

**STATE OF VERMONT**  
**PUBLIC UTILITY COMMISSION**  
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Case No. 19-2659-NMP

Petition of Bradford Solar, LLC, for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, and Commission Rule 5.100, authorizing the installation and operation of a 500 kW solar electric generation facility in Bradford, Vermont

**BRADFORD SOLAR, LLC'S SUPPLEMENTAL PROPOSED FINDINGS AND CONCLUSIONS**

DATED at Montpelier, Vermont, this 10th day of July 2020.

BRADFORD SOLAR, LLC

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**I. INTRODUCTION**

Bradford Solar, LLC, (“Petitioner”) hereby files supplemental proposed findings and conclusions with the Vermont Public Utility Commission (“Commission”). The Petitioner filed its initial proposed findings and certificate of public good on June 28, 2019. Those previous proposed findings are hereby incorporated.

**II. PROCEDURAL HISTORY**

On June 28, 2019, the Petitioner filed a petition with supporting testimony and exhibits requesting a CPG for the Project with the Commission.

On July 2, 2019, the Commission issued a Notice of Incomplete Filing.

On July 9, 2019, Petitioner responded to the Commission’s Notice of Incomplete Filing.

On July 16, 2019, the Petition was deemed administratively complete by Commission staff.

On July 17, 2019, Evan Meenan entered his Notice of Appearance on behalf of the Vermont Natural Resources Board.

On July 19, 2019, Erin C. Bennett entered her appearance on behalf of the Vermont Department of Public Service (Department).

On July 26, 2019, the Two Rivers-Ottauquechee Regional Commission (“TRORC”), through its Senior Planner, Kevin Geiger, filed a Public Comment.

On August 12, 2019, Bradford Solar filed supplemental prefiled testimony in response to a Commission request for additional information.

On August 15, 2019, the Department of Public Service filed comments on the Project.

Also, on August 15, 2019, the Vermont Natural Resources Board (“NRB”), the Vermont Agency of Natural Resources (“ANR”), and the Vermont Agency of Agriculture, Food and Markets (“AAFM”) filed comments and proposed conditions for the Project. AAFM also filed a notice of intervention in this proceeding.

On August 19, 2019, The Town of Bradford (“Town”), through its Chair, Marcey Carver, filed a Public Comment opposing the project.

On August 22, 2019, Commission staff issued a procedural order staying the proceeding pending the submittal of the results of a Phase I archaeological study to the Commission and until issuance of an order lifting the stay. Bradford Solar was also directed to provide a response to the comments and proposed conditions filed by TRORC, the Department, NRB, ANR, AAFM, and the Town.

On September 5, 2019, Bradford Solar filed supplemental testimony to address the comments and proposed conditions.

On October 1, 2019, Bradford Solar filed additional supplemental testimony and the Phase I archaeological study as Exhibit BS-CDN-S-2.

On October 4, 2019, Commission staff issued a procedural order lifting the stay and requesting comments on the Phase I study.

On October 16, 2019, the Vermont Division for Historic Preservation filed Comments on the Project.

On October 17, 2020, the Commission issued a Procedural Order re: Significant Issues and Notice of Scheduling Conference.

On November 1, 2019, a scheduling conference was held in this proceeding. During the scheduling conference, judicial notice was taken of the Bradford Town Plan, dated January 28, 2016, and the TRORC Regional Plan dated July 26, 2019. A Procedural Order was issued Setting Deadline for a Proposed Schedule and Intervention.

On November 8, 2019, the DPS filed a Proposed Schedule.

Also, on November 8, 2019, the Bradford Planning Commission and the Two Rivers-Ottawaquechee Regional Commission filed Notices of Intervention.

On November 12, 2019, the Commission issued a Procedural Order requesting Reply Comments on TRORC and the Town's Notices of Intervention.

Also, on November 12, 2019, the DPS filed Comments on the Intervention Notices, and the Petitioner filed a Proposed Schedule.

On November 14, 2019, the Petitioner filed a response to the Notices of Intervention.

On November 15, 2019, the Commission issued a Procedural Order regarding Intervention and Scheduling and granted Party Status to TRORC and the Town of Bradford.

On November 27, 2019, the Bradford Planning Commission filed a Proposed Schedule and opposed the proposed schedule filed by the Petitioner.

On December 10, 2019, the Commission issued a Scheduling Order in this proceeding.

On December 20, 2019, the Commission issued a Notice of Public Hearing and Information Session.

On December 23, 2019 the Bradford Planning Commission and the Two Rivers-Ottawaquechee Regional Commission served its First Request for Discovery upon Petitioner.

On December 31, 2019, the Commission issued a Memorandum regarding Site Visit Information.

On January 8, 2019 a site visit and public hearing was held.

On January 9, 2020, adjacent landowner, Kimberly Seymore-Sager filed a Public Comment.

On January 10, 2020, the Petitioner responded to the Discovery served upon it by the Bradford Planning Commission and the Two Rivers-Ottawaquechee Regional Commission. The response to the Bradford Planning Commission included Exhibit CDN-S-1-5.

On January 17, 2020, the Commission acknowledged the Public Comment filed by Ms. Seymore-Sager.

On January 23, 2020, the Commission issued a Procedural Order requesting information from the Petitioner, the Town and the TRORC.

On January 24, 2020, the DPS served its First Set of Discovery Requests upon Petitioner, and the Bradford Planning Commission served its Second Set of Discovery Requests upon Petitioner.

On February 7, 2020, the Bradford Planning Commission and the TRORC responded to the Commission's Request for Information.

On February 14, 2020 the Petitioner responded to the Commission's Request for Information.

On March 6, 2020, the DPS and the Town filed prefiled direct testimony.

On March 17, 2020, the Commission issued a Second Procedural Order Requesting Information from TRORC and indicating the due to the current COVID-19 restrictions, the TRORC did not have to have their responses notarized.

On March 20, 2020, the Petitioner served its First Set of Discovery Questions on the Town.

On March 25, 2020, the Commission issued an Addendum to the Second Procedural Order Requesting Information from TRORC.

On March 31, 2020, the TRORC responded to the Commission's Request for Information.

On April 2, 2020, the Town responded to the Petitioner's First Discovery Request.

On April 10, 2020, the Petitioner filed rebuttal/surrebuttal testimony.

On April 14, 2020, the Commission issued a Second Scheduling Order.

On April 30, 2020, the Petitioner responded to the Amended Schedule.

On May 5, 2020, the Commission issued a Procedural Order regarding responses to Motion for Virtual Hearing and Schedule Change.

On May 15, 2020, the DPS responded to the Commission's Request for Information.

Also, on May 15, 2020, the Petitioner responded to the Commission's Request for an Evidentiary Hearing.

On May 19, 2020, Anthony Iarrapino entered his appearance on behalf of the Petitioner.

On May 27, 2020, the Commission issued a Procedural Order granting the Motion for Virtual Hearing.

On June 5, 2020, Petitioner filed a Notice of Intention to Cross Examine Kevin Geiger. The TRORC also responded to the Commission's questions on this date.

Also, on June 5, 2020, the Commission issued a Scheduling Order establishing dates for the Evidentiary Hearing and remaining process.

On June 9, 2020, the Commission issued a Notice of Evidentiary Hearing by Video conference.

