

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Norwich Upper Loveland Solar LLC)
For a certificate of public good pursuant to 30)
V.S.A. §§ 248 and 8010, authorizing installation) 21-3587-NMP
and operation of a 500 kW (AC) photovoltaic)
group net-metering system in Norwich Vermont)

**REBUTTAL TESTIMONY OF PROFESSOR JOY KENSETH ON BEHALF
OF STEVE GORMAN; JAY & HEATHER BENSON;
JENNIFER & DANIEL GOULET; PROFESSOR JOY KENSETH;
SAMIN KIM & JAYOUNG JOO; LARRY UFFORD**

March 16, 2023

Professor Kenseth's rebuttal testimony responds to the rebuttal testimony of
Martha Statskus.

TABLE OF CONTENTS

1. Introduction.....3
2. Rebuttal of Martha Staskus.....4
3. Conclusion.....21

EXHIBITS

NN-JK-23: Comparison of a) 2008 Town Zoning Map 5 and b) Norwich Zoning Ridges data

NN-JK-24: Norwich Trails Committee Minutes

NN-JK-25: Overview of Norwich Trails

NN-JK-26: A Schmidt Bog Trail Map

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1 **1. Introduction**

2 Q1. Please state your name, occupation, and business address.

3 A1. My name is Joy Kenseth. My address is 133 Upper Loveland Road, Norwich VT 05055.

4 I am Professor of Art History Emeritus, having taught the history of art at Dartmouth
5 College from 1975 to 2018. Prior to my employment at Dartmouth, I taught for two years
6 at the City College of New York, and one year at Boston University's School of General
7 Education. Since my retirement, I returned to teaching at Dartmouth for the winter term
8 2019. I am teaching again at Dartmouth for the winter term, January - March 2023.

9 Q2. What is the purpose of your rebuttal testimony?

10 A2. My rebuttal testimony responds to the rebuttal testimony submitted by Martha Staskus.

1 **2. Rebuttal**

2 **a. Rebuttal of Martha Staskus’s Rebuttal Testimony Regarding Aesthetic Impacts and**
3 **Orderly Development**

4 Q3. On page 2 of her rebuttal, Ms. Staskus questions my use of “Zoning Map 5 Ridgeline
5 Overlay District” (Exhibit NN-JK-4) stating that it “is and remains a DRAFT as indicated in its
6 title” and that it includes a disclaimer that reads in part “Maps are to be used for display or
7 planning purposes only, data is not survey quality and is therefore, not to be used as a basis for
8 legal decisions.” Thus, according to Ms. Staskus, “A map that is not intended to be used for
9 legal decisions and that is a draft only, does not rise to the level of constituting a clear
10 community standard under Quechee.”

11 A3. Exhibit NN-JK-23 shows that Zoning Map 5 of the Map Ridgeline Overlay District posted
12 on the official Norwich Zoning and Planning webpage,¹ dated 2008 and labeled “Draft”²
13 (Exhibit NN-JK-4), contains the same information published by the Two Rivers Ottauquechee
14 Regional Commission (TRORC) as a GIS data layer on the Vermont Geodata Portal in
15 December 2018.³ Yet, the TRORC layer is not labeled “Draft”. The TRORC layer is linked to
16 the most recent version of the Norwich Zoning Regulations on the Town of Norwich Website.⁴

¹ <http://norwich.vt.us/planning-and-zoning/>

² <http://norwich.vt.us/wp-content/uploads/2012/06/5RidgelineDistrict52108.pdf>

³ https://geodata.vermont.gov/datasets/ee64843030b84e42802e2068800ba0da_0/explore?location=43.752312%2C-72.317954%2C12.36

⁴ http://norwich.vt.us/wp-content/uploads/2012/06/Norwich-Zoning-Regulations_Amended_07-01-09.pdf

1 Obviously GIS layers are too coarse scale to rely on for regulatory issues. However, the
2 Norwich Zoning Regulations clearly state the site level criteria for determining the area of
3 the Ridgeline Protection Overlay Districts in Article II, Table 2.9 (p. 28):

4 (B) **Area.** The Ridgeline Protection Overlay District includes all land
5 within **750 feet of the designated ridgelines** except for land within 300
6 feet of Class I, Class II, or Class III town highways, state highways or
7 interstate highways. The designated ridgelines are as shown on the
8 Ridgeline Protection Overlay District Map.

