Archeological Site Avoidance and Protection Plan (“ASAPP”) as admitted into the evidentiary record as Exhibit GRH-CM-7 and GRH-SC-5.

33. The CPG Holder must conduct archaeological investigation(s) and prepare related reports to identify, evaluate, and mitigate, if necessary, impacts to archaeological sites within the archaeologically sensitive area identified in the north section of the overhead line connection on the east side of Governor Hunt Road (“Facility area”). The CPG Holder’s archaeological consultant must submit any scope of work to DHP for review and approval before commencing the work.

34. Prior to the completion of all relevant archaeological investigations, the CPG Holder, in consultation with DHP, must identify this part of the Facility area as a not-to-be-disturbed archaeological buffer zone. Topsoil removal, grading, scraping, cutting, filling, stockpiling, logging or any other type of ground disturbance must be prohibited within the archaeological buffer zones until all necessary archaeological work is completed.

35. All relevant archaeological studies to identify, evaluate, or mitigate impacts to archaeological sites must be carried out by a qualified consulting archaeologist. All such studies and associated reports must follow the DHP Guidelines for Conducting Archaeological Studies in Vermont (2017). A digital copy of the final report must be submitted to the DHP. Any archaeological reports submitted to the Commission must have specific archaeological site locational information redacted in accordance with 22 V.S.A. § 761(b) and 1 V.S.A. § 317(c) (20).

36. The archaeological investigations must be scheduled so that mitigation measures, if any are determined to be necessary, can be satisfactorily planned and accomplished prior to site preparation and construction of the Facility. Any archaeological sites within the Facility area must not be impacted until mitigation measures have been completed. Proposed mitigation measures must be approved by the DHP prior to implementation. Mitigation may include but is

not limited to further site evaluation, data recovery, or modification of the buffer zone boundaries or the specific conditions that refer to the same.

37. The CPG Holder will ensure that all aspects of the final ASAPP for the Hemlock Springs Site, VT-WD-0404 are implemented before, during, and after Facility construction.

38. No ground disturbance of any kind is permitted within the Hemlock Springs Site (VT-WD-0404) Locus A and Locus B boundaries, except as set forth in the ASAPP.

39. Vegetation management including tree clearing with no stumping and subsequent scrub-shrub management actions are permitted within the VT-WD-0404 site boundaries only under verified frozen ground conditions.

40. The CPG Holder must comply with the terms and conditions of the Stipulation with the Vermont Agency of Agriculture, Food, and Markets (“AAFM”) admitted into the evidentiary record as Exhibit GRH-CM-9.

41. The CPG Holder must:

- a. Provide a site plan that depicts PAS, limits of disturbance, and locations of proposed PAS stockpiles (Appendix A, Figure 3 in Exhibit GRH-KC-3; GRH-KC-8);
- b. Stockpile PAS separately by soil horizon, making sure piles are located and planted with ground cover to prevent erosion and preserve integrity;
- c. Stockpile PAS on slopes at less than or equal to a 15% grade;
- d. Where installing electric conduit or other Facility features using fill or other imported material in areas of PAS, remove PAS in a manner that separates soil horizons, stockpiles the displaced layer(s), and replaces the remaining soil horizons in their original sequence to fill the trench after installation of the conduit or other Facility feature;
- e. Replace PAS in their original sequence at the conclusion of construction or Facility decommissioning,
- f. Limit grading of PAS except where necessary for Facility construction (*e.g.*, roadways and stormwater management),

- g. Place a suitable barrier (*e.g.*, geotextile 1 fabric) between soil or gravel and native soils, where there is road construction and planned staging areas,
- h. Limit soil compaction to the extent possible during Facility construction and in areas where tree clearing and cutting will occur, and
- i. Conduct bulk density testing on each PAS mapped soil unit within the Facility area prior to construction and at the end of decommissioning.

42. The CPG Holder must also do the following to comply with the AAFM Stipulation:

- a. Soil stockpiles alongside the screening fence, also referred to as “berms” in testimony, must be planted with trees and shrubs to prevent erosion, preserve integrity, and provide a secure covering. The CPG Holder must continue to monitor and maintain said stockpiles to ensure the trees and shrubs remain intact and continue serving their purpose of securing the PAS from theft.
- b. In areas of tree clearing and grubbing, any grubbing will occur simultaneously with tree cutting and other construction activities. The process of grubbing will involve removal of tree stumps and roots to facilitate Facility construction, using light equipment such as a skid steer or small excavator. Grubbing in the proposed tree cutting/grubbing area will minimize soil disturbance to include only what is necessary to effectively remove tree stumps and woody debris to construct the Facility. Tree stumps that are removed will be shaken clean over the area from which they were removed. Stumps will either be chipped or ground up. Chips and ground wood will be used to fill any minor depressions in areas from which trees were removed, widely dispersed so as not to form significant piles, and/or transported off the site for proper disposal. Wood in any form must not be piled on the site after construction is complete.
- c. If installing electric conduit or other features with fill or other imported material of any kind in areas of PAS, the CPG Holder must remove soil in a manner that separates soil horizons, stockpile the layer(s) displaced by