On June 11, 2020, the Petitioner filed a Motion to Strike selected portions of prefiled testimony filed by the Town, and portions of an affidavit and letter filed by Mr. Kevin Geiger on behalf of TRORC.

On June 12, 2020, the hearing officer issued a procedural order establishing June 22, 2020 as the deadline for responses to the Motion to Strike.

Also, on June 12, 2020, the Commission issued a Procedural Order establishing the deadline for responses to Petitioner's Motion to Strike portions of Prefiled Testimony, Affidavits, and Information.

On June 18, 2020, the Commission issued a Procedural Order re: Guidance for Evidentiary Hearing.

On June 19, 2020, L. Brooke Dingleline filed a Limited Notice of Appearance on behalf of the Town of Bradford.

On June 22, 2020, the Town filed its response to Petitioner's Motion to Strike.

On June 23, 2020, the Petitioner filed a reply to the Town's response.

On June 24, 2020, the Petitioner filed revised testimony and exhibits.

On June 25, 2020, the parties filed a Stipulated List of Prefiled Testimony and Exhibits with Objections Noted.

Also, on June 25, 2020, the Commission granted in part Petitioner's Motion to Strike.

Again, on June 25, 2020, the Town filed its February 7, 2020 responses to the Hearing Officer's questions and labeled the responses as Exhibit BPC-4.

On June 26, 2020, with consent of all the parties, the Commission held an evidentiary hearing via the GoToMeeting platform.

## **II. SUPPLEMENTAL FINDINGS**

### **Orderly Development of the Region**

[30 V.S.A. § 248(b)(1)]

1. The Project will not interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, and the land conservation measures contained in the Bradford Town Plan (Town Plan), with substantial deference given to the land conservation measures and specific policies of the Two Rivers-Ottauquechee Regional Plan and Certified Energy Plan adopted July 26, 2017 (Regional Plan), only to the extent that any such measures and policies applicable to this Project are found therein. This finding is supported by findings 2 through 33.

2. The Project will have a favorable impact on the orderly development of the region because it helps advance the renewable energy goals set forth in the Regional Plan. The Regional Plan states two specific goals that the Project can help achieve: "Meet 25% of remaining energy need from renewables by 2025, 40% by 2035 and 90% by 2050. Meet end use sector goal of 67% renewable electric by 2025," and "Increase the amount of renewable energy generated in the TRORC region to 163 MW by 2050." Nichols pf. at 9-10; exh. BS-CDN-4.

3. The Regional Plan does not contain land conservation measures or specific policies aimed at preventing development on the Project site, much less solar development thereon. Nichols pf. at 10; exh. DPS-1, pages 8-9 (concluding that the Regional Plan does not

“identify any open space, scenic or conservation resources specifically associated with the Project site”); exh. BS-CDN-5, page 14 (concluding that Regional Plan does not include any protections for the Project site).

4. The Regional Plan’s Chapter 12, F. Permitting Considerations identifies preferred locations for “new non-renewable generation, transmission, and distribution systems.” This language does not apply here because this is a proposed renewable generation Project. exh. BS-CDN-5, page 11.

5. The Regional Plan’s Chapter 12, F. Permitting Considerations also contains a “Significant Areas” policy. It provides that “[a]ll new generation, transmission, and distribution facilities shall be sited and designed to avoid or, if no other reasonable alternative exists, to otherwise minimize and mitigate adverse impacts to the following:

- Historic Areas, landmarks, sites and structures listed, or eligible for listing, on state or national registers.
- Public parks and recreation areas, including state and municipal parks, forests and trail networks.
- State or federally designated scenic byways, municipally designated scenic roads and viewsheds.”

exh. BS-CDN-5, page 11.

6. No historic areas or landmarks will be impacted by the Project. Nichols First Supp. pf. at A8 & A9; Nichols Third Supp. pf. at 2; Exh. BS-CDN-11; exh. Commission-1.

7. The Project has no impact on public parks, recreation areas, forests as none are on or adjacent to the Project Site. It appears that a spur from the local Vermont Association of Snow Traveler’s (“VAST”) trail network has historically crossed the Project site to provide access to the adjacent gas station, but this spur occurs within the statutory setbacks from the nearby road and adjoining properties that are applicable to the Project; thus the Project will not interfere with the VAST spur. Exh. Commission-1 at 8; exh. BS-CDN-13.

8. There are no state or federally designated scenic byways impacted by the Project. See Generally exh. DPS-1; exh. BS-CDN-5 (discussing project location and surrounding roads and viewsheds). The Town Plan does identify Route 25 (Waits River Road) as a “significant viewshed,” although it fails to explain why the viewshed in the area of the Project (or for the approximately 6-mile length of the road) which is already extensively developed with unscreened commercial buildings is significant. exh. DPS-1 at 6 (citing Bradford Town Plan at 43); exh. Commission 1 at 8. Views of the Project site from Route 25 do not already have a high scenic quality that the Project’s development would diminish. exh. BS-CDN-5 at 20. Nonetheless, the low profile of the project and the required setbacks from the road minimize the view of the Project from the road, with the visual impact of the Project being further diminished by its proximity to other existing development along the road of similar scale and character and by the mitigation plantings proposed by Petitioner to screen or otherwise soften views from the Road. exh. DPS-1 at 7; exh. BS-CDN-5 at 19-20.

9. The Regional Plan’s Chapter 12, F. Permitting Considerations also identifies general goals for “Site Selection.” The Project meets these general goals by using an existing access area and an existing distribution network, and by requiring no tree clearing. Nichols pf. at 6-7.

10. The Regional Plan identifies the area in which the Project is proposed as one of thirteen “Interchange Areas” in the region, specifically the “Bradford Interchange.” exh. BS-CDN-5 (citing Regional Plan at 63-64). With specific reference to development in this Interchange Area, the Regional Plan uses “non-mandatory policy” language (Geiger Aff. ¶ 5), and states that “[t]he land located in the immediate area of the interchange should be left in an undeveloped state. Development should be directed to the east, in and around the intersection of

Routes 5 and 25, taking opportunities to make use of the available land that is located between and behind the existing development, creating a compact core that allows other lands to remain open.” exh. BS-CDN-5, page 8.

11. The Project is consistent with the Regional Plan’s recommendation for the location of development at the Bradford Interchange because the Project site is located between and behind the substantial existing development found in that area. It is proposed on a parcel of land to the north of Waits River Road (VT Route 25) and to the west of a parcel on which a number of existing commercial structures are located, including a large self-storage facility, a service station, an auto parts store, and the Project site also backs on to a large parking lot for a Hannaford supermarket. exh. DPS-1, page 2 & 8-9 (describing Project area and concluding that Project supports the Regional Plan Bradford Interchange goals); exh. BS-CDN-5 (same) 4 & 14.

12. The Regional Plan also includes “General” “Interchange Policies,” including the direction that “[a]ny development planned for interchange development must be constructed to:...Promote the most appropriate land uses as determined through a locally sponsored planning process involving affected landowners, municipalities and the Regional Commission.” TRORC Regional Plan at 62.

13. The Town Plan does not contain land conservation measures applicable to the Project site. Nichols pf. at 10; exh. DPS-1, page 7 (explaining that Town Plan “does not identify conservation resources specifically associated with the Project site”).

14. The Town Plan adopted on 1/28/2016 has not received an affirmative determination of energy compliance under 24 V.S.A. § 4352. exh. BS-CDN-4.

