

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Randolph Davis Solar LLC for a)
certificate of public good pursuant to 30 V.S.A.)
§§ 248 and 8010, authorizing installation and) Case No. 21-__-NMP
operation of a 500 kW (AC) photovoltaic group)
net-metering system in Randolph, Vermont)

**APPLICANT’S MOTION FOR WAIVER OF
COMMISSION RULE 5.107(C)(10)**

NOW COMES Randolph Davis Solar LLC (“Applicant”) and moves the Vermont Public Utility Commission (“Commission”) pursuant to Commission Rule 2.107, to waive Rule 5.107(C)(10)(a), in accordance with long-established Commission practice and rulings, and deem the Application administratively complete.¹

Green Mountain Power Corporation (“GMP”) issued a Fast Track Report on April 28, 2021, and the Applicant and GMP executed a Feasibility Study Agreement on May 6, 2021.² GMP has not yet issued the report.³ The Applicant has budgeted for and will be responsible for paying for all necessary interconnection costs designated as Applicant’s responsibility in the Feasibility Study, as required by Rule 5.500.⁴

Commission Rule 2.107 authorizes the Commission to grant waivers of its Rules in order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause. The Commission’s 2018 *Order Granting Waiver of Commission Rule and Staying Proceeding* with respect to the Granview Solar project (the “*Granview Solar Order*”) explains why there is

¹ See *Petition of Hartland GUVSWMD Solar LLC*, Case No. 21-0433-NMP, Order of 2-3-21 (deemed complete with Fast Track and waiver); *Petition of Weathersfield Transfer Station Solar*, Case No. 19-2539-NMP, Order of 7-11-19 (deemed complete with Fast Track and waiver); *Petition of Weathersfield Town Garage Solar*, Case No. 19-2616-NMP, Order of 7-11-19 (deemed complete with Fast Track and waiver); *Petition of Granview Solar, LLC for a certificate of public good*, Case No. 18-2272-NMP, Order of 7/11/19 (deemed complete with Fast Track and waiver); *Petition of Portland Street Solar*, Case No. 19-2484-NMP, Order of 7-11-19 (deemed complete with Fast Track and waiver); *Petition of Beckley Hill Solar*, Case No. 18-2341-NMP, Order of 7-5-18; *Petition of Norwich Technologies*, Case No 18-1885-NMP, Order of 6-21-18 (deemed complete with Fast Track, without a waiver); *Petition of Norwich Technologies*, Case No. 18-2504- NMP, Order of 7-19-18 (deemed complete with Fast Track and waiver); *Petition of Norwich Technologies, Inc. for a certificate of public good*, Case No. 18-2120, Order of 7/11/18 (deemed complete with Fast Track and waiver).

² Staskus pf. at 13; exh. RDS MS-7.

³ See Rule 5.507(E).

⁴ Staskus pf. at 12.

good cause under these circumstances to grant a waiver and deem application administratively complete:

In regard to Commission Rule 5.107(C)(10)(a), when the Applicant filed its application with the Commission, it included Green Mountain Power Corporation's ("GMP") Fast Track Analysis, which indicates that a Feasibility Study will be required. The Applicant submitted an interconnection application to GMP with enough time for the utility to complete a Fast Track Analysis before the Applicant would need to file its application with the Commission

We find good cause to grant a waiver in this instance because: (1) the Applicant had no control over the delay in the interconnection review, (2) the Applicant stated that it will pay for all required upgrades, (3) the Applicant stated it will file the Feasibility Study when it receives it, (4) the Applicant's application is otherwise complete, and (5) but for the lengthy interconnection review required in this case (a review that can be done only by the utility), the Applicant would have been able to file a complete petition prior to the [petition filing]date"