9 The proposed solar project is clearly a part of the Ridgeline Protection Overlay District,
10 whether using the coarse scale map or the site level definition.

11 Furthermore, Ms. Staskus has failed to acknowledge, as I observed on p.3 of my Aesthetic
12 Report (NN-JK-2), that this map “is incorporated into the Norwich Town plan on pp. 22 and 28
13 Exhibit NN-JK-6.” As such, the map does constitute a clear community standard. No other map
14 has superceded or replaced it and both the Norwich Planning Director [Exhibit NUL-MS-6:
15 Rod Francis Memo to Planning Commission Exhibit, App. C] and Ms. Staskus herself have
16 admitted as such since their references to the Ridgeline Protection Overlay Area are dependent
17 upon the map of the Ridgeline Protection area, Zoning Map 5. Furthermore, this map is
18 included on the TRORC website.⁵

19 Q4. Ms. Staskus states “that the Town Energy Plan provision for preferred siting expressly
20 states that the entire Town is presumed to be a preferred site, regardless of whether it is in a
21 Ridgeline Protection Overlay District.” She sites Exhibit NUL MS-6, App.A App C., Section

⁵ <https://www.trorc.org/wp-content/uploads/2013/10/5RidgelineDistrict52108.pdf>

1 3.2.h and goes on to say that our emphasis on Section 3.8 of the Town Plan and its use of “the
2 word ‘except’ rather than ‘notwithstanding’ ...at most...creates an ambiguity, not a clear
3 community standard.” Do you agree with Ms. Staskus’s conclusions regarding these Sections
4 of the Town Plan?

5 A4. Not at all.

6 As I stated in my Aesthetic Report (NN-JK-2, pp.18-20) a clear community standard with
7 respect to the Ridgeline Protection Overlay District is expressed multiple times in the Norwich
8 Town Plan: See Land Use 2.2c, which explicitly states that development be guided “away from
9 visually prominent locations on ridgelines and hills as viewed from public vantage points,” and
10 because steep slopes exist within and are part of the Ridgeline Protection Overlay district, see
11 as well Land Use 2.2e which states explicitly that development be guided “away from steep
12 slopes.” As noted above, the Norwich Town Plan (see Exhibit NN-JK-6, pp. 22 and 28)
13 incorporates other references to the Ridgeline Protection Overlay District.

14 Ms. Staskus cites the Town Plan’s energy objective 3.2.h as presented in Exhibit NUL-MS-6,
15 App.A, App C. This citation comes from the Rod Francis memo and is not quite accurate.

16 Objective 3.2., published in the 2020 Norwich Town Plan reads as follows:

17 For solar generation projects sized from 15kW to 500kW the presumption
18 is that all of Norwich meets the Public Utility Commission definition of
19 ‘preferred site’, notwithstanding the existing areas of local concern including
20 the Ridgeline Protection Overlay Area, Shoreline Protection Overlay Area
21 and the historic village district as identified in the Norwich Land Use
22 Regulations.

23 Is Ms. Staskus claiming that the word “notwithstanding” means that not only the town’s

1 policies regarding the Ridgeline Protection Overlay area, but also the town’s policies regarding
2 The Shoreline Protection Overlay area, and the historic village district area can be overridden
3 because of the presumption that all of Norwich meets the PUC definition of “Preferred Site”?
4 Does she believe that 3.2.h automatically overrides clearly stated policies adopted by the
5 Norwich community?⁶ As I have stated before (Exhibit NN-JK-2, pp. 19-20):

6 not only would this be a very bad precedent, it makes a mockery
7 of the Town Plan itself, rendering its policies and objectives utterly
8 meaningless. In fact, the Town Plan (3.1.d) states that while renewable
9 energy production should be increased it ought to be carried out “in
10 a manner that is consistent with the goals, objectives, and policies of
11 this plan (24 VSA “4302 (c) (7) (A).