15. The Project is consistent with the general guidance in the Town Plan. Nichols pf. at 10; exh. BS-CDN-5, page 18-19; exh. DPS-1, page 9 (“The Project is compatible with the Town and Regional Plan’s directive for orderly growth.”).

16. The Project is located on a 3-acre parcel in the Town of Bradford in area identified in the Town Plan as the “Lower Plain Commercial 1”. exh. BS-CDN-4 at Map 3.

17. The Town Plan further notes that “The purpose of the Lower Plain Commercial Area is to provide space for concentrated commercial development that does not unnecessarily consume land. Although a mix of uses, this area is intended to be primarily commercial in nature. Land use activities planned for this area should be of a type, scale and design that complements rather than competes with the Downtown. No uses should impose a burden on the financial capacity of the town to accommodate the growth caused by the project.” exh. BPC-1 at 97-98. The Project is a concentrated commercial renewable energy development that will not compete with Downtown retail merchants for customers.

18. The Town Plan sets forth several policies for the Lower Plain Commercial Area with which the Project is compatible. Exh. BPC-1 at 99.

19. The first Policy for the Lower Plain Commercial Area in the Town Plan “encourage[s] the development of businesses in the Lower Plain Commercial Area that are compatible with and complimentary to those located in the Central Business Area.” This policy encourages certain complimentary businesses without imposing a prohibition on commercial solar development.

20. The second Town Plan policy for the Lower Plain Commercial Area in the Town Plan is “to provide opportunities for concentrated growth within the Lower Plain Commercial Area, without putting an undue financial burden on municipal services.” exh. BPC-1 at 99.

Relatedly, the third such policy “encourage[s] cluster development whenever possible within the Lower Plain Commercial Area.” The Project is consistent with these policies because it concentrates development behind and next to existing, large scale commercial structures. Finding 11, supra. The Project will not unduly burden municipal services because it does not require water, sewage, trash, or other services typically provided by municipalities. Nichols pf. at 20. And, as an exemplar of distributed generation, the Project is clustered in an area immediately adjacent to the commercial retail business that will be net-metering 100% of the Project’s output to offset the commercial business’s electrical usage. Nichols First Supp. pf. at 3.

21. The fourth policy for the Lower Plain Commercial area “encourage[s] development of sustainable low-carbon commercial enterprises.” exh. BPC-1 at 99. As a net-metering project that generates renewable solar energy and is located on the lot adjacent to the commercial business that will contract for 100% of the Project’s output, the Project is also consistent with this Policy. Nichols First Supp. pf. at 3.

22. Finally, the fifth such policy related to the Lower Plain is to encourage primary retail establishments to locate north of Route 25 in the area designated on the Future Land Use map as Lower Plain Commercial 1 while allowing other types of commercial development to locate in all parts of the Lower Plain Area.” exh. BPC-1 at 99 (Emphasis added.). This policy underscores the broad range of possibilities promoted by the Town Plan for this commercial area.

23. While not expressly prohibiting any type of development in the Lower Plain Commercial Area, the Town Plan does discourage “formula businesses” i.e., those built by “nationwide chains” and that include, “retail stores, restaurants, hotels and other establishments that are required by contract or other arrangement to adopt and maintain a standardized array of

services, merchandize, methods of operation, uniforms, logos, standardized architecture and decor, or other features virtually identical to businesses located in other communities.” exh. BPC-1 at 98.

24. The Town Plan also expresses support for “responsibly sited and developed renewable energy projects within its boundaries,” and states that “Solar arrays . . . can be located in already developed areas, requiring fewer access roads, requiring less infrastructure, and reducing impacts on wild lands.” The Project fits the description of renewable energy generation that the Town Plan supports, because its site, in an already developed area allows it to take advantage of existing access and distribution facilities. exh. BS-CDN-4; exh. DPS-1, page 5. In addition, while the term is not defined in the Town Plan, no party has presented evidence of any impact on “wild lands” from the Project, which, as noted, is being developed on a vacant lot in a heavily-developed area.

25. The Town Plan states that a solar project must meet community standards “in order to not unduly impact the aesthetics of the rural countryside this plan intends to protect,” and that these standards should be considered when the development falls under Section 248 of Title 30 of the VT Statutes. exh. BS-CDN-4 (Town Plan at page 43).

26. These “community standards” identify characteristics for “good sites” and “poor sites.” These standards are ambiguous for various reasons, including that they do not explain what happens if a project possesses characteristics of good and poor sites. The Mitigation Methods in Section 3 apply to all project sites, potentially implying that a poor site could become a good site. This ambiguous language does not constitute a land conservation measure applicable to the Project site specifically, or to any other site generally. exh. BS-CDN-4 (Town Plan at page 43); exh. DPS-1 at 6.

27. Even if these standards constituted land conservation measures, the Project contributes to orderly development within the Town. Under these standards, “[g]ood sites have one or more” of four characteristics. The Project site and overall proposal has three of these characteristics. First, it is in proximity to existing large scale commercial buildings. Second, the site is proximate to existing hedgerows and other topographical features that naturally screen the proposed array from view on at least two sides. And third, the Project is “otherwise impacted property” because it includes two abandoned leach field installations that have been previously seen as impediments to development. Nichols second supp. pf. at 5-6; exh. DPS-1, pages 6-7; exh. BS-CDN-5, page 18.

28. The Project will not cause adverse impacts to public roadways or other municipal or state services or infrastructure. Nichols pf. at 11; exh. Commission-1 at 11.

29. The Project does not remove productive agricultural land from agricultural use as the land has not been used for agriculture in several years; although after Project decommissioning, the site would be available for future agricultural use. Nichols First Supp. pf. at 10.

30. The Project also does not require public investment in transmission and distribution infrastructure to function properly. Nichols First Supp. pf. at 10.

31. Once the Project permanently ceases to operate, the components and elements of the Project will be removed and the site restored to its current condition, thereby allowing future redevelopment. Nichols pf. at 11.

32. While the Project will temporarily remove a lot in the Town’s “Lower Plains Commercial” district from availability for retail use, there remain other lots available for such use in the Lower Plain Commercial District. exh. BPC-4 at 1; Transcript 6/26/20 (Carver) at 119

(“There are other parcels here by the sewer that are currently undeveloped that could have commercial activity on them.”).

33. The Town Plan contains a general goal of mass and scale of “commercial scale solar,” but it does not define what size project this language applies to and is therefore ambiguous. Even if this general goal applied to the Project, the Project satisfies this goal as it has proposed landscape planting, is proposed in a commercial area adjacent to a larger commercial structure and thus fits within the landscape. exh. DPS.-1 at 7; exh. BS-CDN-5, page 20.

#### Discussion

Under Section 248(b)(1), we must find that the Project will “not unduly interfere with the orderly development of the region.”<sup>1</sup> In so doing, the Commission gives “due consideration to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative body, and the land conservation measures contained in the plan of any affected municipality.”<sup>2</sup> The Commission is also required to give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352.<sup>3</sup> As the findings above indicate, the TRORC 2017 Regional Plan that has received an affirmative determination contains no land conservation measures or specific policies aimed at development on the Project site to which the Commission must give substantial deference. Rather, the Regional Plan, as applicable to the Project, contains what TRORC’s

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<sup>1</sup> 30 V.S.A. § 248(b).

<sup>2</sup> Id.

