

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-3587-NMP

Petition of Norwich Upper Loveland Solar, LLC. for a certificate of public good, pursuant to 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	
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Order entered: 08/19/2022

**ORDER RE: MOTION TO DISMISS, REQUEST FOR SANCTIONS, AND MOTION TO STRIKE,
AND NOTICE OF SCHEDULING CONFERENCE**

This case involves an application filed with the Vermont Public Utility Commission (“Commission”) by Norwich Upper Loveland Solar, LLC (“Applicant”) for a certificate of public good (“CPG”) to construct and operate a 500 kW solar electric generation project in Norwich, Vermont (the proposed “Project”). In this order, I deny the motion to dismiss and the motion for sanctions filed on June 1, 2022, by Dan and Jenn Goulet, Samin Kim and Jayoung Joo, Stephen Gorman, John and Heather Benson, Laurence and Shelley Ufford, and Joy Kenseth (the “Intervenor Landowners”), as well as the motion to strike included in the Intervenor Landowners’ reply brief. I also provide notice to the parties that the scheduling conference in this case will be held on September 1, 2022, at 2:00 p.m.

I. PROCEDURAL HISTORY

On June 1, 2022, Attorney L. Brooke Dingledine filed a limited notice of appearance on behalf of the Intervenor Landowners for the purpose of filing and arguing a concurrently filed motion seeking to dismiss the application and requesting sanctions.

On June 3, 2022, the Applicant filed a response to Intervenor Landowners’ motion to dismiss and request for sanctions. The Applicant opposes the motion and request for sanctions.

On June 15, 2022, the Vermont Department of Public Service (“Department”) filed a response to the Intervenor Landowners’ motion to dismiss. The Department recommends denying the motion to dismiss and argues that the dismissal of the application is not warranted without additional factual development.

On June 20, 2022, the Intervenor Landowners filed a reply to the Applicant's June 3, 2022, response to Intervenor Landowners' motion to dismiss and request for sanctions.

II. DISCUSSION

A. Motion to Dismiss

The Intervenor Landowners argue that the Commission should dismiss the Applicant's petition because the Applicant misrepresented material facts regarding the Project footprint when the Applicant obtained the joint letter of support that it relies on for preferred site status ("Preferred Site Letter").¹ According to the Intervenor Landowners, the Applicant misrepresented the location and visibility of its proposed project by presenting a different site plan for the Project to the adjoining landowners, the municipal selectboard and planning commission, the regional planning commission, and the Commission.

The Applicant responds that no information was knowingly withheld or misstated to intentionally mislead any recipient of the Project plans. The Applicant states that the course of project development and review leading up to the filing of the Project application on August 31, 2021, was "entirely consistent with the iterative process for development and review" of solar projects, and that the site plan changes were made to avoid adverse impacts to a vernal pool complex based on the recommendations of the Vermont Agency of Natural Resources and the Applicant's environmental consultant.² The Applicant explains that it sent a copy of the application materials ultimately deemed complete by the Commission in this case to the adjoining landowners, the Town of Norwich, and the regional planning commission. The Applicant also notes that the Town of Norwich was later asked to revisit and rescind its support for the Project based on the changes to the site plan described in the Intervenor Landowners' motion, but the selectboard voted not to revisit the Preferred Site Letter.

The Intervenor Landowners' motion to dismiss is based on Commission Rule 5.107(B)(4). Commission Rule 5.107(B)(4) states that:

If, within 180 days of the date of the advance submission, the applicant has not filed a complete application for the project that fully complies with the filing

¹ Pursuant to Commission Rules 5.103 and 5.104, a solar net-metering system greater than 150 kW may only be constructed on a preferred site.

² Petitioner's Response to Landowners' Motion to Dismiss and Motion for Sanctions, filed 6/6/22, at 1-2.

requirements of this Rule, the submission will be treated as withdrawn without further action required by the Commission.

The advance submission for the Project was filed on July 14, 2021, and the Commission determined that the application was administratively complete on December 3, 2021, which is a period of 142 days and less than the 180-day period set by Commission Rule 5.107(B)(4). Commission Rule 5.107(D) explains that “[a] determination that an application is administratively complete enough to process is not a legal determination regarding the sufficiency of the information included on the application.”³

Although the Intervenor Landowners challenge its validity, the Preferred Site Letter is sufficient to satisfy the Commission’s completeness review requirements. It is signed by members of the Selectboard and Planning Commission for the Town of Norwich, as well as a representative of the Two Rivers-Ottawaquechee Regional Commission. Any further validity challenge requires an evaluation of evidence, which is beyond the scope of a completeness review. The Intervenor Landowners have not shown that the Commission’s determination that the application was administratively complete enough to process was incorrect.⁴ Because the period between the date of the advance submission and the Commission’s determination that the application filed was administratively complete was less than 180 days, the requirements for dismissal specified in Commission Rule 5.107(B)(4) are not met, and the Intervenor Landowners’ motion to dismiss is denied.

B. Request for Sanctions

Intervenor Landowners also argue that the Commission should impose sanctions on the Applicant because the Project’s Preferred Site Letter was acquired through false and misleading information.

In light of my conclusion above, I also conclude that sanctions are not warranted. The Intervenor Landowners are correct that the “presentation of false or misleading information and the failure to apprise the Commission of material information in a timely manner are

³ Commission Rule 5.107(E).