12 Contrary to Ms. Staskus’s opinion, Section 3.8 paragraph 2 of the Town Plan offers a clearer
13 statement than 3.2.h regarding the Ridgeline Protection Overlay Area. It reads:

14 This plan calls upon the Public Utility Commission to issue Certificates
15 of Public Good for projects between 15kW and 500kW based on the
16 presumption that lands in Norwich meet the so called ‘preferred site
17 criteria’, except in areas already mapped as Ridgeline Protection Overlay
18 Area, the Shoreline Protection Overlay Area, and the designated village
19 Center.

20 The word “except” is unambiguous and unlike the problematic term “notwithstanding,” its use
21 in this sentence makes clear that Section 3.8 paragraph 2 is yet another instance in the Town
22 Plan expressing a clear community standard regarding the protection of Ridgeline areas.⁷
23 Moreover, Ms. Staskus fails to mention the immediately preceding paragraph (Section 3.8

⁶ Rod Francis did not think so: after citing 3.2.h in his memo to the Norwich Planning Commission he wrote: “The subject site is located in the Ridgeline Protection Overlay Area, and therefore does not automatically qualify as a preferred site.”

⁷For a discussion of how the term notwithstanding “can give rise to ambiguities” see Vincent R. Martorana, “The Vices and Virtues of ‘Notwithstanding’,” 3 November 2013. Available at: <https://www.mondaq.com/unitedstates/contracts-and-commercial-law/272744/the-vices-and-virtues-of-notwithstanding>

1 paragraph 1) that says:

2 This plan supports renewable energy production in Norwich. For this
3 policy to continue with broad community support *it must be balanced*
4 with this plan's policies related to: [among other things]...Preserving
5 the recreational and natural value of those lands identified in the Ridge-
6 Line Protection Overlay Area and Shoreline Protection Overlay Area."
7 [emphasis added]

8 As I have stated previously (NN-JK-2, page 20), such balance did not and could not be
9 achieved:

10 because the site plan presented to the town's authorizing committees was
11 not the plan now before the PUC or the plan dated June 26,2021, both of
12 which show significant clearcutting along the ridgeline and steep slopes.
13 Rather, a different site plan, a plan that does not encroach on the ridge-
14 line or steep slopes, was presented to and considered by town officials.
15 Thus any discussion, any deliberation regarding ridgelines and steep
16 slopes was obviated.

17 Q5. (a) How do you respond to Ms Staskus remarks on p.3 of her rebuttal that "the Town went
18 on to conduct a preferred site process and determined the site as such, including addressing
19 review of the Ridgeline Protection Overlay District" ? (b) In the same paragraph she states that
20 because the Ridgeline Protection Overlay District "is part of a local zoning ordinance," she
21 understands "this district zoning designation to be preempted under section 248, which should
22 be handled in a legal briefing."

23 A5. (a) With respect to the preferred site process and review of Ridgeline Protection Overlay
24 district, see Exhibit NN-JK-21, Exhibit NN-16, Exhibit NN-18, NN-JK-8, NN-JK-9,
25 <https://youtu.be/10ZLnHvi-bg> and <https://youtu.be/eyBI5Gw3WWc> . As these exhibits clearly
26 demonstrate the preferred site process and the determination of preferred site status were based on Site

1 Plan B, not on the significantly different Site plan C and Site Plan D. Exhibit NN-JK-21 describes
2 the process in detail and makes clear that the Preferred Site Letter approval is invalid. See as well
3 my answer to Q4 above regarding Section 3.8 paragraph 1.

4 (b) With respect to the notion that the designation of the protections of the Ridgeline Protection
5 Overlay District is preempted simply because it is a regulatory tool contained in the zoning ordinance,
6 Ms. Stakus' layperson's view is just plain wrong. The 2020 Norwich Town Plan itself establishes,
7 identifies and protects the recreational and natural value of those lands identified in the Ridgeline
8 Protection Overlay Area. To suggest any differently strains credulity.

