

**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)
and operation of a 500 kW (AC) photovoltaic)
group net-metering system in Norwich, Vermont) 21-3587-NMP

Order entered: / /2023

**PETITIONER’S RESPONSE TO OPPOSING LANDOWNERS’
JULY 13, 2023 OBJECTION TO JUDICIAL NOTICE OF
PETITIONER’S JUNE 29, 2021 REQUEST FOR PREFERRED SITING**

NOW COMES Norwich Upper Loveland Solar LLC (the “Petitioner” or the “Applicant”) and responds to Opposing Landowners’ July 13, 2023 objection to Petitioner’s request for judicial notice of the June 29, 2021 request for preferred siting (Exhibit NUL Reply Brief-3) sent by Petitioner to the Town of Norwich Selectboard and Planning Commission (the “Objection”).¹

In their Objection, Opposing Landowners contend, in part:

“6. There is no evidence that verifies that the email was ever received by the Town of Norwich, and in fact, the documents were not received by the Town, according to its production of public documents in response to a Public Records Act (“PRA”) request.

7. The offered email and its attachments were not contained in any agenda packet or correspondence packet provided to the Planning Commission prior to its July 13, 2021 Meeting or ever.”

Objection at 1.

These statements, like Opposing Landowners’ allegations in their Brief that the Applicant submitted a site plan for the Planning Commission’s July 13, 2021 meeting that is different than the 45 Day site plan mailed the next day, and that Applicant never came back to inform the Town of a subsequent shift in the array prior to the PUC petition filing, are incorrect.²

¹ Capitalized terms used herein not otherwise defined have the meaning set forth in Petitioner’s June 5, 2023 Reply Brief.

² As already established by Petitioner’s request for judicial notice of Exhibit NUL Reply Brief-3, the third page of the June 29, 2021 preferred siting request letter is the very same engineering site plan that was included in the 45 Day filing made on July 14, 2021. Exhibit NUL Reply Brief-2 is the August 23, 2021 email from Mr. McBride that notified the Planning Commission of the shift in the array.

On July 14, 2023, Attorney Joseph McLean, legal counsel to the Town of Norwich, emailed Attorney Dingledine and Petitioner's counsel to confirm that the Town in fact did receive the entire June 29, 2021 preferred siting request. Attorney McLean's email states in relevant part:

“Kim/Brooke: On Friday morning, in follow-up to a request, the Norwich Assistant Town Manager (formerly, the Assistant to the Town Manager), Miranda Bergmeier, searched for and located the email below, with accompanying attachments, in her inbox (having been forwarded to her by former Town Manager Herb Durfee). I am providing the same to you now given the recent dispute regarding whether Norwich Solar had sent its June 29, 2021 email/letter/plan to the Town.

Although within the scope of Mary Gorman's March 2, 2022, PRA request (attached), and non-exempt, the June 29, 2021 correspondence from Norwich Solar was not produced in response to that request. At this time, I cannot explain with any reasonable degree of certainty how or why that occurred. Perhaps it was simply overlooked. However, all of these materials were published in the August 11, 2021 Selectboard packet and, hence, were already publicly available at the time of Ms. Gorman's request.”

Exhibit NUL Reply Brief-4. The recent request that prompted Attorney McLean and the Town to search its records came from undersigned counsel to verify the inaccuracy of Opposing Landowners' claim that “[t]he offered email and its attachments [Exhibit NUL Reply Brief-3] were not contained in any agenda packet or correspondence packet provided to the Planning Commission prior to its July 13, 2021 Meeting *or ever*.” Objection at 1, *supra* (emphasis added).

Opposing Landowners also knew or should have known that the June 29, 2021 email and attachments for the preferred site request were received by the Town, because this fact was spelled out in a two-page memorandum prepared by Planning Commission Chairman Jaan Laaspere prepared for the Planning Commission hearing packet for the recent July 11, 2023 meeting (at which both Mrs. Gorman and Attorney Dingledine attended and spoke). *See* Exhibit NUL Reply Brief-5 (PC 7/11/23 meeting packet) at 11-12. The Chairman's chronology states in relevant part:

June 29, 2021 - NST sent letter to Rod Francis addressed to the Norwich Planning Commission and Selectboard requesting preferred siting letter. Includes site plan that will go to PUC on 7/14/21.

