

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: 02/09/2023

ORDER SUSTAINING-IN-PART AND OVERRULING-IN-PART
APPLICANT’S OBJECTIONS TO ADMISSION

I. INTRODUCTION

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 rule on the evidentiary objections filed by the Applicant on December 15, 2022. The Applicant objects to the admission of certain exhibits and testimony filed by Stephen Gorman and Joan Kenseth on grounds that include relevance, risk of prejudice, hearsay, and that certain opinions are beyond the scope of the witnesses’ expertise. Stephen Gorman, Joy Kenseth, Jayoung Joo, Samin Kim, Dan and Jenn Goulet, Larry Ufford, and Jay and Mary Benson (the “Neighbor Intervenors”) filed a response opposing the Applicant’s objections.

For the reasons below, the objections are sustained in part and overruled in part.

II. LEGAL STANDARD

The admissibility of evidence in Commission proceedings is governed by the Vermont Rules of Evidence (“V.R.E.”) and statute. To be admissible, evidence must relevant, meaning it in some way advances the inquiry into a fact of consequence to the proceeding.¹

V.R.E. 701 addresses opinion testimony by a lay witness and states:

¹ V.R.E. 401. *See also* 3. V.S.A. § 810(1).

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical or other specialized knowledge within the scope of [V.R.E.] 702.

V.R.E. 702 addresses testimony by experts, explaining:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

V.R.E. 703 describes the permissible factual bases of opinion testimony by experts and states in relevant part:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.

Hearsay is defined in V.R.E. 801 as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." V.R.E. 802 states that hearsay is not admissible except as provided by the rules of evidence or by other rules prescribed by the Vermont Supreme Court or by statute. Evidence that would be hearsay if offered for its truth, however, may not be hearsay if offered for a nonhearsay purpose, such as showing the basis of an expert's opinions.² V.R.E. 803 also establishes exceptions to the hearsay rule if certain conditions are satisfied.

The Vermont Administrative Procedure Act, 3 V.S.A. § 810(1), also allows the Commission, in contested cases, flexibility to admit evidence according to the following standard:

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Rules of Evidence as applied in civil cases in the Superior Courts of this State shall be followed. When necessary to ascertain facts not reasonably susceptible of proof

² *State v. Recor*, 150 Vt. 40, 47 (1988) (discussing V.R.E. 703).

under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent [people] in the conduct of their affairs.

In ruling on an objection to the admissibility of testimony, the Commission does not determine the persuasive weight to be given to that testimony. Rather, the Commission decides the narrower question of whether the testimony may be admitted into the evidentiary record pursuant to the rules of evidence and the discretion accorded to the Commission under 3 V.S.A. § 810. The Commission reviews a project or transaction under Title 30 as an expert body that is engaged in a “legislative, policy-making process.”³ In this capacity, the Commission serves as the trier of fact and there is no jury to protect from exposure to unreliable evidence.⁴

III. DISCUSSION

The Applicant has objected to portions of exhibit NN-SG-2 and all of exhibit NN-SG-3 to Stephen Gorman’s testimony, and exhibits NN-JK-7, NN-JK-8, and NN-JK-9 to Joy Kenseth’s testimony. Mr. Gorman has a background in environmental studies and is offering testimony about the value of forests in an expert capacity. The Applicant has not challenged Mr. Gorman’s qualifications, and has acknowledged that he has some education and experience relating to the natural environment. The Applicant has not addressed Ms. Kenseth’s qualifications to offer her testimony. Both Mr. Gorman and Ms. Kenseth are residents of Norwich, reside near the proposed Project area, and are parties to the proceeding participating *pro se*.

The Applicant’s objections are addressed below.

A. Exhibit NN-SG-2

Exhibit NN-SG-2 is an exhibit prepared by Stephen Gorman titled “Forest Value and Carbon Costs Associated with the proposed 500 kW Solar Array off of Upper Loveland Road, in Norwich, Vermont.” Although characterized as an exhibit, it consists of narrative prepared by Mr. Gorman along with summaries of and excerpts from materials that he relied on for his testimony.

³ *In re Amended Pet. of UPC Vermont Wind*, 2009 VT 19, ¶ 2 (citing *In re Vt. Elec. Power Co.*, 2006 VT 69, 6).

⁴ *Petition of Barton Solar LLC for a certificate of public good*, Docket 8148, Order of 5/9/14 at 2.

