

**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’
6/28/22 MOTION TO ENLARGE SCHEDULE**

NOW COMES Randolph Davis Solar LLC (the “Petitioner”) and responds to intervenors Joan Allen’s and Michael Binder’s (the “Landowners”) motion submitted on June 28, 2022 asking the Hearing Officer to enlarge the schedule, allow more Landowner discovery, Landowner surrebuttal, and delay the evidentiary hearings (the “Motion”).¹ Petitioner believes the Motion is without merit.

As documented by the following list of Landowner pleadings, this Motion constitutes the seventh pleading filed by Landowners seeking to delay, dismiss or otherwise prevent the progression of the Commission’s substantive review of the case:

- December 12, 2021 Request for Evidentiary Hearing and Response to Commission, which states “consider this letter to be our Motion to Stay the case” (denied in December 16, 2021 procedural order);
- March 1, 2022 Motion to Dismiss or in the alternative Motion to Stay;
- March 23, 2022 Neighbor Intervenor’s Reply to Petitioner’s Response to Motion to Stay/Motion to Dismiss, with Renewed Motion to Dismiss (denied in April 15, 2022 procedural order);
- March 29, 2022 Neighbor Intervenor’s Second Motion to Dismiss Petition or in the alternative Motion for Stay of Proceeding and Motion to Permit Entry and Inspection of the Premises for a Wetland Delineation and Revision of the Scheduling Order (denied in April 15, 2022 procedural order)
- March 30, 2022 Neighbor Intervenor’s Opposition to Minor Amendment (denied in the April 15, 2022 procedural order)
- April 6, 2022 Neighbor Intervenor’s Motion to Change Schedule (granted with limited additional time to file prefiled testimony but denying enlargement of the hearing schedule in the April 15, 2022 procedural order); and
- June 28, 2022 Neighbor Intervenor’s Motion to Change Schedule, Reopen Discovery, Permit Rebuttal Testimony and Continue Evidentiary Hearing

¹ Capitalized terms used herein not otherwise defined have the meaning set forth in Petitioner’s prior responses to Landowners’ prior pleadings.

Landowners endorsed the schedule adopted by the Hearing Officer at the February 16, 2022 scheduling conference, which did not provide for additional discovery or surrebuttal on rebuttal filings. The only concern and accompanying requested schedule change by Mr. Binder at the scheduling conference was that Petitioner more fully explain the Site Plan and that dates be adjusted several weeks to accommodate his request. *See* Tr. 2/16/22 at 7-13.

All of the evidence filed by Petitioner in its June 24, 2022 rebuttal submissions was in response to issues raised by Landowners. As discussed below, none of the five enumerated reasons recited in the Motion support the enlargement and another delay.

The first reason recited is without merit. The Project Site Plan submitted with Petitioner's rebuttal (Exh. RDS MS-2 (rev. 6-17-22)) includes slopes layers. As explained in Ms. Staskus' June 24, 2022 Rebuttal Testimony, and again in the accompanying affidavit of Ms. Staskus and Motion for Waiver, the LOD in Exhibit RDS MS-2 (rev 6-17-22) shifted approximately 80 feet, reducing the area within the LOD in the northern most corner of the property. This linear shift of the LOD and reduction in area raises no substantive issues under the applicable criteria, nor has Mr. Binder identified any such new substantive issue.

The second stated reason in the Motion is that Landowners were not aware Arrowwood Environmental would delineate the vernal pool on Landowners' property. During the project Site Visit, the Landowners themselves raised the absence of the vernal pool delineation as an alleged deficiency and further expressly requested the Hearing Officer and parties to visit the vernal pool. It is disingenuous for Landowners' to now claim surprise that Petitioner would address the issue raised by Landowners themselves. Landowners had an opportunity to have their own vernal pool delineation conducted and chose not to do so. Landowners also never requested to have discovery and surrebuttal on Petitioner's rebuttal.

The third stated reason in the Motion is that Petitioner submitted rebuttal testimony from its professional civil engineer, Mr. Homsted of Krebs & Lansing. Petitioner is not precluded from utilizing an expert on rebuttal who did not file direct testimony. Krebs & Lansing prepared the civil plans in this Case and it is proper and appropriate for Petitioner to submit Mr. Homsted as a rebuttal witness.

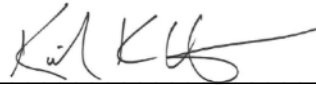
The fourth stated reason in the Motion is that ANR in its June 24, 2022 supplemental comments reserved the right to further comment on Petitioner's rebuttal as well as the recent evidentiary ruling of the Hearing Officer. ANR has not filed any such additional comments, and therefore these statements by themselves provide no new grounds to enlarge the schedule at this time.

Finally, the fifth stated reason in the Motion is that the LOD shift constitutes an amendment that will require notice to adjoining landowners. With its Motion for Waiver, submitted today, Petitioner is also submitting and mailing a Notice of Second Minor Amendment today. Having sent this Notice, there is no justification for a schedule delay.

Dated at Burlington, Vermont, this 30th day of June, 2022.

Respectfully submitted,

Randolph Davis Solar LLC



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