9 Section 3.8 of the Norwich Town Plan, (pages 28-29) contains **Renewable Energy Project Siting**
10 **Standards** which specifically identify and protect the Ridgeline Protection Overlay Area and the
11 Shoreline Protection Overlay Area, and states as follows:

12 **Renewable Energy Project Siting Standards**

13 This plan supports renewable energy production in Norwich. For this policy to
14 continue with broad community support it must be balanced with this plan's policies
15 related to:

16 Protecting natural resources, environmental quality, scenic resources and
17 rural character

18 Maintaining viable farms and the working lands needed to sustain them
19 Focusing development in those areas of town already served by existing
20 public infrastructure

21 Preserving cultural resources within Norwich village

22 **Preserving the recreational and natural value of those lands identified**
23 **in the Ridgeline Protection Overlay Area** and Shoreline Protection
24 Overlay Area

1 Increasing the supply, diversity and affordability of housing in Norwich

2 This plan calls upon the Public Utility Commission to issue Certificates of Public
3 Good for projects between 15 kW and 500 kW based on the presumption that lands
4 in Norwich meet the so-called ‘preferred site criteria’, **except in areas already**
5 **mapped as Ridgeline Protection Overlay Area**, the Shoreline Protection Overlay
6 Area, and the designated village center. Renewable energy projects in Norwich are
7 further conditioned on the following standards:

8 For individual or group net metered renewable energy projects, the property
9 owner must take reasonable measures to site and/ or screen the installations
10 **to minimize any visual or noise impacts beyond the property line,**
11 **particularly on sites where there are neighboring homes in close**
12 **proximity**

13 Projects larger than 150 kW must meet existing standards for setbacks, site
14 design (landscaping, screening, lighting, **stormwater**, etc.) as laid out in the
15 Norwich Zoning and Subdivision Regulations.

16 Projects larger than 500 kW must have a management and decommissioning
17 plan that will ensure the land will be returned to its prior condition when no
18 longer actively used for renewable energy generation. Wherever feasible, the
19 energy generation use must be combined with continued agricultural use of
20 the land or habitat management, such that soil health and fertility is
21 maintained.

22 Projects larger than 500 kW must not clear land within a mapped forest block (see
23 Figure 8) unless there is a management and decommissioning plan that will ensure
24 the land will be re-forested and managed in accordance with a forest management
25 plan, when no longer actively used for renewable energy generation.

26 Exhibit NN-JK-6, pages 28-29.

27 These standards are clear written community standards for purposes of aesthetics and
28 land conservation measures for purposes of orderly development. Furthermore,
29 Section 5.08 of the Norwich Zoning Ordinance further describes the purpose of the

1 **Ridgeline Protection Overlay (RPO) District**, and is consistent with and implements
2 the protections contained in the Town Plan cited above.⁸

⁸ **Section 5.08 Ridgeline Protection Review** of The Norwich Zoning and Subdivision Regulations lays out the standards for review of projects proposed for the Ridgeline Protection Overlay Area which require that “Proposed development shall comply with the standards in Table 2.9 (F) & (G).”

Norwich Zoning Regulations, **Table 2.9 Ridgeline Protection Overlay (RPO) District** states in relevant part:

- (A) **Purpose.** The purpose of the Ridgeline Protection Overlay District is to protect Norwich’s rural character and scenic landscape by ensuring that development is located and designed in a manner that protects the uninterrupted skyline and minimizes adverse visual impact on designated ridgelines and adjacent slopes as viewed from public roads (Class I, II, and III town highways, state highways and interstate highways within the town).
- (B) **Area.** The Ridgeline Protection Overlay District includes all land within 750 feet of the designated ridgelines except for land within 300 feet of Class I, Class II, or Class III town highways, state highways or interstate highways. The designated ridgelines are as shown on the Ridgeline Protection Overlay District Map.

...