Applicant Objections II.A.1.b., II.A.1.c., and II.A.1.i.
[*Hearsay (V.R.E. 802)*]

The Applicant objects to the second and third paragraphs under the heading “Affects Physical, Mental and Spiritual Health” on page four of exhibit NN-SG-2 as irrelevant to the Project and the Section 248 criteria at issue in this proceeding and inadmissible under V.R.E. 402 and 3 V.S.A. § 810(1). The Applicant also objects to the quoted passage in the third paragraph of the section as inadmissible hearsay under V.R.E. 802.

The Neighbor Intervenors respond that the relevance of materials relied upon by an expert witness goes to the credibility of that witness and the weight to be afforded the expert testimony. Regarding the hearsay objection, the Neighbor Intervenors state that the quoted passage is not being offered for the truth of the matter asserted, but instead to show the basis of Mr. Gorman’s opinions.

The passages to which the Applicant objects discuss and quote from a 2010 study by the Kaiser Family Foundation (“Kaiser Study”). The portions of the Kaiser Study quoted by Mr. Gorman contain information about the amount of time youth spend on entertainment media, but do not directly discuss the effects of forest clearing or the value of forests. However, Mr. Gorman does rely on the study as a basis for his opinions.

I overrule the Applicant’s objection to the second paragraph under the heading “Affects Physical, Mental and Spiritual Health” of exhibit NN-SG-2, which is part of Mr. Gorman’s opinion testimony about the benefits of forests.

The third paragraph consists of a quote from the Kaiser Study, which would be hearsay not subject to an exception if offered for its truth. The Neighbor Intervenors represent that the quote is only included to show the basis of Mr. Gorman’s opinion, and not for the truth of its content. The Neighbor Intervenors also argue that the quotation should be admitted as Mr. Gorman’s testimony.

Exhibit NN-SG-2 is written in the style of a report, with Mr. Gorman’s opinions mixed with citations to and quotations from the materials that he relied on. Although an expert is permitted to rely on inadmissible evidence in forming opinions, that reliance does not make

otherwise inadmissible evidence admissible for use as substantive evidence.⁵ The materials relied on by Mr. Gorman must be shown to be independently admissible if they are to be admitted as substantive evidence.

The Neighbor Intervenors argue that the quoted passage is admissible as Mr. Gorman's testimony, citing an order from *Randolph Solar* in which the hearing officer admitted an exhibit prepared by a witness containing a compilation of stormwater manual excerpts from other states and the witness's testimony about those excerpts.⁶ In *Randolph Solar*, however, the stormwater manual excerpts were from other exhibits that were separately admitted under an exception to the hearsay rule, with the remaining content, which was written by the witness, admitted as the witness's testimony.⁷ Here, the sources of the quoted materials included in Mr. Gorman's exhibit have not been offered separately for admission.

The Neighbor Intervenors argue that the Kaiser Study is admissible under several hearsay exceptions, including V.R.E. 803(6) (records of regularly conducted business activity), V.R.E. 803(8) (public records and reports), V.R.E. 803(17) (market reports, commercial publications), and V.R.E. 803(18) (learned treatises). Based only on a review of the excerpts and citations contained in Mr. Gorman's exhibit, the sources do not appear to fall within the exceptions for records of regularly conducted business activity, public records and reports, or market reports and commercial publications. The Neighbor Intervenors have not addressed the reliability of the study, which precludes an evaluation of the Kaiser Study under the learned treatises exception of V.R.E. 803(18).⁸

I agree with the Applicant that the excerpt from the Kaiser Study in the third paragraph under the heading "Affects Physical, Mental and Spiritual Health" of exhibit NN-SG-2 is hearsay. However, the quotes from the Kaiser Study to provide useful context to Mr. Gorman's opinions and I find that Mr. Gorman's reliance on materials such as the Kaiser Study is reasonable for experts offering opinions on the health benefits of forests.

⁵ *State v. Recor*, 150 Vt. 40, 48 (1988) ("[V.R.E. 703] provides for limited-purpose admission of otherwise inadmissible evidence, and may not be used to circumvent the restrictions of the hearsay rules generally . . .").

⁶ *Petition of Randolph Davis Solar LLC for a certificate of public good*, Case No. 21-2939-NMP, Order of 10/31/22.

⁷ *Id.* at 4 ("As discussed above, the out-of-state stormwater manuals have been admitted under V.R.E. 803(8).").

⁸ Additionally, the learned treatise exception, if applicable, would only allow the admission of the portions of the learned treatise relied on by Mr. Gorman in his direct testimony.