the layer of imported for the life of the Facility, and replace the remaining soil horizons in their original sequence to fill the trench after installation of the conduit or other features. When decommissioning, the CPG Holder must excavate and replace soil horizons in the same way, this time removing the conduit (or other features) and imported material and replacing it with the stockpiled layer(s) that the imported material previously displaced. If no imported material is used, no stockpiling must be required for the associated excavation, so long as the CPG Holder ensures that any PAS removed during construction and again during decommissioning is replaced in a manner that retains the integrity of the PAS and the proper sequencing of soil horizons consistent with AAFM guidelines.

- d. Except for grading to create the access road, the Facility must not include any grading of PAS. Any fill or gravel used for roads or staging areas must be separated from native soils by a suitable barrier such as geotextile fabric.
- e. To reduce impacts to PAS from soil compaction, the CPG Holder must not use any vehicle or equipment with an axle load (the fraction of the gross weight distributed over each axle) of over 12,000 pounds on wet soils. Wet soils exist when the site has seen a higher-than-average rainfall for a trailing 30-day period, based on National Weather Service or similar state or federal rainfall data. This prohibition must not apply to the use of any onsite gravel roads that are constructed with geotextile fabric, a minimum of 10 inches of gravel, and a 1 inch or thicker cap of crushed aggregate.
- f. Prior to construction and again at the end of decommissioning, the CPG Holder must test bulk density of the soil on each mapped soil unit containing primary agricultural soils within the Facility limits to ensure that the primary agricultural soils on the site are materially the same after the Facility as they were before construction. “Materially the same” means an increase in soil bulk density of no more than 10 percent. The

CPG Holder must undertake the soil tests and mitigate any material change in soil bulk density as follows:

- i. The CPG Holder must undertake the soil tests and mitigate any material change in soil bulk density as follows: Before construction, for each area of direct impact such as staging areas, access roads, and any area on the Facility site where axle loads (the fraction of the gross weight distributed over each axle) of construction vehicles or equipment will exceed 12,000 pounds per vehicle, the CPG Holder will collect two soil samples at least 100 feet apart and test them using the method “Bulk Density Test” described in the Natural Resources Conservation Service “Soil Quality Test Kit Guide.” (Currently available online at https://efotg.sc.egov.usda.gov/references/public/WI/Soil_Quality_Test_Kit_Guide.pdf.)
- ii. In any areas of primary agricultural soils on the Facility site where axle loads of construction vehicles or equipment will not exceed 12,000 pounds, the CPG Holder must collect and test one sample for each mapped soil unit before construction and must otherwise follow the same testing protocols.
- iii. At the end of the decommissioning process, the CPG Holder must repeat the testing at the same locations tested before construction. If the post-decommissioning soil bulk density for any sample shows an increase in soil bulk density from preconstruction soil bulk density that is greater than 10 percent, then the CPG Holder must conduct agricultural subsoiling and/or other strategies to decompact soil until soil bulk density is materially the same as it was prior to Facility construction.
- iv. The CPG Holder must serve test results upon AAFM within 60 days of the test, as follows: By email to counsel of record in this matter, as listed in PUC records at the time of service; and by

email to AGR.Notice@vermont.gov, as may be updated in PUC records at the time of service.

43. Prior to commencing construction of the Facility, the CPG Holder must file the results of the ISO-NE Surplus Interconnection Service study with the Department and the Commission. This CPG is conditioned on the Commission's approval of the results of the Study after a two-week review and comment period.

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Parties:

Joshua Diamond (for GRH Growth LLC)
Dinse, P.C.
209 Battery St
P.O. Box 988
Burlington, VT 05401
jdiamond@dinse.com

Donald J. Einhorn, Esq. (for Vermont Agency of
Natural Resources)
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3901
donald.einhorn@vermont.gov

Maxwell I Krieger, Esq. (for Division for Historic
Preservation)
Vermont Division for Historic Preservation
One National Life Drive, Davis Bldg., 6th Floor
Montpelier, VT 05620-0501
maxwell.krieger@vermont.gov

Megan LaChance (for Town of Vernon
Selectboard)
P.O. Box 578
Rutland, VT 05702
mlachance@fgmvt.com

Henry Mauck (for Vermont
Department of Public
Service)
112 State Street
Montpelier, VT 05620
henry.mauck@vermont.gov

Willy Jane Patry (for Vermont Agency of
Agriculture, Food and
Markets)
Agency of Agriculture, Food & Markets
116 State St
Montpelier, VT 05620-2901
willyjane.patry@vermont.gov

James F. Pinkerton (for Town of Vernon
Selectboard)
Town of Vernon
JlmpinkertonJr@gmail.com