- (G) **Supplemental District Standards.** New structures within the RPO District shall comply with the following:

- (1) Forest Cover. On wooded sites, forest cover shall be maintained or established adjacent to proposed structures to interrupt the facade of buildings, provide a forested backdrop to structures, and/or soften the visual impact of new development as viewed from public roads. The Development Review Board shall consider the location of proposed structures relative to existing vegetation, and may require additional planting and/or limit the amount of clearing adjacent to proposed development to provide screening and maintain a forested backdrop. **A tree cutting, landscaping and/or forest management plan may be required to ensure that ridges and hill tops remain wooded, and to ensure that trees remain standing immediately adjacent to buildings to visually interrupt facades and reduce reflective glare, as viewed from off site.** Such a plan shall address specific measures to be taken to ensure the survival and, if necessary, replacement of designated trees during or after site development and the installation of all site improvements.
- (2) Placement of Structures. **New structures** shall be as minimally visible from public roads as possible given site conditions and topography, and **shall not stand in contrast to the surrounding landscape patterns and features, serve as a visual focal point, or be** visible from multiple points along a road, for an extensive distance along a road segment, and/or which is **highly visible from several vantage points within one mile of the development site.**
- (3) Landscaping & Screening. In instances where existing forest cover or topography will not adequately screen proposed development, a landscaping plan may be required by the Development Review Board. Such plan shall be designed to minimize the visibility of the structure as viewed from public roads. (continued on page 12)

1 Q6. On page four of her Rebuttal Testimony Ms. Staskus contends that you have not provided
2 documentation as to the location of the trails in the Town Forest relative to the proposed project.
3 She adds that these trails are not identified on Exhibit NUL MS-20, a Town of Norwich Trails map.
4 In addition, she believes that the solar array will not be visible from the town trail network.
5 How do you respond?

6 A6. Ms. Staskus must not realize that the location of the Town Forest and its trail network is
7 documented in the map that Norwich Solar Technologies included in their “Dear Neighbor”
8 letter sent to adjoining landowners on May 6, 2021 (Exhibit NN-JK-14). On this map, the
9 proposed project area is shown in blue on a parcel labeled (38 Acres LLC) with a yellow boundary.
10 The property to the west of the proposed solar site is labeled “Town of Norwich”. The white dotted
11 lines indicate the location of most of the trails. This exhibit demonstrates that Norwich Solar
12 Technologies had knowledge of the Town Forest and its trail network since at least 2021. Yet,

(4) Glare. Exterior building materials of all structures visible from public roads may be required to be of a type and design to minimize reflective glare and avoid undue adverse visual impact. Exterior lighting visible from a public road shall be shielded and downcast.

(H) Pre-application Site Development. Forest management activities designed as pre-development site preparation shall be reviewed by the Development Review Board to determine compliance with the standards set forth in this section. Such activities include, but are not limited to, road and driveway construction, excavation related to the upgrade and conversion of logging roads to development roads or driveways, clearing and/or grading for house-sites and septic systems, or related work. Where a landowner fails to submit pre-development plans for review, the Board may direct the manner in which the site will be restored or re-vegetated prior to development and/or limit development to a portion of the property which best meets the standards of this district.

1 Ms. Staskus continues to question the existence of both.

2 Excerpts from the 2017 - 2022 minutes of the Norwich Trails Committee (NTC) (Exhibit
3 NN-JK-24) also prove that there is indeed a trail network on the Town Forest parcel and that the
4 NTC spends time and money to maintain it. The minutes include discussions of repairs and
5 work days for the Schmidt Bog trail network. This exhibit also shows that on February 2, 2022,
6 former Norwich Selectboard member Steve Flanders referred to Schmidt Bog as “town-owned
7 bog property” during a monthly meeting of the Norwich Trails Committee (Item #6). He also
8 suggested that the Town Manager be notified of recent encroachments on the parcel. David
9 Hubbard, a member of both the Norwich Conservation Commission and the NTC described
10 Schmidt Bog “a valuable community natural resource” (March 2, 2022, Item #6). Meeting
11 minutes of the NTC are available at the Town of Norwich website.⁹

12 The Schmidt Bog trails are not shown on Exhibit NUL-MS-20, a Town of Norwich trail map,
13 because the map is obsolete. The NTC classifies this map as a Legacy map.¹⁰ Exhibit
14 NUL-MS-20 was produced in 2007. In addition to the Schmidt Bog trail network, this map does
15 not show the Blue Ribbon trail, the Blue Ribbon Connector, the Brookmead trail network, the
16 Rosemary Reiser trail, and many others. However, it does show the former location of the
17 Norwich Swimming Pool that washed out twelve years ago during Tropical Storm Irene and has
18 not been rebuilt. Clearly, Exhibit NUL-MS-20 is not a useful or reliable source of information.