In light of the Neighbor Intervenors' representation that the quotes are not being offered for their truth, I sustain the Applicant's objection to the admission of the quoted passages from the 2010 Kaiser Study in paragraph three under the heading "Affects Physical, Mental and Spiritual Health" on page four of exhibit NN-SG-2 as substantive evidence and will not give the excerpt substantive weight in any proposal for decision to the Commission.⁹ However, the quote may remain in the exhibit for the purpose of showing the basis of Mr. Gorman's opinions.¹⁰ In proceedings before the Commission, there is no jury to protect from exposure to unreliable evidence, which minimizes the risk of prejudice or confusion that might result. Allowing the quoted passage to remain for to show basis also allows Mr. Gorman to submit his full opinion testimony, with the references available to him if needed during cross-examination.

The Neighbor Intervenors have incorporated the same responses discussed above as their response to other hearsay objections made by the Applicant. Rather than discussing each objection and response separately, I instead adopt the same ruling and treatment described above for the following hearsay-only objections:

- Excerpts from *Yale Environment 360* (page 5, ¶ 2; page 6, ¶¶ 3-5) (Applicant Objection II.A.1.c.).
- Excerpts from *National Library of Medicine* and *BBC Future* (page 9, ¶¶ 3-4; page 10, 1st sentence) (Applicant Objection II.A.1.d.).
- Excerpts from *Wildlands and Woodlands* (page 14, ¶¶ 3-5) (Applicant Objection II.A.1.i.).¹¹

Applicant Objection II.A.1.d.

[*Relevance (V.R.E. 402)*, *Expert Qualifications (V.R.E. 702)*, and *Hearsay (V.R.E. 802)*]

The Applicant objects to excerpts from the *National Library of Medicine* and *BBC Future* on pages 9-10 discussing a condition called "solastalgia" as not relevant, beyond the scope of Mr. Gorman's expertise, and hearsay.

⁹ Applicant Objection II.A.1.b.

¹⁰ See *Joint Petition of NorthStar Decommissioning Holdings, LLC, et al.*, Docket 8880, Order of 2/8/18 at 9 (citing *In re E.T.*, 184 Vt. 273, 280 (2008)).

¹¹ The Applicant has objected to "the fourth and fifth paragraphs on page 14" as hearsay quotes. Citations to *Wildlands and Woodlands* appear in paragraphs three and five, not four and five. However, the entirety of paragraphs three through five appear to be quoted from the article.

Like the hearsay objections discussed above, the quoted passages discussing solastalgia on pages 9-10 are hearsay not subject to an exception. As done for the hearsay objections above, I sustain the Applicant's hearsay objection but will allow the excerpts to remain in the exhibit to show the bases of Mr. Gorman's opinions about the benefits of the trail network in Norwich. Because the excerpts will only be used to show the basis of Mr. Gorman's opinions and not for substantive purposes, the Applicant's relevance objection is overruled.

Regarding the Applicant's objection under V.R.E. 802, the identified passages are almost entirely quoted material covered by the hearsay objection rather than opinion testimony with one exception. The first sentence of the second paragraph on page nine, which reads "People suffer when they perceive that nature is under assault" is not an excerpt and crosses into general opinion that I agree is beyond the scope of Mr. Gorman's expertise. With respect to that first sentence, I sustain the Applicant's objection as beyond the scope of Mr. Gorman's expertise.

Applicant Objections II.A.1.e., II.A.1.f., II.A.1.g, and II.A.1.h.
[*Relevance (V.R.E. 402), Expert Qualifications (V.R.E. 702), and Hearsay (V.R.E. 802)*]

The Applicant objects on several grounds to the "Land Conversion for Renewable Energy" section on pages 12-14 of exhibit NN-SG-2, including that it is beyond the scope of Mr. Gorman's expertise, is not relevant, and that the specific quoted excerpts included in the section are hearsay.

I agree with the Applicant that the discussion in the Land Conversion for Renewable Energy section is beyond the scope of this proceeding. Mr. Gorman's discussion is not specific to this Project, any of the statutory criteria under 30 V.S.A. § 248 that must be evaluated by the Commission, or any issue for which I granted the Neighbor Intervenors party status. While the discussion does relate generally to land use and energy policy at a national or even global level, Mr. Gorman's testimony does not raise any issues specific to the Project's consistency with Vermont's energy policy, as articulated in 30 V.S.A. § 202a, or the implementation of that policy in the State Comprehensive Energy Plan.

