

**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 )

**SUPPLEMENT TO PETITIONER’S MOTION TO STRIKE PORTIONS OF  
LANDOWNERS’ DIRECT PREFILED TESTIMONY AND EXHIBITS**

NOW COMES Randolph Davis Solar LLC (the “Petitioner”) and supplements its motion to strike certain prefiled testimony and exhibits submitted by witness Joan Allen dated May 6, 2022 (the “Motion to Strike”), with supporting information provided in Landowner’ June 3, 2022 admissions and responses to discovery (“Allen Discovery Responses”) demonstrating the limitations of Ms. Allen’s qualifications to offer expert testimony.

In support of this supplement to Motion to Strike, Petitioner submits the Allen discovery Responses and associated Discovery Certificate of Ms. Allen as Exhibits Petitioner-1 and -2, respectfully.

**I. Supplement to Motion to Strike Ms. Allen’s Testimony**

**A. Stormwater**

The following numbered portions of Ms. Allen’s Discovery Responses supplement and reinforce Petitioner’s Motion to Strike the entirety of her Questions and Answers 8, 9, and 10 regarding stormwater impacts:

- Allen Discovery Response 9, wherein Ms. Allen admits that she is not a Vermont licensed professional engineer;
- Allen Discovery Response 10, wherein Ms. Allen admits that she is not a Vermont licensed civil engineer;
- Allen Discovery Response 11, wherein Ms. Allen admits that she is not a Vermont licensed wastewater engineer;
- Allen Discovery Response 12, wherein Ms. Allen admits that she has never prepared an application for, or obtained a construction stormwater discharge permit from the Vermont Department of Environmental Conservation;

- Allen Discovery Response 13, wherein Ms. Allen admits that she has never prepared an erosion prevention and sediment control ("EPSC") plan for a Vermont construction stormwater discharge permit application;
- Allen Discovery Response 14, wherein Ms. Allen admits that she does not have education, training, or experience as a Vermont civil engineer, professional engineer, or wastewater engineer;
- Allen Discovery Response 8(c), wherein Ms. Allen admits that she had not prepared any peer-reviewed articles, studies or research on water quality, headwater streams, wildlife and wildlife habitat, wetlands, forests, or flood resiliency.

These Allen Discovery Responses also supplement and reinforce that Exhibit JA-3, titled "Soil Characteristics & Analysis," should be stricken under V.R.E 702, 402 and 403. Ms. Allen is not qualified to offer a technical analysis or opinion on soils. As already noted in the Motion to Strike, no foundation has been laid to identify who prepared this document, what the calculations mean, what standards were applied, or their relevance in this case. The document is irrelevant and therefore should be excluded under V.R.E. 402, and because "its probative value is substantially outweighed by the danger of unfair prejudice [and] and confusion of the issues." V.R.E. 403.

### **B. Wetlands**

In Allen Discovery Response 15, Ms. Allen admits that she does "not consider [her]self an expert wetland ecologist or wildlife biologist." As such, she is not qualified as an expert to offer the opinions she provides in Question and Answers 15-17 of her testimony on wetlands. These Questions and Answers, along with Exhibit JA-14 (an excerpt from best logging practices), are inadmissible because Ms. Allen is not qualified to testify on these subjects.

### **C. Necessary Wildlife Habitat**

Answer 8(c) of the Allen Discovery Responses admits that Ms. Allen had not prepared any peer-reviewed articles, studies or research on wildlife and wildlife habitat, wetlands, or forests. As previously pointed out in the Motion to Strike, nor has she specified that she has any education, training or experience that would qualify her to offer an opinion as an expert as to

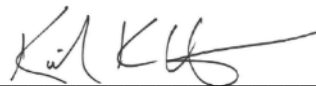
whether the Project site qualifies as “necessary wildlife habitat” under the Vermont legal standards that govern such designation. She has not demonstrated that she is qualified to offer an expert opinion on such topics under V.R.E. 702, and the entirety of her Questions and Answers 11 through 14 are inadmissible and should be stricken. In fact, Answer 14, page 11, lines 12 through 14, concedes that she “cannot testify with certainty” that any portion of the Project site rises to the level of “necessary wildlife habitat.” Her testimony is essentially mere speculation and, under the Vermont Supreme Court’s ruling in *Turgeon v. Sneider*, and should be stricken.

For the same reasons and those previously pointed out in the Motion to Strike, Exhibits JA-6 labeled “Forest Conservation Targets” and Exhibit JA-7, labeled “Shrubland and Young Forest Dependent Species of Greatest Conservation Concern”, should be stricken as Ms. Allen is not qualified to speak as an expert as to the relevance or application of those documents to this proceeding.

Dated at Burlington, Vermont, this 6th day of June, 2022.

Respectfully submitted,

Randolph Davis Solar LLC



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