July 14, 2021 - NST initial filing to PUC, includes the site plan that was sent to the Planning Commission on 6/29.

Sept 14, 2021 - Planning Commission meeting. Packet includes McBride 8.23 email in correspondence. Rod mentions the change in the plan by noting the correspondence was received.

Oct 12, 2021 – Planning Commission meeting. Draft minutes for 9/14/21 meeting included under correspondence section: “Norwich Technologies provided details of an environmental review of the Upper Loveland RD project site. There has been a minor adjustment to the location of panels in response to findings, but there will be no visual impact.”

Exhibit NUL Reply Brief-5 at 11 (emphasis added).

Based upon these facts, the Planning Commission declined Mrs. Gorman's recent request to re-open the preferred site designation for the Norwich Upper Loveland Solar Project. *See* Exhibit NUL Reply Brief-7 (Planning Commission 7/11/23 draft minutes).

The Applicant respectfully asks the Hearing Officer to take judicial notice of Exhibits NUL Reply Brief-3 (Petitioner's June 29, email to the Town with Preferred Site Request), NUL Reply Brief-4 (Attorney McLean's 7/17/23 email with attachments), NUL Reply Brief-5 (Planning Commission 7/11/23 meeting packet), NUL Reply Brief-6 (Planning Commission 9/14/21 draft minutes), and NUL Reply Brief-7 (Planning Commission 7/11/23 draft minutes).³

³ “A judicially noticed fact must be one that is not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b). Petitioner submits that Exhibits NUL Reply Brief-3,4,5, 6, and 7 are not subject to reasonable dispute in that they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. V.R.E. 201(b). They are a public documents held by the Town of Norwich. Section 810(4) of the Vermont Administrative Procedures Act, as incorporated by Commission Rule 2.216(A), provides that “[n]otice may be taken of judicially cognizable facts” by an agency. Furthermore, Vermont Rule of Evidence 201(d), as incorporated by 3 V.S.A. § 810(1) and Commission Rule 2.216(A), directs that an agency “shall take judicial notice

Opposing Landowners' argument under V.R.E. 201, that the June 29, 2021 preferred site request is not entitled to judicial notice because it purportedly "is simply not in the public domain", *see* Objection at 6, is wholly inaccurate. Whether or not the original June 29, 2021 preferred site request was in a Selectboard packet or produced in response to Mrs. Gorman's Public Records Act Request, is irrelevant. The Opposing Landowners are and have been on actual notice by the Town's Planning Commission Chair and its attorney, that it received the request.

Rather than continuing to make inaccurate submissions to this Commission and the Town of Norwich that wrongly impugn the integrity and reputation of Petitioner, Opposing Landowners should have conducted further due diligence, corrected their repeated misstatements, and withdrawn the claims. *See In re Wysolmerski*, 237 A.3d 706, ¶ 31(Vt. 2020)("[a] lawyer shall not knowingly ... make a false statement of fact or law to a tribunal *or fail to correct a false statement of material fact* or law previously made to the tribunal by the lawyer.")(emphasis added)(quoting Vermont Rule of Professional Conduct 3.3). *See also id.* at ¶ 33.⁴ Admission of the evidence offered by Petitioner that corrects the material misstatements made by Opposing Landowners is required for a just and proper resolution of the issue.

Request for Relief

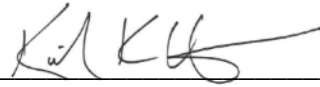
Wherefore, Petitioner respectfully requests that the Commission take judicial notice of exhibits cited herein, deny Opposing Landowners' request for dismissal and its objection to judicial notice, adopt Petitioner's Proposed findings and briefs, and promptly issue a certificate of public good for the Project.

if requested by a party and supplied with the necessary information." Judicial notice may be taken at any stage of a proceeding. V.R.E. 201(f).

⁴ *Citing Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1546 (11th Cir. 1993) ("All attorneys, as 'officers of the court,' owe duties of complete candor and primary loyalty to the court before which they practice. ... This concept is as old as common law jurisprudence itself."), *cert. denied*, 510 U.S. 863, 114 S.Ct. 181, 126 L.Ed.2d 140 (1993).

DATED at Burlington, Vermont this 27th day of July, 2023.

Norwich Upper Loveland Solar LLC

By: _____

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