19 Ms. Staskus’s continued reliance on this map is puzzling.

⁹ <http://norwich.vt.us/trails-committee/>

¹⁰ <https://norwichtrails.org/trail-maps/>

1 Current maps of the Norwich trail network are available online at the Norwich Trails website,
2 hosted by the Norwich Trails Committee.¹¹ Exhibit NN-JK-25 is a depicts the Trails Overview
3 page that includes the Schmidt Bog trail network.¹² Schmidt Bog is also also shown on the Trail
4 Maps page¹³ and the “Make Your Own Map” portion of the website hosted by CalTopo,¹⁴
5 shown in Exhibit NN-JK-26. Despite the fact that the Schmidt Bog trail network is published
6 online, it is not promoted as a major trail due to access issues. As noted in the August 3, 2022
7 NTC meeting minutes (Exhibit NN-JK-24), to gain access to the Town Forest and the Schmidt
8 Bog trail network, the public must cross privately owned lands. The minutes state:

9 Although public access across privately owned lands has been generously
10 allowed in the past, it would be desirable to have more formal authorization
11 to assure continued access into the future.

12 Regardless, maps of the Schmidt Bog trail network are published online and these trails are
13 frequently used by the community, their friends and families.

14 With regard to the visibility of the solar array from the town trails, the most recent incarnation
15 of the Upper Loveland Road site plan, Exhibit NUL-MS-2 (revised 1/17/23), shows that on the
16 west side of the solar array, the elevation of the top of the panels (700 - 730 ft) and wildlife
17 fence (723 - 748 ft) will be slightly lower than the elevation of the Schmidt Bog trail (740 - 760
18 ft). Since all of the trees between the powerline corridor and the solar array will be cut, bikers,
19 hikers and other trail users will look down on the wildlife fence and the western-most solar

¹¹ <https://norwichtrails.org/>

¹² <https://norwichtrails.org/trails-in-norwich/>

¹³ <https://norwichtrails.org/trail-maps/>

¹⁴ <https://caltopo.com/map.html#l=43.72358,-72.29759&z=15&b=mbt>

1 panels from the trail that runs along the eastern edge of the Town Forest.

2 Q7. Will the project be shocking and offensive to the average person?

3 A7. Ms. Staskus claims that it will not, but as I discussed at length in NN-JK-2 it most certainly
4 will for numerous reasons. For example, Ms. Staskus did not consider how the project would
5 appear to average people (hikers, birdwatchers, snowshoers, and other nature lovers) from the
6 adjacent public, Town owned forest land; she did not consider how the destructive clearcut
7 of the forested ridgeline and the upper third of the steep slope would appear to average
8 people traversing Upper Loveland Road, Loveland Road, and I-91 during the 6 ½ to 7 months
9 of the year when trees in this area are not in leaf. Ms. Staskus claims that views of the project
10 will be limited. This is not the case: from the trails and east side of the Schmidt's Bog/
11 Town owned forest adjacent to the project site, the project will be in open view. See the
12 above Answer 6 to this rebuttal. As I have said before:

13 The proposed project is an aesthetically discordant and disharmonious
14 intrusion into a forested area and as such is offensive to the sensibilities
15 of the average person. It is an industrial construction that is completely
16 out of character with the shapes, colors, and textures of the surrounding
17 forest..." (Exhibit NN-JK-2, page 22)

18 On p.5 of her rebuttal Ms. Staskus states that the "average person" under Quechee is not
19 viewed from the perspective of those with a "neighborly" interest, such as Ms. Kenseth and
20 her neighbors." She goes on to say that the "average person means the average member of
21 the viewing public who would see a particular project from the vantage point of the public"
22 and "from an objective, as opposed to subjective and neighborly, perspective.