<sup>3</sup> 30 V.S.A. § 248(b)(1)(C) (Emphasis added).

witness refers to as “non-mandatory policy language,” and are thus advisory under the statute’s default “due consideration” standard.<sup>4</sup>

No party has argued or presented evidence demonstrating that either the Town Plan or Regional Plan contain “land conservation measures” for the parcel at issue within the meaning of § 248(b)(1). The Petitioner has satisfied that portion of Section 248(b)(1) that requires due consideration to land conservation measures in the applicable Town and Regional Plans as there are none.

The Regional and Town Plans do both provide advisory guidance as to the location and type of development that should occur in the Bradford Interchange Area/Lower Plain Commercial area. The Project is consistent with that guidance. The Project is sited in an area with pre-existing commercial development that is similar in size and visual character with the Project. The Project is sited between and behind the existing development. The Project is on a flat, vacant, already-denuded lot surrounded by large commercial facilities rather than in a so-called “wildlands” area in which the Town Plan discourages solar development. It will not require clearing of any trees; in fact, it will add trees and other vegetation to screen its already limited visibility. It does not require the construction of new roads or the extension of electrical distribution infrastructure. It does not burden municipal services, much less unduly so, and presents no conflict with smaller retail establishments in Bradford’s nearby Downtown. It is clustered next to the existing commercial retail establishment that will benefit from its net-metered electrical output, thereby increasing the sustainability of the existing business.

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<sup>4</sup> See *In re Petitions of Vt. Elec. Power Co.*, 2006 VT 69, ¶ 25, 895 A.2d 226 (“[T]his Court has construed the phrase 'due consideration' in § 248(b)(1) to 'at least impliedly postulate[] that municipal enactments, in the specific area, are advisory rather than controlling.' ”).

The BPC and TRORC have both made recommendations that the PUC deny the Project because they claim it will unduly interfere with the orderly development of the region. We have given due consideration to these recommendations. For the reasons set forth below, the recommendations are unpersuasive as a matter of fact and law under the controlling legal standard focused on impacts that are both regional in scope and that have the effect of “unduly interfering” with such regional orderly development.

The BPC cites various efforts by the Town to attract more intensive development of commercial retail establishments to the Lower Plain Commercial area in which the Project site is located. These efforts include the extension of municipal water and sewer services to the Lower Plain to serve existing and future development there. The BPC, which has no private property development rights in the Project site, has identified various attributes of the Project site that it believes make it desirable for the type of larger scale commercial retail establishments it hopes to attract to the area. Thus, the BPC argues that the project should be denied to hold open the possibility that the private landowner would consider another more intensive retail commercial use—consistent with the Town’s economic development efforts—on the parcel in the near term. While the Town has focused all its attention in this case on the Project site, none of the planning efforts cited by the Town have focused exclusively on the Project site. In fact, the BPC’s witness has admitted that “[t]here are other parcels here by the sewer that are currently undeveloped that could have commercial activity on them”.

The TRORC attempts to elevate the Town’s concern about the loss of one currently-vacant, developable parcel with potential for retail development to a concern of regional import. It does so not by claiming that the Project site is in itself of regional significance, but rather by asserting that approval of this Project could set a precedent for solar development on other land

suited to retail development in the region because of its location near transportation infrastructure and municipal water and sewer infrastructure.

We cannot concur in the BPC and TRORC assessments that approval of this Project will unduly interfere with orderly development of the region as a whole, which is the statutory standard we must apply. We cannot even concur that the Project would interfere with orderly development within the Town of Bradford, whose current Town Plan sets forth advisory policies for the Lower Plain that, based on our findings, are consistent with development of the Project in this location.

Our analysis begins by heeding the Vermont Supreme Court’s recognition that “the [§ 248(b)(1)] statutory requirement relates to the orderly development of the region, not to a particular municipality within the region.”<sup>5</sup> Thus, the Commission and the Supreme Court have previously refused to deny a petition on undue interference with orderly development grounds where, as is the case here, there is “very little evidence of the project’s regional impacts” and “virtually all the evidence and arguments concerned the impacts on and within the Town.”<sup>6</sup> The Commission has recognized that there could be “some instances [when] localized impacts may be found to interfere with orderly regional development due to their character or severity,”<sup>7</sup>; we find no such impacts here.

In fact, the primary impact that the BPC points to here is the temporary loss of one parcel in the Lower Plain that might attract private development to provide retail shopping and job opportunities for Town residents and to pay sewer and water fees that will help recoup the cost of extending infrastructure to the Lower Plain area. First, we note that this Project is on private

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<sup>5</sup> *In re Petition of Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 9 (quoting Commission order on appeal).

<sup>6</sup> *Id.* ¶ 12.

<sup>7</sup> *Id.*

property whose owner also holds adjacent parcels with existing commercial development. If we were to deny the Project, there is no guarantee that the property owner would be amenable to developing it in the manner the Town prefers and that the economics of doing so will make sense for the private landowner under unknown future market conditions.

Moreover, BPC's own witness has testified that, "until TRORC adopts its proposed Regional Plan with this parcel included in the Town Center, thus allowing for primary retail, the development [of primary retail] is at a standstill."<sup>8</sup> Petitioner developed this Project proposal based on the TRORC plan that was in effect at the time of the Petition and that remains in effect today. The Commission's orderly development review authority does not empower the Commission to hold private property hostage until changes in the regulatory environment enable a potentially competing form of development preferred by the municipality but different from that chosen by the site's actual owner. Similarly, granting the Petition for solar development on the Project site will not preclude the Town from working with owners of other buildable lots in the Lower Plain to attract the type of retail business the Town desires.

Even if we could agree that the Town's concerns supported a conclusion that the Project would negatively impact the Town—a conclusion that we do not reach for the reasons set forth above—that impact would not be of a "character or severity"<sup>9</sup> that rises to the level of undue interference at the regional level. While the BPC and others in the Town may have different desires for the Project site, the duly adopted Town Plan provides guidance to landowners wishing to develop in the Lower Plain. We find this Project consistent with that guidance. Further, with specific reference to solar arrays, the duly adopted Town Plan also provides guidance, albeit ambiguous in nature, regarding what makes for a "good site" for solar arrays in

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<sup>8</sup> Exh. BPC-4 at 2-3.

<sup>9</sup> *In re Petition of Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 12.

the Town of Bradford. The Project site is consistent with one or more of these “good site” characteristics.

The only “regional” impact that the TRORC points to is the “precedent setting potential.” Geiger Aff. At ¶ 7. In the TRORC’s view, permitting this Project in this specific location “would jeopardize prime commercial land in many other locations in the region designated for more intensive land use,” *id.* The Vermont Supreme Court has recognized, however, that the mere “prediction of future replication” is not “actual evidence of regional impact.”<sup>10</sup> Even if Mr. Geiger’s prediction of future replication could be considered evidence of regional impact, his testimony has very little probative value. Mr. Geiger is not a solar developer qualified to opine on the economic and logistical feasibility<sup>11</sup> of development in the other locations he fears will be subject to solar development if this Project moves forward.