The definition of relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or

less probable than it would be without the evidence.”¹² Vermont’s energy policy is set by the Legislature and the Vermont Department of Public Service prepares a State Comprehensive Energy Plan that implements the Legislature’s policy. Opinions that a project is inconsistent with state energy policy would be relevant to the Commission’s consideration of a proposed project under Section 248, but Mr. Gorman’s testimony does not identify any inconsistencies. Instead, the Land Use for Renewable Energy section in exhibit NN-SG-2 appears to question the development of land for energy purposes altogether, which is an issue that is outside of the scope of this proceeding and not relevant to any fact in issue in this proceeding.

Additionally, the section consists almost entirely of quoted material, rather than opinion testimony, and the Applicant has also objected to these excerpts on hearsay grounds. Although I have allowed hearsay to remain in the document to show the bases of Mr. Gorman’s opinions as discussed above, the Land Conversion for Renewable Energy section does not contain any admissible opinions for the quoted excerpts to support. Therefore, the quoted material contained in the Land Conversion for Renewable Energy section will not be admitted for any purpose.

For the reasons above, the Applicant’s objection to the Land Conversion for Renewable Energy section on pages 12-14 is sustained on relevance grounds.¹³

Applicant Objections II.A.1.a., II.A.1.j., II.A.1.k., II.A.1.l.
[*Relevance (V.R.E. 402 & 3 V.S.A. 810) and Prejudice (V.R.E. 403)*]

The Applicant raises multiple objections to the citations and statistics that appear in the “Relationship Between Climate Change and Forests” and “Relationship Between Climate Change and Deforestation” sections on pages 16-18 of exhibit NN-SG-2. In these objections, the Applicant argues that the statistics and article citations are inaccurate, misleading, irrelevant, and will lead to undue confusion. According to the Applicant, the time and expense that would be required to address the citations and statistics through discovery, rebuttal, or cross-examination result in an unfair burden on the Applicant.

¹² V.R.E. 401.

¹³ Because I have sustained the Applicant’s objection to the Land Conversion for Renewable Energy section in its entirety on relevance grounds, I overrule as moot the individual Applicant Objections II.A.1.f., II.A.1.g., and II.A.1.h., which address specific portions of the section.

The Applicant included substantive rebuttal arguments in its objections to the statistics and citations cited by Mr. Gorman. These rebuttal arguments go to the weight of the evidence rather than admissibility, which is beyond the scope of review of an objection to the admission of evidence. However, the Applicant was able to describe the bases of its rebuttal arguments in just a few paragraphs in its objections and can do the same with minimal burden during cross-examination of the witness. Because this proceeding does not involve a jury, the risk of confusion resulting from the article content is limited.

The following objections are overruled for the reasons stated above:

- Citations and excerpts from *The Independent* (page 16) (Applicant Objection II.A.1.j.).
- Statistics about carbon absorption (page 17, first full paragraph) (Applicant Objection II.A.1.a.).
- Discussion of and statistics from *World Resources Institute* (“Relationship Between Climate Change and Forests” section: page 17, first 2 paragraphs; page 18, second full paragraph) (Applicant Objection II.A.1.k.).
- Discussion of *Wildlands and Woodlands* (“Relationship Between Climate Change and Forests” section: pages 17-18, last paragraph) (Applicant Objection II.A.1.l.).

B. Exhibit NN-SG-3

Applicant Objections II.A.2.a. and II.A.2.b.
[*Expert Qualifications (V.R.E. 702) and Hearsay (V.R.E. 802)*]

The Applicant objects to the entirety of exhibit NN-SG-3 to Mr. Gorman’s testimony as not relevant, and to specific portions of the exhibit as hearsay and beyond the scope of Mr. Gorman’s expertise.

The Neighbor Intervenors’ response incorporates their responses to previous objections, which include the arguments that challenges to an expert’s opinion, the relevance of the materials they relied on, or their methodology all go to the credibility and weight afforded to the expert testimony, and that the quoted passages are not hearsay because they are not being offered for their truth. The Neighbor Intervenors also rely on the evidentiary ruling from *Randolph Solar*, discussed above, to argue that the excerpts in exhibit NN-SG-3 should be admitted as Mr. Gorman’s testimony.

Exhibit NN-SG-3 is a document prepared by Mr. Gorman titled “Other Considerations Associated with the Carbon Costs of the proposed 500 kW Solar Array off of Upper Loveland Road in Norwich, Vermont.” Despite its title, the exhibit does not discuss any issues specific to Norwich or the Project but instead cites to a variety of publications discussing global energy consumption, the ability of solar power generation to replace fossil fuels, and general criticisms of solar power generation.

