

**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. 21-2939-NMP
operation of a 500 kW (AC) photovoltaic group	)	
net-metering system in Randolph, Vermont	)	

**PETITIONER’S RESPONSE TO LANDOWNERS’
SECOND MOTION TO DISMISS**

NOW COMES Randolph Davis Solar LLC (the “Petitioner”) and responds to intervenors Joan Allen’s and Michael Binder’s (the “Landowners”) second motion to dismiss dated March 23, 2022, asking the Hearing Officer to dismiss Petitioner’s application for a 500 kW (AC) photovoltaic group net-metering system in Randolph, Vermont (the “Project”).

This second motion contends that the petition should now be dismissed under Vermont Public Utility Commission Rule 5.107(B)(4) because purportedly the filing was not completed within 180 days of the advance notice filing. This is unequivocally incorrect. The 45 day advance notice letter was issued June 21, 2021 and the petition was deemed complete by the Commission as of August 11, 2021, fifty one (51) days later. See Notice of Complete Petition, Case No. 21-2939-NMP, Memorandum of 8/18/21.

As to the remainder of Landowners’ second motion, it should be denied for the numerous reasons Petitioner has already detailed in response to Landowners’ first motion to dismiss.

Landowners conflate the Town of Randolph’s request that Petitioner survey the grade under the area of the array prior to installation, which Petitioner has complied with even before the Commission’s review is complete, with Commission Rule 5.107’s requirements for project site plans. That the intended survey area was to be limited to the array, is expressly stated in the Town Planning Commission’s December 14, 2021 letter to Petitioner, Exhibit RDS MS-14, which provides in relevant part: “In response to our Notice of Discrepancy ... the Randolph Planning Commission received your response on 13 Dec 2021 and accepts your guarantee that ‘prior to installation of the panels, Norwich Technologies will **confirm the grade slopes in the area of the solar panels by having a Vermont licensed surveyor set grade stakes for the solar array rows**

location and document the slopes.” Exh. RDS MS-14 (emphasis added). Rule 5.107 does not require information on grade of slopes, let alone slope survey detail, nor do Landowners suggest it does. The Project site plans submitted include the topographic detail typically included in site plans submitted under Rule 5.107. The additional survey work and mapping included in Exhibit RDS MS-2A reflects ***the grade of slopes in the area of the solar panels*** per the request of the Town, and was subsequently provided in this case per the request of the Landowners and hearing officer.

As already briefed in Petitioner's response to Landowners' first motion to dismiss, the Town Plan steep slopes language does not operate as a de facto zoning provision. It is entitled to due consideration under 30 V.S.A. § 248(b)(1), but even then is not relevant under that criterion because it clearly is not a “land conservation measure.” It also does not qualify as a “clear, written community standard” under 30 V.S.A. § 248(b)(5)'s aesthetics criterion or Commission Rule 5.112, because it does not “(1) designate specific scenic resources in the area where the Project is proposed and (2) provide specific guidance for project design.” *Petition of MHG Solar LLC for a certificate of public good*, Case No. 20-1261-NMP, Order of 9/17/21 at 27 (citing Commission Rule 5.112(C)(1)-(2)).

Dated at Burlington, Vermont, this 24th day of March, 2022.

Respectfully submitted,

Randolph Davis Solar LLC



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