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August 31, 2021

Holly R. Anderson, Clerk  
Vermont Public Utility Commission  
112 State Street, 4<sup>th</sup> Floor  
Montpelier, VT 05620-2701

Re: Case Nos. 21-0974-PET and 21-0975-PET – Petitioners’ Response to Procedural Order of August 20, 2021

Dear Ms. Anderson:

Please accept this filing in response to the Hearing Officer’s August 20, 2021, order in the above-referenced proceedings regarding Petitioners’ proposal for a CPG condition requiring a post-construction site visit to determine whether any landscape mitigation plantings would be needed to ameliorate any unexpected adverse aesthetic impacts from the Bristol Solar and Bristol Energy Storage Projects.

Petitioners expected that the proposed post-construction site-visit condition would be accepted by the Public Utility Commission because there is precedent for similar CPG conditions. See *Petition of Next Generation Solar Farm, LLC*, Case No. 8523, Order of 1/27/2017 at 50, 73. Petitioners understand that the Commission’s Aesthetic Mitigation Rule 5.800 was adopted after the Commission’s *Next Generation Solar Farm* decision, however, there is no dispute that the proposed Bristol Solar and Bristol Energy Storage Projects will not have an undue adverse aesthetic impact. The Hearing Officer’s August 20, 2021, order acknowledges this fact, which Petitioners appreciate. It is important to consider that the Bristol Planning Commission did not request Petitioners to propose a landscape screening plan before construction due to the site characteristics; the Planning Commission only wanted an opportunity to see the site after construction to confirm that no landscape plantings were necessary to screen the Projects. Petitioners

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do not believe that their proposed CPG condition is inconsistent with or otherwise in violation of Rule 5.800.

The Bristol Planning Commission is a volunteer body with responsibilities that go beyond reviewing Projects under the Public Utility Commission's jurisdiction. Petitioners believe that it is unreasonable to request that the Planning Commission spend additional time considering the potential aesthetic impact of the Bristol Solar and Bristol Storage Projects before they are constructed given the time that the Planning Commission has already devoted to reviewing and providing feedback to Petitioners on the Projects' pre-construction plans. To that end, Petitioners are committed to honoring the Planning Commission's request for a post-construction site visit regardless of it being a CPG requirement. If there is a need for Commission review of any changes to the Project resulting from that visit, Petitioners will seek that review accordingly.

Petitioners therefore recommend and request an alternative approach to resolving the Hearing Officer's concern that Rule 5.800 and Petitioners' proposed CPG condition conflict: the Commission should simply reject the proposed CPG condition because, as the Hearing Officer's August 20, 2021, order acknowledges, the "current record supports a conclusion that the Projects do not have an undue adverse effect on aesthetics and, as such, the Petitioners would not be required to propose additional landscape mitigation." Thus, rejecting Petitioners proposed post-construction site visit condition is consistent with the current record and would not result in additional delays to these proceedings.

Petitioners request this alternative approach because the process outlined by the Hearing Officer will impose a burden on the volunteer Bristol Planning Commission and will unnecessarily delay the outcome of these proceedings. In addition, directing Petitioners to negotiate with a non-party to resolve an issue that the Commission itself must resolve establishes a bad precedent and introduces uncertainty about this process, which is governed by the Administrative Procedures Act and the Vermont Rules of Civil Procedure.

In sum, the Commission should respect the Bristol Planning Commission's decision not to participate in this proceeding. Petitioners respectfully request that the Hearing Officer issue a Proposal for Decision in the above-referenced matters without further delay.

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Thank you for your assistance and attention to this filing.

Very truly yours,



Leslie A. Cadwell

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