The discussion and excerpts contained in exhibit NN-SG-3 are not related to this Project and will not assist the Commission with its evaluation of the Section 248 criteria as applicable to the Project. Because exhibit NN-SG-3 does not have any tendency to make any fact at issue in this proceeding more or less probable, the Applicant’s objection to exhibit NN-SG-3, in its entirety, is sustained on relevance grounds.

C. Exhibit NN-JK-7

Applicant Objection II.B.1.

[Relevance (V.R.E. 402 & 3 V.S.A. 810) and Foundation (V.R.E. 901)]

The Applicant objects to exhibit NN-JK-7 as lacking foundation for the source and location of the video, as well as the existence of a Norwich “Town Forest,” which is what Ms. Kenseth calls the parcel from which the video was reportedly filmed. The Applicant also objects to the video on relevance grounds.

The Neighbor Intervenors’ response includes citations to several public municipal resources that appear to show that the parcel where the video is represented to have been filmed is owned by the Town of Norwich.

Regardless of whether the parcel is officially called the Norwich Town Forest, I find the video relevant to the aesthetics testimony provided by Ms. Kenseth and sufficiently reliable for admission into the record of this proceeding. According to figure 14 in exhibit NN-JK-2, which is a photograph that appears to be taken from the same location, the video was taken by Mr. Gorman. Mr. Gorman has submitted testimony in this case, can provide a foundation for the video, and will be available, along with Ms. Kenseth, for cross-examination by the Applicant.

The objection to exhibit NN-JK-7 is overruled.

D. Exhibits NN-JK-8 and NN-JK-9

Applicant Objection II.B.2.
[*Hearsay (V.R.E. 802) and Foundation (V.R.E. 901)*]

The Applicant objects to exhibits NN-JK-8 and NN-JK-9 to Ms. Kenseth's testimony, which are identified as transcripts of meetings of the Norwich Planning Commission on July 13, 2021, and the Norwich Selectboard on August 11, 2021. The basis of the Applicant's objection is that the transcripts are hearsay, lack foundation as to who prepared the documents, and are of unknown accuracy.

The Neighbor Intervenors respond that Norwich Planning Commission and Selectboard meetings are video recorded and publicly available, that the transcripts are provided as a convenience to the Commission, and that the accuracy of the transcripts can be confirmed by the videos.

I was able to find only one reference to exhibits NN-JK-8 and NN-JK-9 in the prefiled material submitted by Ms. Kenseth, which appears in exhibit NN-JK-2 without discussion. Exhibit NN-JK-21 includes excerpts from the meeting recordings, but provides links to the publicly available video recording of the meetings rather than exhibits NN-JK-8 or NN-JK-9. The video recordings have not been offered for admission into the evidentiary record.

Based on a review of the excerpts from the Planning Commission and Selectboard meetings contained in exhibit NN-JK-21, I conclude that Ms. Kenseth is not relying on the statements from the meeting for their truth. For example, the truth of the Applicant's statement that "[t]he layout of our solar array might change slightly depending on the review of the wetland scientist" or a Planning Commission member's statement that "the applicant is obligated to come back to the Planning Commission and notify them" of any significant changes does not matter for the purpose of Ms. Kenseth's testimony. Instead, Ms. Kenseth is relying on the statements, regardless of their truth, to show what the Applicant presented to the Planning Commission and Selectboard for consideration in determining whether to issue a preferred site letter for the Project location. Because the statements in the transcript are not being offered for their truth, Ms. Kenseth is providing exhibits NN-JK-8 and NN-JK-9 for a nonhearsay purpose.

The citations to the Planning Commission and Selectboard meetings included in Ms. Kenseth's testimony and exhibits are similar to the motion to dismiss filed by the Neighbor

Intervenors on June 1, 2022. In denying that motion as premature because it required an evaluation of evidence, I informed the Neighbor Intervenors that if they “wish to continue to challenge the validity of the Preferred Site Letter, they may do so at the evidentiary hearing.”¹⁴ The events that occurred at the Planning Commission and Selectboard meetings are a part of the Neighbor Intervenors’ presentation of evidence pursuant to that instruction.