We turn to now to the erroneous contention that the recommendations for future development of the Lower Plain Commercial Area, as set forth in the *Pathways to a Vital Economic Center* analysis prepared for the Town by consultants DuBois & King<sup>12</sup> (*Pathways*) are somehow binding on the Project’s landowner by virtue of “General” “Interchange Policy” #3(b) in the TRORC Regional Plan. In pertinent part, that general policy states that “[a]ny development planned for interchange development must be constructed to...Promote the most appropriate land uses as determined through a locally sponsored planning process involving affected landowners, municipalities and the Regional Commission.” TRORC Regional Plan at

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<sup>10</sup> *Id.*

<sup>11</sup> Hearing Transcript 6/26/20 (Geiger) at 157, lines 5-10.

<sup>12</sup> Exh. BPC-3.

62. TRORC contends that the *Pathways* document embodies such a “locally sponsored planning process.”<sup>13</sup>

First, we note that the TRORC Regional Plan has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. Geiger Aff. ¶ 2. Under § 248(b)(1)(C),<sup>14</sup> the Commission is required to give “substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan” that has received such an affirmative determination. “Substantial deference” in this context “means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy.”<sup>15</sup> By the plain language of the Plan itself, we are dealing with a “general” rather than “specific” policy within the meaning of the statute. Therefore, the Commission is not obliged, under § 248(b)(1)(C), to apply the general policy strictly in accordance with its terms. Nonetheless, to the extent that this general interchange policy comprises a “recommendation” of the regional planning commission, we give it “due consideration” under the default standard of § 248(b)(1).<sup>16</sup>

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<sup>13</sup> Geiger Aff. ¶ 3. At the technical hearing in this matter, Petitioner moved to strike Mr. Geiger’s opinion on the qualification of the *Pathways* analysis for consideration under general interchange policy 3(b). Petitioner’s motion argues that Mr. Geiger’s opinion lacks sufficient basis in facts or data under Vermont Rules of Evidence 702-703. Transcript 6/26/20 at 137-139. We agree with Petitioner that neither the *Pathways* study itself nor Mr. Geiger’s testimony or the testimony of another witness establishes the involvement of the Regional Commission or all Lower Plain Commercial Area “affected landowners” in the actual preparation of the *Pathways* analysis. At most, testimony from Ms. Carver indicates that TRORC may have supported the Town’s application for a grant that paid for DuBois & King to prepare the analysis, but this is not the same as actual involvement in the analysis by the TRORC. Accordingly, we strike Mr. Geiger’s opinion, as set forth in his affidavit, from the record. We nonetheless herein provide additional analysis as to why the recommendations in the *Pathways* report, when given due consideration, do not justify blocking the Project on the alleged basis that it unduly interferes with orderly development of the region.

<sup>14</sup> 30 V.S.A. § 248(b)(1)(C).

<sup>15</sup> Id.

<sup>16</sup> Id. § 248(b)(1)

As set forth in the findings and analysis above, we conclude that this Project does promote the most appropriate land uses in the Interchange Area/Lower Plain Commercial area as determined by a locally sponsored planning process involving affected landowners, municipalities and the regional planning commission. The process we refer to, however, is not the consultant's process that yielded the *Pathways* analysis, but is the adoption of the duly enacted Bradford Town Plan. Unlike the informal, survey-based analysis embodied in the *Pathways* analysis, the process of adopting the Town Plan - by state law - requires notice and comment opportunities on draft plan provisions for all affected landowners and the regional planning commission prior to the plan's final adoption.<sup>17</sup> Per our discussion above, the Project is consistent with the existing Town Plan's policies for appropriate land uses in the Lower Plain Commercial Area and with policies for development of solar arrays in the town more generally.

We note further that the *Pathways* analysis acknowledges that the type of primary retail development that the Town desires for the Lower Plain Commercial area requires changes to both the town and regional plans and the town's municipal zoning bylaw. For example, the *Pathways* analysis recommends:

[T]he Bradford Town Plan should be revised to incorporate important elements generated through this project. The Planning Commission can opt either to bring components of this project (data, implementation items, etc.) into the Plan or can adopt this report as part of the Plan by reference.<sup>18</sup>

The *Pathways* analysis also indicates that "The potential for conflicts between the local and Regional Plan is significant when retail development is proposed outside of the [Bradford] Village."<sup>19</sup> The *Pathways* analysis further states that "[t]he pattern of development identified

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<sup>17</sup> 24 V.S.A. §§ 4384(b); 4385 setting forth multiple notice and comment obligations of municipal planning commissions and legislative bodies before final adoption of a municipal plan.

<sup>18</sup> Exh. BPC-3 at 6; see also *id.* at 24-25 under the heading "Revise the Town Plan."

<sup>19</sup> *Id.* at 21.

through this project suggests that changes to the Regional Plan's Future Land Use classifications in Bradford may be warranted."<sup>20</sup> Finally, the *Pathways* analysis contains extensive recommendations to "Revise and Adopt Zoning Regulations."<sup>21</sup>

The Commission has already ruled that the vested rights doctrine applies to this case to bar consideration of testimony on changes to the municipal zoning bylaw that were not enacted until after Petitioner filed its administratively complete application in this case and to testimony about draft proposed changes to the TRORC regional plan that have still not been duly adopted.<sup>22</sup> These are the very post-petition changes intended to effectuate the recommendations of the *Pathways* analysis. The Commission's earlier ruling in this case rests on the vested rights policy of "providing landowners with certainty in the law and its administration".<sup>23</sup> Pursuant to the Commission's vested rights ruling in this case, which adheres to long-established precedent, it would be inconsistent for the Commission to require the Project's strict compliance with the outcome of *Pathways* analysis, when that outcome is not reflected in - and in some respects conflicts with - the duly adopted regional and municipal plans and bylaws in existence at the time Petitioner filed its application.

Finally, to the extent that the outcome of the *Pathways* analysis echoes and informs the more general recommendations of the BPC about its preference for primary retail development on the Project site, we have already given those recommendations due consideration and explained why allowing net-metered commercial solar development here will not unduly interfere with orderly development of the region.

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<sup>20</sup> *Id.* at 31-32.

<sup>21</sup> *Id.* 27.

<sup>22</sup> Order Granting in Part Petitioner's Motion to Strike (6/25/20) at 6-7

<sup>23</sup> See Petition of Chelsea Solar LLC, Case No. 17-5024 Order Granting Chelsea's Request that the Vested Rights Doctrine Apply to the Review of the Petition (5/17/18) (citing Smith v. Winhall Planning Commission, 140 Vt. 178, 181, 436 A.2d 760, 761 (1981))

**Aesthetics**

[30 V.S.A. § 248(b)(5)]

34. The Project will not have an undue adverse impact with respect to the aesthetics or scenic beauty of the area. ex. BS-CDN-5; Oxender pf. (Department); ex. DPS-1.

35. The Petitioner hired an aesthetic expert, Mike Buscher, T. J. Boyle Associates to review and assess the Project. ex. BS-CDN-5.

36. The Department hired an aesthetic expert, Ben Oxender, to review and assess the Project. Ben Oxender pf.; ex. DPS-1.

37. Neither the Town nor the Regional Planning Commission provided testimony from an aesthetic expert. See e.g, Prefiled Testimony of Marthanne Carver (Bradford).

38. The Project site is located along Vermont Route 25 (Waits River Road), near the intersection with US Route 5. Exit 16 on Interstate 91 is approximately one-third mile to the west along Route 25. ex. BS-CDN-5.

