

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Norwich Upper Loveland Solar, LLC)
for a certificate of public good, pursuant to) **Case No. 21-3587-NMP**
30 V.S.A. §§ 248 and 8010, authorizing the)
installation and operation of a 500 kW (AC))
group net-metering solar electric generation)
system in Norwich, Vermont)

NEIGHBOR INTERVENORS’ REPLY and
MOTION TO STRIKE PETITIONER’S OPPOSITION TO
INTERVENORS’ MOTION TO DISMISS THE PETITION and
MOTION FOR SANCTIONS

NOW COME Neighbor/Intervenors Dan & Jenn Goulet, Samin Kim & Jayoung Joo, Stephen Gorman, John & Heather Benson, Laurence & Shelley Ufford, and Joy Kenseth (collectively “Neighbor/Intervenors”), by and through their attorney L. Brooke Dingedine, Esq. of the firm Valsangiacomo, Detora & McQuesten, P.C., on a limited appearance, and hereby respectfully reply and move to strike Petitioner’s Opposition to their request that the Public Utility Commission dismiss the Petition of Norwich Upper Loveland Solar, LLC, open an Investigation, conduct an Evidentiary Hearing, and impose sanctions against the Applicant/Petitioner.

REPLY MEMORANDUM

I. MOTION TO STRIKE

Intervenors’ move to strike the Petitioner’s opposition memorandum as an *ad hominem* attack on their Counsel. In nine (9) places in the opposition memorandum including in a Section heading, the Petitioner refers to the Motion and the arguments as “Attorney Dingedine’s” instead

of the Intervenor's or Neighbors. The Public Utility Commission does not permit this type of ad hominem attack on counsel and it should; therefore, strike the pleading.

II. REPLY TO THE CONTENT OF THE OPPOSITION

"Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence."

--John Adams

The remaining content of the Petitioner's Opposition is notable not for what it says, but for what it does not say. Petitioner has utterly failed to provide any explanation whatsoever as to why it presented Site Plan B and its "NO-VIEWshed Analysis" to the Planning Commission and then less than 24 hours later it submitted its Advance Notice with a *significantly* different Site Plan C depicting the project site coming down the east ridge behind the neighbors' homes.

Intervenor's have transcribed the relevant portions of the July 13, 2021 Norwich Planning Commission Meeting and the August 11, 2021 Selectboard Meeting. They are submitted as Exhibits NN-11 and NN-12. As revealed in the Transcript of the Planning Commission Meeting, Troy McBride (Petitioner's representative) said, before he pulled up the images of the NO-VIEWshed Analysis for the Planning Commission to look at:

Specifically to the wetland scientist, we are having a wetland scientist look at the site. There are some areas there that we'll need to avoid and that is something we're fully committed to do and required to do and that is avoid all unmapped wetlands that our environmental scientist will locate and then we'll have full at least 50 foot buffer on any class two wetlands so that. The layout of our solar array might change slightly depending on the review of the wetland scientist but it's a very, **it will be very minor changes** based on the location, and there's areas that we already are avoiding based on our understanding of this site.

Exhibit NN-11.

The Petitioner's efforts to deflect their misrepresentations to the Norwich Planning Commission speaks volumes because there is no explanation of why the Site Plans were Bait and Switched *when they actually existed for 19 days at the time of the presentation* and why Mr. McBride made the representation that there might be a "VERY MINOR CHANGE." Therefore, it is imperative that the PUC review the Planning Commission and Selectboard Transcripts to understand the circumstances surrounding the misrepresentations and the extent of the misrepresentations.

With regard to objections to the exhibits, they are partially comprised of the Petitioner's Site Plans and materials submitted to the Town and PUC. The overlays and photos are demonstrative aids that require no evidentiary basis. However, if the PUC opens an Investigation of this matter, Intervenors will be happy to present evidence at Hearing.

With regard to Petitioner's obfuscation claiming there is no legal briefing, Intervenors believe that they have adequately provided the facts and law upon which the PUC should open an Investigation and hold an evidentiary hearing.

The Petition lastly argues that the Motion is an Improper Pleading Under V.R.C.P. 9(b) and Should be Rejected because:

V.R.C.P. 9(b) requires that with respect to any pleadings that allege fraud, "the circumstances constituting fraud or mistake shall be stated with particularity." V.R.C.P. 9(b). The "particularity" required by rule 9(b) means "that all of the elements be specifically pled." *Cheever v. Albro*, 138 Vt. 566, 570, 421 A.2d 1287 (1980). "To maintain a cause of action for fraud, plaintiff must demonstrate five elements: '(1) intentional misrepresentation of a material fact; (2) that was known to be false when made; (3) that was not open to the defrauded party's knowledge; (4) that the defrauded party act[ed] in reliance on that fact; and (5) that thereby harmed.'" *Felis v. Downs Rachlin Martin, PLLC et al.*, 2015 VT 129, ¶ 13 "Failure to prove any one of the five elements defeats the fraud claim." *Id.* Here, **Attorney Dingledine's Motion** avers fraud, but fails to plead any of the requisite elements of fraud, let alone prove them.

Vermont Rules of Civil Procedure Rule 9(b) actually states:

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, **the circumstances constituting fraud or mistake shall be stated with particularity**. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

VRCP 9(b).

Intervenors believe that they have submitted more than sufficient information and evidence describing the “circumstances constituting fraud . . . with particularity.” There was a Bait and Switch of Site Plans which makes the approval invalid because it was for a different project than the one that Petitioner is seeking a CPG for. The circumstantial evidence suggests that Petitioner knew it was misrepresenting the view, which is a material fact that was known to be false for 19 days when made. In addition, the material facts were not known by the Town and they relied upon the misrepresentations that the array would be INVISIBLE. Therefore, there is sufficient evidence of fraud, that has been pled with particularity, upon which the Public Utility Commission could Dismiss the Petition, open an Investigation of the matter, hold an Evidentiary Hearing, and impose sanctions.

WHEREFORE, Neighbors/Intervenors respectfully request that the Commission deem the Application Incomplete and Dismiss the Petition and/or treat it as Withdrawn pursuant to PUC Rule 5.107(B)(4). Furthermore, Neighbors/Intervenors respectfully request that the Commission open an Investigation into the matter, hold an Evidentiary Hearing, and impose Sanctions against Norwich Solar Technologies, Inc. to deter such conduct in the future.

DATED at Randolph, County of Orange and State of Vermont this 20th day of June, 2022.

**Dan & Jenn Goulet, Samin Kim & Jayoung Joo,
Stephen Gorman, John & Heather Benson,
Laurence & Shelley Ufford, and Joy Kenseth,**
Neighbors/Intervenors

/s/ L. Brooke Dingledine

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