Even if hearsay, the transcripts in exhibits NN-JK-8 and NN-JK-9 are admissible as a written record of the Planning Commission and Selectboard meeting under the public records and reports exception of V.R.E. 803(8). I also conclude that the transcripts of the meetings are admissible under the flexibility provided to the Commission under 3 V.S.A. § 810(1). Ms. Kenseth’s reliance on the transcribed video record of the meetings is reasonable and what the Planning Commission and Selectboard considered is an issue not reasonably susceptible to proof without the meeting recordings or transcripts. Ms. Kenseth can provide a foundation for the exhibits as a witness at the evidentiary hearing and the Applicant will have the opportunity to cross-examine her on any inaccuracies contained in the transcripts.

The Applicant’s objections to exhibits NN-JK-8 and NN-JK-9 are overruled.

IV. SUMMARY AND CONCLUSION

For the reasons stated above, the Applicant’s objections to the admission of evidence are sustained in part and overruled in part. I have included a summary of my rulings below.

- Applicant Objection II.A.1.a. (page 17, first full paragraph) – overruled.
- Applicant Objection II.A.1.b. (exhibit NN-SG-2, page 4, ¶¶2-3 under heading “Affects Physical, Mental and Spiritual Health”) – objection to ¶2 overruled; hearsay objection sustained as to ¶3 for substantive use (V.R.E. 802); ¶3 may remain to show basis of opinion only.
- Applicant Objection II.A.1.c. (exhibit NN-SG-2, excerpts from *Yale Environment 360* on page 5, ¶ 2, page 6, ¶¶ 3-5) – hearsay objection sustained for substantive use (V.R.E. 802); may remain to show basis of opinion only.
- Applicant Objection II.A.1.d. (exhibit NN-SG-2, excerpts from *National Library of Medicine* and *BBC Future* on page 9, ¶¶ 3-4, page 10, 1st sentence) – hearsay objection sustained for substantive use (V.R.E. 802); may remain to show basis of opinion only.

¹⁴ Order of 8/19/22 at 4.

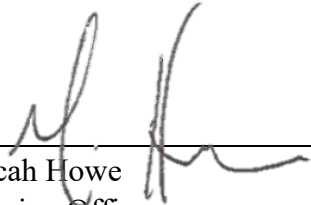
- Applicant Objection II.A.1.d. (exhibit NN-SG-2, page 9, ¶2, 1st sentence) – sustained as beyond the scope of expertise (V.R.E. 702).
- Applicant Objection II.A.1.e. (exhibit NN-SG-2, pages 12-14 (“Land Conversion for Renewable Energy” section)) – sustained on relevance grounds (V.R.E. 402, 702). Applicant Objections II.A.1.f., II.A.1.g., and II.A.1.h. are overruled as moot.
- Applicant Objection II.A.1.i. (exhibit NN-SG-2, excerpts from *Wildlands and Woodlands*, page 14, ¶¶3-5) – sustained for substantive use (V.R.E. 802); may remain to show basis of opinion only.
- Applicant Objection II.A.1.j. (exhibit NN-SG-2, citations to *The Independent*, page 16) – overruled.
- Applicant Objection II.A.1.k. (exhibit NN-SG-2, discussion of *World Resources Institute*, pages 17-18) – overruled.
- Applicant Objection II.A.1.l. (exhibit NN-SG-2, discussion of *Wildlands and Woodlands*, pages 17-18) – overruled.
- Applicant Objections II.A.2.a., II.A.2.b. (exhibit NN-SG-3) – sustained (V.R.E. 402, 702).
- Applicant Objection II.B.1. (exhibit NN-JK-7) – overruled.
- Applicant Objection II.B.2 (exhibits NN-JK-8 and NN-JK-9) – overruled.

I emphasize that my rulings today only address the admissibility of the prefiled testimony and exhibits challenged by the Applicant. I express no opinion as to the weight that should be given to the testimony and exhibits that my rulings will allow into evidence. The Applicant retains the ability to challenge the credibility and accuracy of the testimony and exhibits and the weight to be given to that evidence at the evidentiary hearing and in post-hearing briefing.

I direct Mr. Gorman to file a redacted version of exhibit NN-SG-2 reflecting the rulings above for admission at the evidentiary hearing. This includes redacting the following passages: page 9, ¶2, 1st sentence; and pages 12-14 (“Land Conversion for Renewable Energy” section). Exhibit NN-SG-2 will not be admitted.

SO ORDERED.

Dated at Montpelier, Vermont, this 9th day of February, 2023.



Micah Howe
Hearing Officer

OFFICE OF THE CLERK

Filed: February 9, 2023

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

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