39. The Project is proposed within a vacant property, currently maintained as an open field, but is surrounded by commercial development to the west, north and east of the Project site. An auto parts store abuts the property to the west, a Hannaford Supermarket is to the north, and a self-storage facility and gas station / convenience store are directly east of the Project. A mix of residential and agricultural properties are located south of Vermont Route 25, across from the Project site, with more commercial development to the southeast. The village of Bradford begins roughly one-mile to the north of the Project, on US Route 5. ex. BS-CDN-5.

40. Overall, views of the Project would be concentrated to locations directly south of the Project, particularly from locations on Vermont Route 25 immediately adjacent to the Project. ex. BS-CDN-5.

41. The immediate area surrounding the Project site, including vegetation around the periphery of the site, particularly around the northern end of the site, helps to screen visibility. exh. BS-CDN-5 and (Appendix B, Viewpoint 1).

42. Locations with the highest potential for visibility of the Project begin on Vermont Route 25, west of the Project. When heading east on Route 25, visibility would begin east of Viewpoint 2 included in Appendix B. The Project would be setback at least 100 feet from the edge of the road, which reduces visibility when approaching the site from both directions. There are a significant number of structures, objects and vegetation which obscure or eliminate views of the Project from US Route 5 (Lower Plain Road). Likewise, Interstate 91, access ramps and other area roads have no view of the Project due to intervening landform and vegetation. exh. BS-CDN-5; exh. DPS-1.

43. Further east on Vermont Route 25 views are obstructed by vegetation, buildings, gas pumps, cars and trailers, and fences. exh. BS-CDN-5 and Viewpoints 8, 9, 11 in Appendix B.

44. Views would be possible when entering onto Vermont Route 25 from Saddleback Road, a short dead-end road that accesses several low to medium density residential properties south of the Project, as shown from Viewpoint 6. However, views from further along Saddleback Road are substantially screened from the raised embankment on which Vermont Route 25 is located (see Viewpoint 5). exh. BS-CDN-5.

45. One residential property, directly south of the Project would have direct views of the Project, but as shown in the panoramic view from Viewpoint 1, generally only rooflines are visible of other residential structures south of Route 25. exh. BS-CDN-5.

46. Visibility to the Project site was not observed from US Route 5. Views from along the sidewalk to the entrance of the Hannaford Supermarket north of the Project are screened by fences, landscaping (partly installed as part of Hannaford's), and vehicles. ex. BS-CDN-5.

47. The Project materials and colors would be dark blue or gray photovoltaic panels, metal array frames, and metal fencing. Other surrounding elements include similar colors and textures, including the roof of the NAPA auto parts facility immediately west of the Project, the metal mini-storage buildings northeast of the Project, and the diesel pump island, trailer storage, fencing and building, and part of the gas station immediately east of the Project. ex. BS-CDN-5.

48. The Project site is not identified on any Town or Regional Plan maps as conserved open space and the property is privately owned. If the property were to be considered open space, there is not public access to the property. ex. BS-CDN-5.

49. Based on the findings above, the Project would have an adverse effect on the scenic or natural beauty or aesthetics of the area. This is primarily due to unobstructed visibility along Vermont Route 25 adjacent to the Project site. However, the level of adversity would be relatively low. There is very limited visibility of the Project from surrounding public locations and the surrounding area does not possess a high scenic quality. Visibility of the Project would be significantly screened by surrounding obstructions, including buildings, vegetation, fences, and trailer storage. The area near the Project includes a variety of land uses, many of which are commercial or industrial in character. ex. BS-CDN-5.

50. The municipality's "landscape" in this commercial area of town is not defined by existing natural vegetation occurring roadside or framing views of distant ridgelines, which may

be considered scenic, but rather the dominance of primarily commercial buildings, large, street-facing parking with limited vegetation. There are few street trees along Route 25 or Route 5 in the Lower Plain Commercial area. Accordingly, the Petitioner is proposing four groups of plantings in order to break up views of the Project from the road while blending into the existing landscape in which it is proposed. exh. DPS-1.

51. The Project's impact on aesthetics would not be unduly adverse. Based on the review of the Regional and Town plans, the Project would not violate any clear written community standard intended to preserve the aesthetics or scenic or natural beauty of the area. exh. BS-CDN-5.

52. The 2017 Two Rivers-Ottawaquechee Regional Plan, adopted July 26, 2017 ("Regional Plan"), the TRORC Regional Energy Implementation Plan, adopted July 26, 2017 ("Energy Plan") and the Bradford Town Plan, adopted January 1, 2016 ("Town Plan") do not identify the Project site as a scenic resource and the Project complies with the general siting criteria within the plans. exh. BS-CDN-5.

53. Specifically, a review of the various Regional Plan and Energy Plan maps did not reveal any protections or significant scenic resources on or adjacent to the proposed Project location. exh. BS-CDN-5; exh. DPS-1.

54. The Regional Plan and Energy Plan cover a wide range of topics for the region including land use, housing, economics, cultural resources, energy generation and consumption, as well as other community issues. The Regional Plan clearly recognizes the importance of scenic resources within the region but does not specifically call out views to the Project site or the Project site itself for scenic protection. The Regional Plan encourages the development of solar generation that avoids undue adverse impacts and interference with existing scenic views.

The Regional Plan offers encouragement and support for the constituent towns to review their own needs and desires, and there are rarely any specific guidelines for scenic quality control. exh. BS-CDN-5.

55. With respect to the Town Plan, it has a strong focus on the importance of scenic resources. The development of properly located renewable energy generation is also promoted within the Town Plan. The Project site is not identified within the Town Plan as a scenic resource, although Vermont Route 25 is noted as a scenic road and US Route 5 is noted as being a scenic byway. The Town Plan does not, however, provide any clearly written distinction of viewsheds from the road nor give any guidance on how to protect the purportedly scenic resources or views from these lengthy roads. exh. BS-CDN-5; exh. Commission-1 at 8.

56. The Town Plan states that “Solar arrays.... can be located in already developed areas, requiring fewer access roads, requiring less infrastructure and reducing adverse impacts on wild lands.” exh. BS-CDN-4 (Town Plan at page 43).

57. The Project is proposed for an already developed area of town, with existing commercial buildings and uses on both sides of the Project. The Project will require no new curb cuts along Vermont Route 25 and access to the site will be through an existing 35-foot access easement through the adjacent lot to the east. The Project will not have a negative impact on wild lands. exh. DPS-1.

58. The Project is not sky lined against the horizon and is situated near other large commercial buildings occurring in the Town. exh. DPS-1.

59. The Town Plan states that a Project must meet community standards “in order to not unduly impact the aesthetics of the rural countryside this plan intends to protect,” and that

these standards should be considered when the development falls under Section 248 of Title 30 of the VT Statutes. exh. BS-CDN-4 (Town Plan at page 43).

60. These community standards identify characteristics for “good sites” and “poor sites.” These standards are ambiguous for various reasons, including that they did not explain what happens if a project possess characteristics of good and poor sites. The Mitigation Methods in Section 3 apply to all project sites, potentially implying that a poor site could become a good site. This ambiguous language does not constitute a clearly written community standard. exh. BS-CDN-4 (Town Plan at page 43); exh. DPS-1.

