

**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 the
installation and operation of a 500 kW (AC)
group net-metering solar electric generation
system in Norwich, Vermont

Case No. 21-3587-NMP

**NEIGHBOR/INTERVENORS RESPONSE TO PETITIONER'S
MOTION FOR RELIEF FROM JUDGMENT**

Neighbor/Intervenors here state that Petitioner's motion for relief from judgment should not be granted for the following reasons:

Petitioner submits as “a key piece of material evidence” (p.4) a chronology prepared by Planning Commission Chair Jaan Laaspere for the PC meeting of July 11, 2023. Petitioner claims that this chronology “corroborates the Hearing Officer’s assessment,” but in fact this is not the case. In his May 5, 2024 Public Comment on PUC case number 21-3587-NMP, Jaan Laaspere states “I must correct the misperception that the referenced document [his chronology] can be considered in any way a definitive or evidentiary record of events relating to the Upper Loveland solar project. It should not be considered material evidence in this case. It is not, and was never intended to be a detailed, exact, or complete record. The document includes particulars which are uncertain and under contention at this later date. My compilation of events was one view created based on the limited information available to me in July 2023.”

As has happened repeatedly in past documents, Petitioner fails to recognize that **Site Plan B (second facility layout) was the plan that received approval and Preferred site status from the Planning commission (July 13, 2021) and the Selectboard (August 11, 2021).** Petitioner

accepts Laaspere's inaccurate chronology items of July 13, 2021 and August 11, 2021. **Neither Site Plan C (third facility layout) or Site Plan D (fourth facility layout) was approved or given Preferred Site status** at those meetings.

The following email from Norwich Town Attorney Joseph McLean to Intervenors' attorney Brooke Dingledine demonstrates unequivocally the updated plan was not provided to members of the Planning commission:

"I am writing to communicate the results of my further inquiry into whether the Town of Norwich Planning Commission members were given a copy of the letter from Norwich Solar Technologies (Troy McBride), dated June 29, 2021 (copy attached), which included a document entitled "Draft Site Plan for proposed solar project," prior to recommending that the Town issue a letter of support for the project. The answer is no. The Planning Commission "packet" for its July 13, 2021 meeting did not include the "Draft Site Plan," referenced above, and there is no evidence that it was otherwise provided to the Planning Commission members prior to or during the meeting.

See: <http://norwich.vt.us/wp-content/uploads/2012/06/Package-a.pdf>

This letter and additional related exchanges between the two attorneys were filed with the PUC on **August 15, 2023 as Exhibit G**. The Petitioner received a copy of this Exhibit and therefore is well aware that Site Plan C (Draft Site Plan) was **not** "provided to the Planning Commission members prior to or during the meeting" of July 13, 2021.

Petitioner claims (pp. 2-3) that "The record of existing evidence irrefutably establishes that the Project site plan depicting the limits of clearing and array layout were finalized at the time the Petition was filed on August 31, 2021..." "Both the 45-Day Advanced Notice and

the Petition filing were delivered to the Town Planning Commission and Selectboard at the official Town address. The only change to the array and clearing limits occurred between the time of the July 14, 2021 Advance Notice filing and the date the petition was just over one month later.”

Once again, Petitioner fails to acknowledge that **the plan approved by the PC (July 13, 2021) and the SB (August 11, 2021) was not Site Plan C (third layout; Draft Site Plan) but Site Plan B (second layout)**. It is not true that the “only change to the array and clearing limits occurred between..July 14, 2021” and the date the petition was sent to the PUC on August 31, 2021.

The first major change occurred between Site Plan B (second layout), **the plan approved by both the PC and the SB**, and Site Plan C (third layout). While Plan B (2) did not remove any trees from the ridgeline and the steep slope descending from it, Plan C (3) calls for significant clearcutting of trees along the ridgeline and partway down the steep slope. Plan B indicates that the distance between the project site and the nearest residence will be 500 feet. Plan C indicates that distance will be reduced to 405 feet.

The second major change occurred between Plan C and Plan D (fourth layout). With Plan D, the change of the eastern boundary of the site requires clearcutting trees not just along the ridgeline but an additional 80 feet down the steep slope. Now the distance between the project site and the nearest residence has been reduced to 325 feet. As we have noted before (Comments on Proposal for Decision, April 11, 2024, p.24): “These changes are in direct contradiction to the Applicant’s representations to the Town Planning commission that the site would be hidden “over the ridge

behind these trees.” That statement is no longer true. Site Plan D [fourth layout] is a fundamentally different project than what was approved (Plan B) by the Town (NN-JK-21, pp.13-14).”

On August 10, 2021, the 45-Day Notice containing Plan C (third layout) was included in the packet for the Planning Commission meeting of August 10, 2021. Despite the fact that this was a dramatically different plan from the plan (B, second layout) approved on July 13 by the Planning Commission, the new plan was **not** reviewed or voted upon by members of the Commission. Draft minutes of this meeting make no mention of the 45-day notice and the accompanying plan.

On September 14, 2021, Plan D (fourth layout) with a superimposed image (in blue) of Plan C (third layout) was included in the Planning Commission packet under the heading “Correspondence.” This map together with an environmental map from Arrowood had been emailed to the Commission on Aug 23, 2021 by Troy McBride who stated that the “two features [accommodations for a vernal pool and a small stream] don’t change our proposed solar project much.” In his very brief report to the Commission members, Town Planning and Zoning Administrator Rod Francis states that there are “only minor adjustments to the scope of the project.” Both statements were misleading since Plan D (fourth layout) differed dramatically from the Plan B (second layout) that Commission members had approved for Preferred site status in July. Aside from brief comments by PC member Goodrich regarding the Arrowood study, there was no review or discussion of this plan at the meeting and **no vote** was taken to give this latest plan a preferred site status.

As we have noted before (Comments, p.25), neighbor/intervenors met in 2022-23 with the Selectboard (twice) and the Planning Commission (once) regarding the dramatic differences between the plans and concerns about the preferred site process. At these meetings, members **did not vote** to approve and give Preferred site status to the final plan, Plan D (the fourth layout).

Given the reasons presented above, we respectfully ask the PUC to not grant the Petitioner relief from judgment. We thank you for your attention and refer you to the following previously filed documents that provide a detailed account of the Preferred Site Process: NN-JK-21 (Preferred Site Letter Report), and Comments on Proposal for Decision, April 11, 2024 (pp.19-25 Preferred Site Status). See also Comments on Proposal for Decision, April 11, 2024, pp.2-6 (Soil Erosion, Public Health and Safety) for a discussion of the potential risks that Plan D (the fourth layout) would have for the property and safety (the physical well-being) of the residents whose homes are at the base of the steep slope.

DATED at Norwich, County of Windsor and State of Vermont this 14^h day of May, 2024.

Respectfully submitted on behalf of Neighbor Intervenors Stephen Gorman, Heather and Jay Benson, the Goulets, Jayoung Joo and Samin Kim, Larry Ufford and Joy Kenseth:

/s/ Stephen Gorman
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