

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-2939-NMP

Petition of Randolph Davis Road Solar LLC for a Certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the Installation and operation of a 500kW group Net-metered solar electric generation system in Randolph, Vermont	
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**NEIGHBOR INTERVENORS' REPLY COMMENTS TO
PETITIONER'S PROPOSED CHANGES REASONING**

Now come Neighbor Intervenors Michael Binder and Joan Allen, *pro se*, and provide the following reply comments to Petitioner's Proposed Changes Reasoning.

The Applicant argues that their change to the project should be a Minor Amendment.

The PUC NM Rule 5.103 states:

“Amendment” means one or more of the following changes to the physical plans or design of a net-metering system. An amendment is either “major” or “minor”:

(1) The following changes constitute a “major” amendment:

(a) increasing the nameplate capacity of the net-metering system by more than 5% or reducing the nameplate capacity of the net-metering system by more than 60%;

(b) moving the limits of disturbance by more than 50 feet;

(c) changing the fuel source of the net-metering system; or

(d) any other change that the Commission, in its discretion, determines is likely to have a significant impact under one or more of the criteria of Section 248 applicable to the net-metering system.

(2) The following changes constitute a “minor” amendment:

(a) proposing additional aesthetic mitigation; or

(b) any other change to the physical plans or design of the system that is not a major amendment.

PUC NM Rule 5.103.

The Applicant's request for a minor amendment states the following regarding whether this is a major or minor amendment:

Staskus 2/22/22 pf. at 2-3. Exhibit RDS MS-2A (2/22/22) demonstrates that the re-arranged solar panel rows can be installed in areas with slopes not greater than 25% while staying within the original Limit of Disturbance. Staskus 2/22/22 pf. at 3.

Here, the proposed changes to the system do not involve (a) increasing the nameplate capacity of the net-metering system by more than 5% or reducing the nameplate capacity of the net-metering system by more than 60%; (b) moving the limits of disturbance by more than 50 feet³; (c) changing the fuel source of the net-metering system; or (d) any other change that is likely to have a significant impact under one or more of the criteria of Section 248 applicable to the net-metering system. As such, the changes meet the Commission's definition of a minor amendment.

See Petitioner's Motion for Minor Amendment.

The Applicant's motion for a minor amendment merely states part of the Rule and then says in one conclusory sentence: "As such, the changes meet the Commission's definition of a minor amendment." So while the Hearing Officer has requested Comment on the "Reasoning" for the Proposed Changes Reasoning, Neighbor Intervenors are unable to provide any Comment because there is no "Reasoning" to comment on. The Applicant has previously criticized the *pro se* Intervenors for failing to file a legal memorandum in support of our Motions, yet the Applicant provides no legal analysis of the facts or standards by which the Hearing Officer can decide whether this is a minor or major amendment.

Neighbor Intervenors disagree that this is a minor amendment because the Applicant has failed to provide any information or analysis as to why the changes will not "have a significant

impact under one or more of the criteria of Section 248 applicable to the net-metering system” under Rule 5.103 which states: “(d) any other change that the Commission, in its discretion, determines is likely to have a significant impact under one or more of the criteria of Section 248 applicable to the net-metering system.” Therefore, without any analysis or legal memorandum the amendment should be treated as a major.

What is more troubling, following today's site visit is that there are many missing elements from the site plan including: the previously mentioned structures (culverts) for storm water, the slope overlays of the entire limits of disturbance, including on the access which we climbed straight up the mountain, and most concerning, the failure to map and delineate the streams and wetlands on the subject property as well as the vernal pool complex which is contiguous to the subject property on our land. So, Neighbor Intervenors are confused about the process of how one amends a Permit Application that has failed to comply with the Rule 5.107(c)(5) & (6) filing requirements in the first place.

(C) Filing Requirements. Applications for net-metering systems subject to this Section 5.107 **must contain the following information. Failure to provide any required information will result in the application being deemed incomplete:**

(5) Site plans. The applicant must provide a site plan for each project. A site plan must include:

...
(d) A description of any areas where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations to or impacts on wetlands or other natural resources protected under 30 V.S.A. § 248(b)(5), **including the limits of disturbance and the total acreage of any disturbed area;**

PUC Net Metering Rule 5.107(C)(5)(d) (emphasis supplied).

Petitioner's site plan fails to comply with the requirements of the Rule because as we saw on the site today, there are streams, wetlands and adjacent vernal pool complex but the Petitioner

has not provided the required information. Therefore, Neighbor Intervenors request that their Motion to Dismiss or their Motion to Stay be Granted and request that the Amendment be treated as a Major.

Thank you for your attention to this matter.

DATED March 25, 2022.

/s/ Joan Allen

Joan Allen, *pro se*
1953 Davis Road
Randolph Center, VT 05061
joanbarballen@gmail.com

/s/ Michael Binder

Michael Binder, *pro se*
1953 Davis Road
Randolph Center, VT 05061
michaeljbinder@yahoo.com