⁴ See Exh. NUL MS-5.

sanctionable offenses under 30 V.S.A. § 30.”⁵ However, the evidentiary record in this case has not been developed, and any conclusion regarding the facts surrounding the Applicant’s joint letter of support would be premature. Design details frequently change over the course of the development process for a variety of valid reasons, such as to minimize natural resource impacts as the Applicant represents here.⁶ If the Intervenor Landowners wish to continue to challenge the validity of the Preferred Site Letter, they may do so through discovery and at the evidentiary hearing. The Intervenor Landowners’ request for sanctions on the Applicant is denied.

C. Motion to Strike

The Intervenor Landowners also move in their reply to strike the Applicant’s opposition memorandum as an *ad hominem* attack on their attorney for attributing arguments in the motion to dismiss as advanced by Attorney Dingledine. While Intervenor Landowners are correct that the motion and arguments should be credited to the Intervenor Landowners, not their counsel, this did not affect my review of the briefing, and no refile of the document is necessary. In future filings and proceedings, I ask that all parties and representatives remain focused on the facts and evidence and avoid unnecessarily inflammatory statements or arguments.

III. NOTICE OF SCHEDULING CONFERENCE

I will hold a scheduling conference in this case on **Thursday, September 1, 2022, at 2:00 p.m.** The scheduling conference will be held online via GoToMeeting videoconference.⁷ Participants and members of the public may access the scheduling conference online at <https://meet.goto.com/566591581>, or call in by telephone using the following information: phone number: +1 (646) 749-3129; access code: 566-591-581. Participants may wish to download the GoToMeeting software application in advance of the hearing at <https://meet.goto.com/install>. Guidance on how to join the meeting and system requirements may be found at <https://www.gotomeeting.com/online-meeting-support>.

⁵ Intervenor Landowner Br. at 33-34 (quoting *Investigation Pursuant to 30 V.S.A. §§ 30 & 209 into Alleged Violation of Newbury GLC Solar, LLC’s Certificate of Pub. Good Issued in Case #17-4721-NMP*, Case No. 19-0734-INV, Order of 8/1/19 at 5).

⁶ Applicant Response at 2.

⁷ Pursuant to 30 V.S.A. §§ 20 and 21, the Applicant will be responsible for court reporter costs incurred by the Commission as a result of this hearing. Invoices for these costs will be mailed to the attorney of record or the Applicant’s official representative.

I ask that the parties discuss and submit a joint proposed schedule, if possible, or submit separate proposals by Tuesday, **August 30, 2022**.

SO ORDERED.

Dated at Montpelier, Vermont, this 19th day of August, 2022.



Micah Howe
Hearing Officer

OFFICE OF THE CLERK

Filed: August 19, 2022

Attest: Pamela Lenahan
Deputy Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 21-3587-NMP - SERVICE LIST

Parties:

John and Heather Benson, *pro se*
8 Spur LN
Norwich, VT 05055
jkbenson3@gmail.com

(for L. Brooke Dingleline, Esq.)

Benjamin Civiletti
Department of Public Service
112 State Street
Montpelier, VT 05620
benjamin.civiletti@vermont.gov

(for Vermont Department of Public Service)

*Alison Stone, General Counsel
Vermont Natural Resources Board
nrb.comments@vermont.gov

(for Vermont Natural Resources Board)

L. Brooke Dingleline, Esq.
Valsangiacomo, Detora & McQuesten, P.C.
P.O. Box 625
Barre, VT 05641
lbrooke@vdmlaw.com

(for Dan & Jenn Goulet) (for Laurence and Shelley Ufford) (for Joy Kenseth) (for John and Heather Benson) (for Samin Kim) (for Stephen CN Gorman) (for Jayoung Joo)

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

(for Vermont Agency of Natural Resources)

Stephen CN Gorman, *pro se*
504 Hawk Pine Road
Norwich, VT 05055
steve@stephengorman.com

(for L. Brooke Dingleline, Esq.)

Dan & Jenn Goulet, *pro se*
185 Upper Loveland Road
Norwich, VT 05055
jggoulet08@gmail.com

(for L. Brooke Dingleline, Esq.)

Kimberly K. Hayden, Esq.
Paul Frank + Collins PC
One Church Street 05402
P.O. Box 1307
Burlington, VT 05401
khayden@pfclaw.com

(for Norwich Upper Loveland Solar LLC)

Jayoung Joo, *pro se*
147 Upper Loveland Road
Norwich, VT 05055
jayoung.joo@gmail.com

(for L. Brooke Dingledine, Esq.)

Joy Kenseth, *pro se*
133 Upper Loveland Road
Norwich, VT 05055
joy.kenseth@dartmouth.edu

(for L. Brooke Dingledine, Esq.)

Samin Kim, *pro se*
147 Upper Loveland Road
Norwich, VT 05055
skim2308@gmail.com

(for L. Brooke Dingledine, Esq.)

Aaron Lamperti, *pro se*
557 New Boston Rd
Norwich, VT 05055
aaron.lamperti@gmail.com

John C. Lewis, *pro se*
346 Palm Street
Hollywood, FL 33019
jlewis6577@aol.com

Karin McNeill
Vermont Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05620-3901
Karin.McNeill@vermont.gov

(for Vermont Agency of Natural Resources)

James McTaggart, *pro se*
71 Upper Loveland Road
Norwich, VT 05055-9417
mctagjjim@aol.com

Laurence and Shelley Ufford, *pro se*
64 Loveland Road
Norwich, VT 05055
ljufford@t-n.com

(for L. Brooke Dingledine, Esq.)