1 Ms. Staskus assumes that the perspective I have offered with respect to the “average person” is
2 not that of the average person but that of myself and my neighbors. As a careful reading of my
3 Aesthetic Report shows, I provided examples of the various types of people (average
4 persons) who would find the project offensive and shocking. Ms. Staskus claims that from
5 what she sees and hears average people are shocked and offended that Vermont is not doing
6 more “to deploy more renewable energy projects.” From what I have seen and heard, the
7 average people who know the details about the solar array proposed for this particular site,
8 especially the fact that it will require the clearcutting of 8.2 acres of forest including forest
9 along a ridgeline and down a steep slope, are appalled. Since I am a neighbor to the project,
10 Ms. Staskus seems to assume that my perspective is not objective, but subjective. I would
11 remind Ms. Staskus that given my decades long career as a professor and scholar and as an
12 expert on aesthetics I am certainly capable of providing a professional and objective opinion
13 about the visual impact of the project apart from any “neighborly interests.” Actually, one might
14 well ask if Ms Staskus herself is capable of providing an objective perspective about the aesthetics
15 and visual impact of the project given the fact that she is a paid employee of the company
16 proposing to install it.

17 Q8: What is your response to Ms Staskus’s statement that my aesthetic report “includes no
18 acknowledgement that the Commission’s Section 248 aesthetic assessment is significantly
19 informed by the societal benefits of the project.”?

20 A8: In 2017, the statute was updated to require net-metering systems larger than 150
21 kW to apply the Quechee test as described in the Vermont Supreme Court’s decision In

1 re Halnon, 174 Vt. 514 (2002). 30 VSA §8010(c)(3)(D) states

2 (D) With respect to net metering systems that exceed 150 kW in plant
3 capacity, the rules shall apply the so-called “Quechee” test for aesthetic
4 impact as described by the Vermont Supreme Court in the case of In re
5 Halnon, 174 Vt. 51411 (2002) (mem.). The rules and application form shall
6 state the components of this test.

7 The Court in explained in Halnon that some people refer to Quechee as a three-part test
8 (meaning including the third standard about societal benefits) but in the Halnon
9 decision, the Vermont Supreme Court restates the “proper” Quechee test which is two
10 parts only. The Halnon decision does away with the “societal benefits” third part of
11 Quechee test as it was being applied by the PUC and clarifies that it is only two parts:

12 The parties in this matter offer differing interpretations regarding proper
13 application of the Quechee test, alternately referring to both a two-part,
14 and a three-part Quechee analysis. For purposes of clarification **we**
15 **restate the proper Quechee test** for determining whether a project will
16 have an undue adverse effect on the aesthetics or scenic and natural
17 beauty of an area...

18 ... the Board accepted the hearing officer’s conclusion that the project
19 failed **the two-part Quechee test** and would, therefore, have an undue
20 adverse effect upon the aesthetic and scenic and natural beauty of the area.

21 In re Halnon, 174 Vt. 514 (2002) [*emphasis added*]

22 The subsequent net-metering statute says that the two-part Halnon test must be applied.

23 The third standard, “societal benefits” is not in the PUC Rule as applied to all net-
24 metering projects. PUC Rule 5.112 states, in its entirety:

1 **5.112 Aesthetic Evaluation of Net-Metering Projects**

2 (A) Quechee Test. In determining whether a net-metering system satisfies
3 the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the
4 Commission applies the so-called “Quechee test” as described in the case

5 In *Re Halnon*, 174 Vt. 514 (2002) (mem.), set forth below:

6 (1) Step one: Determine whether the project would have an adverse
7 impact on aesthetics and the scenic and natural beauty of an area
8 because it would not be in harmony with its surroundings. If the
9 answer is no, then the project satisfies the aesthetics criterion. If yes,
10 move on to step two.

11 (2) Step two: The adverse impact will be found to be undue if any one
12 of the three following questions is answered affirmatively:

13 (a) Would the project violate a clear, written community standard
14 intended to preserve the aesthetics or scenic, natural beauty of the
15 area?