We find it is in the interests of judicial efficiency and economy and in the interests of all potential parties in this proceeding to stay commencement of the 30-day period for filing public comments, notices of intervention, motions to intervene, and requests for hearing until the Applicant files a letter from GMP conforming to the requirements of Commission Rule 5.107(C)(10)(a). When the Applicant files that letter, the Commission will issue a memorandum stating the date by which public comment, notices of intervention, motions to intervene, and requests for hearing must be filed. The Applicant shall wait to provide notice pursuant to Commission Rule 5.107(E) until it receives that memorandum.⁵

One year later, the Commission issued a nearly identical ruling when it granted a similar waiver in *Petition of Portland Street Solar*, Case No. 19-2484-NMP, Order of 7/11/18. As noted in footnote 1, above, numerous other orders have granted similar relief. Importantly, the Commission's rationale in the *Granview Solar Order* was that as long as an applicant provides the interconnecting utility the required 15 days to perform its Fast Track review and provide the results prior to filing a CPG petition, an application should be deemed administratively complete.⁶

⁵ *Application of Granview Solar, LLC for a certificate of public good*, Case No. Order of 7/11/19 at 2-3 (emphasis added).

⁶ See *supra*, italicized portions of the *Granview Solar Order* and footnote to that order (stating "[b]y contrast, for example, an applicant that submits a filing to a utility within less than 15 days before submitting its application to the Commission would not allow enough time for the utility to complete a Fast Track Analysis. See Commission Rule 5.505").

As recognized by the Commission in *Granview Solar*, *Portland Street Solar*, and numerous project filings cited in footnote 1, above, the interconnecting utility, not an applicant, has sole control over the duration of the interconnection review process, which can be lengthy. Here, the Applicant submitted an interconnection application to GMP with enough time for the utility to complete a Fast Track Analysis before the Applicant would file its application with the Commission. These facts support the grant of a waiver and determination that the Application is administratively complete.

Moreover, as a matter of fundamental administrative procedure, the Commission must treat like cases alike. *In re Petition of Stowe Cady Hill Solar, LLC*, 2018 VT 3, ¶21, 182 A.3d 53, 59 (“A fundamental norm of administrative procedure requires an agency to treat like cases alike.”). The Vermont Supreme Court in *Cady Hill* held that the Commission’s application of its rule regarding completeness of net meter applications ran counter to the Commission’s own previous application of the same rule in a like case, and accordingly struck down the Commission’s decision denying Cady Hill Solar a CPG. *Cady Hill*, 2018 VT 3, ¶22. Under *Cady Hill*, the Commission has an obligation to treat this case like it has treated similarly situated cases with respect to granting a waiver when presented with a Fast Track report and deeming the application administratively complete. Consistent with its prior precedent, the Commission should grant the requested waiver and deem the Application complete contemporaneously, rather than unnecessarily delaying its grant of the waiver, as was done here.

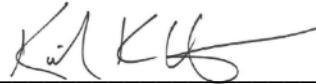
Finally, as noted by the Vermont Supreme Court held in *In re Programmatic Changes*, 2014 VT 29, “Section 8007 of Title 30, Vermont Statutes Annotated, which is entitled ‘Small renewable energy plants; simplified procedures,’ [provides] that renewable energy plants of 2.2 MW or less are entitled to streamlined approval procedures.” *In re Programmatic Changes*, 2014 VT 29, ¶ 14 (quoting 30 V.S.A. § 8007). Granting a waiver and deeming an application administratively complete following timely filing of a complete interconnection application – furthers this statutory requirement for simplified procedures.

The Applicant respectfully requests the Commission to grant the requested waiver and deem its Project application complete within the timeframe established by Commission Rule 5.107(D)(five days).

Dated at Burlington, Vermont, this 11th day of August, 2021.

Respectfully submitted,

Randolph Davis Solar LLC

A handwritten signature in black ink, appearing to read 'Kim K Hayden', written over a horizontal line.

BY: Paul Frank + Collins P.C.
Kimberly K. Hayden, Esq.
One Church Street
P.O. Box 1307
Burlington, VT 05402-1307
(802) 860-4134
khayden@pfclaw.com

8317691_1:12602-00071