61. Even if these community standards were clear written community standards, the Project satisfies them. The Project as proposed constitutes a good site because it is a “System[] located in close proximity to existing larger scale, commercial, industrial or agricultural buildings,” and is in “Proximity to existing hedgerows or other topographical features that naturally screen the proposed array from view from at least two sides.” The Project is near existing large-scale commercial buildings (auto parts store, mini storage, grocery store, diesel/filling station) and the development is infilling an otherwise empty parcel. The development’s location on an open parcel in the commercial district, adjacent to existing commercial buildings and uses that are similar in scale supports the traditional pattern of growth. exh. DPS-1; exh. BS-CDN-5.

62. The Petitioner has incorporated reasonable aesthetic mitigating measures. One of the most important forms of aesthetic mitigation is the location selected for the Project. The Project is located in a developed area, as opposed to an undeveloped rural area. While such a developed area brings with it higher public use, the surrounding development helps to screen the Project from most nearby locations with potential visibility. Additionally, the array would be

located adjacent to the commercial use that would be using most of the energy created by the Project. exh. BS-CDN-5; exh. DPS-1.

63. All Project wiring would be installed underground. exh. BS-CDN-5.

64. The Project would interconnect with GMP's existing three-phase distribution network, located immediately adjacent to the property. exh. BS-CDN-5.

65. The Project would utilize an existing right-of-way easement across a previously developed property to access the site. exh. BS-CDN-5.

66. The Project would use non-reflective panels to reduce the potential for glare.

67. The Project components are low in profile and rows of panels would contour with the existing topography. exh. BS-CDN-5.

68. To help screen and soften views from Vermont Route 25, Saddleback Road, and residential properties south of the Project, the Applicant proposes landscape mitigation plantings along the southern edge of the Project area. Plantings include a combination of 53 evergreen and deciduous shrubs. Plantings would be grouped into clusters with gaps in between to avoid the appearance of a single hedge. exh. BS-CDN-5 and Appendix C.

69. These proposed mitigation measures allow the Project to successfully integrate with the landscape. The Project incorporates generally available mitigating steps, which a reasonable person would take to improve the harmony of the project with its surroundings. exh. BS-CDN-5; exh. DPS-1; Transcript 6/26/20 (Oxender) at 86 (stating that, in relation to the mitigation plan, "what has been submitted as part of the petition is reasonable.")

70. The Project would not offend the sensibilities of the average person. No specific scenic qualities or sites have been identified for this area by the Town Plan or the Regional Plan. The Project would result in an adverse impact, mostly as a result to views along the south side of

the Project. However, the Project would have limited visibility from the surrounding landscape and views from south of the Project would be restricted to a very short stretch of the Vermont Route 25 and adjacent properties. Views of the Project site would not be considered to have a high scenic quality, and surrounding development could even be considered as having an industrial character. Setbacks from Route 25 and surrounding properties along with the low profile of Project equipment would not result in the array being an overly dominant object in the landscape. Proposed mitigation plantings would help to screen and soften views that would be created of the Project. Based on these facts, the Project could not be considered to shock or offend the sensibilities of the average person. exh. BS-CDN-5; exh. DPS-1.

#### Discussion

The proposed Project satisfies PUC Rule 5.112 and Section 248(b)(5) that addresses the aesthetic evaluation of net-metering projects. This Rule requires the Commission to first determine whether the Project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. If the answer is no, then the project satisfies the aesthetics criterion. If yes, the Commission must move on to step two.

Starting with the first prong, all parties agree that the Project will result in an adverse impact. However, this adverse impact is low given that the Project would be located in a commercial area and would be surrounded by existing commercial development. The Project is adverse primarily because of visibility of the Project from Vermont Route 25. Exh. BS.CDN.5.

We must now turn to step two. The adverse impact will be found to be undue if any one of the three following questions is answered affirmatively:

- a. Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area?
- b. Would the project offend the sensibilities of the average person?
- c. Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings?<sup>24</sup>

The Commission’s analysis, however, does not end with the results of the *Quechee* test. Instead, its assessment of whether a particular project will have an “undue” adverse effect on aesthetics and scenic or natural beauty is “significantly informed by overall societal benefits of the project.” *Petitions of the Vermont Electric Power Company, Inc. (VELCO), Vermont Transco*, Docket No. 6860, at page 79 (Jan. 28, 2005) (footnotes omitted).

In order to find that a project would violate a clear, written community standard, the Commission must find that the Project is inconsistent with a provision of the applicable town or regional plan that: (1) designates specific scenic resources in the area where the project is proposed; and (2) provides specific guidance for project design. “Statements of general applicability do not qualify as clear, written community standards.”<sup>25</sup> Under the Commission’s precedent as well, “a standard ‘must be intended to preserve the aesthetics or scenic beauty of the area where the proposed project would be located and must apply to specific resources in the proposed project area.’”<sup>26</sup>

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<sup>24</sup> PUC Rule 5.112

<sup>25</sup> PUC Rule 5.112

<sup>26</sup> *Petition of Acorn Energy Solar 2, LLC*, Case No. 17-4049, Final Order Granting Net-Metering CPG, Page 53 (7.26.19) and Order Denying Motion for Reconsideration (10/17/2019) (on appeal) (internal quotations omitted) (Petitioner’s counsel reviewed the appellate briefing and the Commission’s clear written communication standard findings and discussion were not appealed).

Neither the Town or Regional Plans contain a clear, written community standard as neither identify any open space, scenic or conservation resources associated with the Project site, and the standards that they do contain are ambiguous. Pages 43-44 of the Town Plan contain self-described “community standards” that apply to solar projects. The Commission reviewed similar town plan language in *Petition of Acorn Energy Solar 2, LLC* and concluded that such community standards provide “general siting criteria rather than designating specific areas for protection, which means that the Aesthetic Guidelines are not clear written, community standards.”<sup>27</sup>

We reach the same conclusion here. The “community standards” in the Town Plan do not identify any specific resources for protection. Instead, the community standards, as in *Acorn*, provide general siting criteria for solar projects with a goal of “not unduly impact[ing] the aesthetics of the rural countryside this plan intends to protect.” exh. BS-CDN-4 (Town Plan pages 42-44). The community standards do not “identify designated areas and resources that need protection.”<sup>28</sup> They are also ambiguous because they do not address what happens if a site possesses characteristics of both good and poor sites, and whether a project can become a good site if its developer implements the identified mitigation measures. In sum, the general siting criteria do not constitute a clear written community standard for purposes of the *Quechee* analysis.

Even if the Town Plan’s siting criteria did constitute a clear written community standard, the Project satisfies those standards. The Project is considered a “good site” given its close

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<sup>27</sup> *Petition of Acorn Energy Solar, 2, LLC*, Case No. 17-4049, Final Order Granting Net-Metering CPG, Page 53 (7.26.19) (on appeal).

<sup>28</sup> *In re Petition of Rutland Renewable Energy*, 2016 VT 50, ¶19 (concluding that town plan did not contain a clear written community standard when “[t]he Town never identified the area of this project for special protection to protect aesthetics or scenic beauty. In fact, the municipal plan specified that its future use would be for industrial/commercial development.”)

proximity to existing larger scale, commercial and industrial buildings and its proximity to existing hedgerows and topography that naturally screen the array. The Project has only one “poor site” characteristic (proximate location to Route 25), but the wording of the Town Plan indicates that a site must have more than one such characteristic to be considered a “poor site” overall. The Project has satisfied the mass and scale goals by siting the Project in a commercial, rather than a historic or agricultural area, and by proposing screening to further allow it to blend in with the landscape. The Project also meets all the mitigation methods called for in the Town Plan.

