Public Comment from Benjamin Marks
April 8, 2019

Peter Carothers and I want to offer our sincere thanks for the opportunity to meet with you on Acorn Energy Co-op's solar project in Shoreham and its journey in pursuit of a CPG. I am glad we got the chance to answer your questions about Acorn's experience with the PUC's current regulatory process.

In response to your request we are forwarding our "Community Solar Update," which we recently sent to the project's Series B Investors, the ultimate owners of the project, and to our Co-op members.

I also wanted to follow up with one policy observation, illustrating how the regulatory process has become less efficient.

The PUC rule changes wrought as a result of Act 174 included a key change to the terms on which an intervenor, such as a neighboring landowner may participate in a proceeding. In the past, a private citizen had to demonstrate a "significant" interest in the proceeding that was not represented by a state regulatory actor. For instance, a private citizen could not participate in a proceeding on Section 248's wetland criterion if ANR was involved. This was to encourage regulatory efficiency and to keep the science within accepted norms. This was changed in the current Rule 5.100 to a "substantive" interest, which is really at the discretion of the hearing officer. This subtle change is one significant source of inefficiency in the PUC process.

Thus, in Acorn's current proceeding, our wetlands expert maintained that there were no state significant wetlands on site. Rather, there were only Class III wetlands, seasonal low spots in a hay field, over which ANR has no jurisdiction. ANR agreed and chose not to participate in the PUC's regulatory process as a result. The intervenors, however, with no investigation or solid science behind them, alleged harm to those wet spots and were granted a hearing (in part) on that issue, <u>despite the fact that ANR chose not to participate in our proceeding at all</u> due to lack of significant impact. This makes a Section 248 proceeding much more like one under Act 250, and much less like a path to furthering an important state policy. As an advocate, I have to say the science is on Acorn's side on the wetland issue, and I predict that we will ultimately be granted a CPG on this 248 criterion. But the "more process" edict at the PUC has resulted in a more expensive, and vastly more time-consuming, process for essentially the same result. I do not believe the state is well served by the current rule.

Once again, thanks for the opportunity to contribute to the legislative process.

Best regards,

Benjamin Marks