16 (b) Would the project offend the sensibilities of the average person?

17 (c) Have the applicants failed to take generally available mitigating
18 steps that a reasonable person would take to improve the harmony
19 of the proposed project with its surroundings?

20 (B) Adverse Aesthetic Impact. In order to determine that a project would
21 have an adverse impact on aesthetics and the scenic and natural beauty
22 under subsection (A)(1), above, the Commission must find that a project
23 would be out of character with its surroundings. Specific factors used in
24 making this evaluation include the nature of the project’s surroundings, th
25 compatibility of the project’s design with those surroundings, the suitability
26 of the project’s colors and materials with the immediate environment, the
27 visibility of the project, and the impact of the project on open space.

28 (C) Clear, Written Community Standard. In order to find that a project
29 would violate a clear, written community standard, the Commission must
30 find that the Project is inconsistent with a provision of the applicable town
31 or regional plan that:

1 (1) Designates specific scenic resources in the area where the project
2 is proposed. Statements of general applicability do not qualify as
3 clear, written community standards. For example, the general
4 statement that “agricultural fields shall be preserved” would not qualify
5 because the statement does not designate specific resources as
6 scenic. The statement “the agricultural fields to the west of Maple
7 Road are scenic resources that must be preserved” would qualify
8 because it designates specific resources as scenic.

9 (2) Provides specific guidance for project design. For example, the
10 statement “only dwellings, forestry, and agriculture are permitted
11 within the Maple Road scenic protection area” would be a clear
12 standard because it states with specificity what type of development is
13 permitted. The statement “all development in the Maple Road scenic
14 protection area must maintain the rural character of the area” would
15 not be a clear standard because it does not state with specificity what
16 type of development is permitted.

17 (D) Offend the Sensibilities of the Average Person. A project will be found
18 to offend the sensibilities of the average person if the project would be so out
19 of character with its surroundings or so significantly diminish the scenic qualities
20 of the area as to be offensive or shocking to the average person. In determining
21 whether a project would offend the sensibilities of an average person, the
22 Commission will consider the perspective of an average person viewing the
23 project from both adjoining residences and from public vantage points.

24 (E) Generally Available Mitigating Steps. In determining whether an
25 applicant has taken generally available mitigating steps, the Commission
26 may consider the following:

27 (1) what steps, such as screening, the applicant is proposing to take;

28 (2) whether the applicant has adequately considered other available
29 options for siting the project in a manner that would reduce its
30 aesthetic impact;

31 (3) whether the applicant has adequately explained why any additional
32 mitigating steps would not be reasonable; and

33 (4) whether mitigation would frustrate the purpose of the Project.

1 PUC Rule 5.112.

2 The third “societal benefits” standard added by the PUC to the Quechee test exceeds
3 the PUC’s statutory authority as applied to net-metering cases larger than 150 kW
4 according to the updated 2017 statute. Based on Halnon, the “proper” Quechee test for
5 this project is two parts only, and excludes consideration of “societal benefits”.

6 Q9. What is your response to Ms. Staskus’s claim that my Aesthetic Report does not “express
7 the Town’s desire to switch to more renewable energy in Norwich” nor provide evidence “to
8 suggest that the Project will unduly interfere with the orderly development of the region.”?

9 A9. Norwich’s desire to “switch to more renewable energy” is set forth in aspirational
10 statements that are not regulatory. By contrast, the specific requirements of the Town Plan’s
11 protections of its ridgelines is mandatory. As such these mandatory statements create a clear
12 written community standard while aspirational language does not.

13 Even though the town of Norwich has set forth its aspirations to promote development of
14 renewable energy resources, it does not necessarily follow that such development must take
15 place on the Upper Loveland Road site. With respect to solar projects in particular, numerous
16 other locations in the town of Norwich could satisfy these aspirations, for example, the rooftops
17 of residences and commercial buildings, brown fields, or open fields located near commercial
18 enterprises. Pivotal solar arrays could help to satisfy these aspirations as could other means such
19 as geothermal energy.

1 **3. Conclusio**

2 Q11. Does this conclude your testimony?

3 A11. Yes.