Regarding the Regional Plan, it clearly recognizes the importance of scenic resources within the region but does not specifically call out views to the Project site or from the Project site itself for scenic protection. The Regional Plan encourages the development of solar generation that avoids undue adverse impacts and interference with existing scenic views, both of which are general goals. In sum, neither the Town or Regional Plans contain a clear written community standard that this Project would offend.

The Commission must also assess whether the Petitioner has implemented generally available mitigation steps. The Rule requires the Commission to consider:

- 1) What steps, such as screening, the applicant is proposing to take;
- 2) Whether the applicant has adequately considered other available options for siting the project in a manner that would reduce its aesthetic impact;
- 3) Whether the applicant has adequately explained why any additional mitigating steps would not be reasonable; and
- 4) Whether mitigation would frustrate the purpose of the Project.

Site selection for the Project is the first form of mitigation. As explained above, the proposed site is in a commercial area and thus is surrounded by existing development. This existing commercial development both helps to screen the Project and allows it to blend into its surroundings.

In addition to appropriate site selection, the Petitioner has offered numerous additional, reasonable mitigation measures that further allow the Project to integrate with the existing commercial landscape. Mitigation includes installing all Project wiring underground, interconnecting the Project with an existing three-phase distribution network next to the Project property, using an existing easement across previously developed land to access the site, using non-reflective panels to reduce potential glare, and using Project components that are low in profile and rows of panels that contour with the existing topography.

The Petitioner also proposed a landscape plan to screen and soften views from Vermont Route 25, Saddleback Road, and residential properties along the Project's southern edge. Plantings include a combination of 53 evergreen and deciduous shrubs. At the technical hearing, the adequacy of this mitigation plan was repeatedly confirmed by the independent aesthetics expert hired by the Department specifically to respond to the BPC's aesthetic concerns.

Based on the site selection, landscape mitigation plan, and other mitigation measures, the Petitioner has satisfied the reasonable mitigation requirement.

With respect to whether a project offends the sensibilities of the average person, Rule 5.112 explains that:

A project will be found to offend the sensibilities of the average person if the project would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. In determining whether a project would offend the sensibilities of an average person, the Commission will consider the perspective of an average

person viewing the project from both adjoining residences and from public vantage points.

As an initial matter, the Town Plan at pages 43-44 states that for purposes of that plan, “either the Selectboard or the Planning Commission shall be deemed to represent the voice of the ‘average person’ with respect to the ‘Quechee Test.’” According to the Department, “[a]n ‘average person’ is considered a disinterested party, not an affected neighbor. In our opinion, the town can’t request themselves to be considered an average person if they are also advocating being an interested party in all solar siting cases in the Town.” exh. DPS-1. The Petitioner’s aesthetic expert also opined that an “average person is considered a disinterested party” for purposes of the *Quechee* analysis. exh. BS-CDN-5. This particular Town Plan language has no legal force given the Rule’s requirement that an “average person” is one that views a project from public vantage points and adjoining residences. Neither longstanding *Quechee* test precedent, nor Commission rule allows the Town to designate a specific Town entity—much less one that has offered reasons other than aesthetics to oppose the Project—as the “average person” for purposes of our aesthetics analysis.

All parties agree that the Project is located in a commercial area. The Town’s witness acknowledges that the “[a]rea surrounding this parcel is a mix of businesses and residential properties.” Carver pf. at 4. The TRORC explained that the Project site is in an area designated for “intensive land use.” TRORC Response to Hearing Officer (6.5.20). Solar projects located in such commercial areas are less likely to be so out of character with their surroundings or to diminish significantly the scenic qualities of such developed areas.

For additional reasons, the Project is not shocking or offense. Neither the Town nor the TRORC plans identify specific scenic qualities at the Project site. exh. DPS-1, page 9; exh. BS-

CDN-5 at page 20. The Project's materials and colors are similar in character to the surrounding commercial structures and the scale of the Project is consistent with surrounding commercial developments. exh. DPS-1, page 9; exh. BS-CDN-5, page 5.

The Project's adverse impact derives primarily from views along the Project's south side. However, the Project would have limited visibility from the surrounding landscape and views from south of the Project would be restricted to a very short stretch of the Vermont Route 25 and adjacent properties. Views of the Project site would not be considered to have a high scenic quality, and surrounding development could even be considered as having an industrial character. Setbacks from Route 25 and surrounding properties along with the low profile of Project equipment would not result in the array being an overly dominant object in the landscape. Proposed mitigation plantings would help to screen and soften views that would be created of the Project. Based on these facts, the Project could not be considered to shock or offend the sensibilities of the average person. exh. DPS-1, page 9; exh. BS-CDN-5, pages 19-20.

For these reasons, the Project will not have an undue adverse impact with respect to aesthetics or scenic beauty of the area.

### **Public Good**

71. The Project exemplifies the concept of "distributed generation" where renewable generation is located immediately adjacent to the existing commercial establishment whose electrical load it helps to reduce. Nichols First pf. at 3-4.

72. The Project helps to advance state and regional goals for renewable energy generation. Findings ¶¶ 2.

73. The Project is not located in the constrained Sheffield-Highgate Export Interface (“SHEI”).<sup>29</sup>

### Discussion

Vermont has established ambitious goals for reduction of greenhouse gases<sup>30</sup> and deployment of renewable energy within the state.<sup>31</sup> The net-metering program, which relies on the efforts and capital of renewable energy developers, is an important component in achieving those reduction and deployment goals as reflected in statute and in the state’s duly adopted Comprehensive Energy Plan (“CEP”).<sup>32</sup> Specifically, the

CEP embraces a different vision: a distributed energy future in which a significant portion of Vermont’s energy is produced near where it is consumed, and which is shaped by many coordinated actions by distributed energy users, rather than through singular central control. This alternate vision is possible thanks to the increasing availability of cost-effective distributed electric generation technology, such as solar PV...<sup>33</sup>

While Petitioner in this net-metering case, submitted under Commission Rule 5.111(B), is not required to demonstrate this Project’s compliance with Vermont’s CEP,<sup>34</sup> we do believe that this Project’s consistency with the vision embodied in that plan supports our conclusion that the Project is in the public good.

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<sup>29</sup> Pursuant to V.R.E. 201, the Commission may take judicial notice of the Project’s location outside of the Sheffield-Highgate Export Exchange, which area is generally known to and readily ascertainable by the Commission as a result of its various ongoing cases involving proposed generation in the SHEI.

<sup>30</sup> 10 V.S.A. § 578.

<sup>31</sup> 30 V.S.A. §§ 202, 202b

<sup>32</sup> See id. § 8010(a)(1)(A),(B).

<sup>33</sup> Vermont Comprehensive Energy Plan 2016 at 4 *available at* [https://outside.vermont.gov/sov/webservices/Shared%20Documents/2016CEP\\_Final.pdf](https://outside.vermont.gov/sov/webservices/Shared%20Documents/2016CEP_Final.pdf)

<sup>34</sup> Commission Rule 5.111(B) conditionally waives consideration of 30 V.S.A. § 248(b)(7) for Project’s such as this. That waiver has not been rescinded in this matter.

Conclusion

Based on the foregoing findings and conclusions, we conclude that the Project satisfies the substantive criteria of 30 V.S.A. § 248 and will promote the general good of the State. It will, therefore, be granted a certificate of public good.