

**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	)	

**REQUEST FOR WAIVER OF RULE 5.108(B)
AND ORDER DEEMING MINOR PROJECT CHANGES A
MINOR AMENDMENT**

NOW COMES Randolph Davis Solar LLC (the “Petitioner”) and pursuant to Vermont Public Utility Commission (“Commission”) Rule 2.107, asks the Commission to deem an approximately 80 foot shift of the Project limit of disturbance (“LOD”), reducing the LOD in the area by 10,200 sf (0.24 acres)± for the proposed Randolph Davis Solar Project (“Project”), a minor amendment under Commission Rule 5.108(A).

Background

On June 24, 2022, Petitioner submitted a revised Site Plan that added the Binder/Allen wetland/vernal pool identified at the Site Visit and subsequently delineated by Arrowwood Environmental along with a 100’ buffer and extended the original western mapped wetland cartographic arrow to Davis Road. Staskus 6/30/22 Affidavit. The shift in the LOD results in an approximately 80 foot retraction of the LOD’s northern most corner. *Id.* The LOD shift does not involve changing the Project capacity or the fuel source of the Project. *Id.* The LOD shift does not have the potential to have a significant impact under the applicable Section 248 criteria, and in fact reduces Project impacts. *Id.*

Because the shift in the LOD will exceed 50 feet, it would meet the definition of a major amendment under Commission Rule 5.103. If treated as a major amendment, Commission Rule 5.108(B) would require the Applicant to re-submit the 45-day notice and entire petition filing. Applicant is seeking a waiver in this instance under Rule 2.107, and requesting the Commission to determine that the Project change constitutes a minor amendment under Commission Rule 5.108(A).

Legal Memorandum

Under the Commission's Net-Metering Rule, an amendment is either "major" or "minor."

A "major amendment" is one of the following:

- (a) increase 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) move the limits of disturbance by more than 50 feet;
- (c) change the fuel source of the net-metering system; or
- (d) involve a 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.

Rule 5.103.

A "minor amendment" is defined as "(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."

Rule 5.103. If an applicant seeks to undertake a minor amendment to a pending application, a notice of the change must be provided to the Commission and all persons and entities who were entitled to receive a copy of the original application. Rule 5.108(A). On the other hand, a major amendment requires an entirely new 45-day advance notice and new full application submittal.

Rule 5.108(B).

These standards for minor and major amendments are different than the standard applied to Section 248 projects under Commission Rule 5.408. Under Rule 5.408, an amendment is required only for a "substantial change." See Rule 5.408.

Rule 2.107 allows the Commission to waive its rules to avoid delay, hardship, injustice, and for other good cause. *Request of BP Ascutney 2 LLC for minor amendment to CPG No.18-1686-NMP*, Case No. 19-3179-PET, Order of 10/09/19 at 3. It provides:

In order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the Commission may waive the application of rule upon such conditions as it may require, unless precluded by the rule, itself, or by statute.

Rule 2.107.

There is good cause to waive the re-filing requirements of Rule 5.108 in this instance. While the proposed changes would move the limit of disturbance by slightly more than 50 feet,

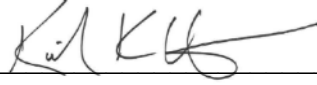
the changes are not major in any other respect, nor are they substantial changes. As explained in Ms. Staskus' accompanying affidavit, the change does not increase the Project's capacity and will not raise a substantial issue with respect to any of the substantive criteria of Section 248. In fact, the LOD shift results in a net decrease in the LOD area and as such reduces Project impacts. Under these circumstances, requiring the Applicant to undergo the major amendment process is unnecessary, unduly burdensome, and would cause unnecessary delay, consequences that are not justified given the proposed change does not raise a substantial issue with respect to any of the substantive criteria of Section 248. In similar circumstances, the Commission has found good cause to issue a waiver. *See Request of White River Community Solar LLC*, Case No. 21-4187-PET, Order of 12/02/21 (granting waiver of major amendment where LOD moved more than 50 feet and where LOD shift was intended to avoid potential environmental impacts). Moreover, waiver under these circumstances would be entirely consistent with the Legislature's directive in 30 V.S.A. § 8007, that the Commission establish procedures for renewable energy facility Section 248 that "shall simplify the petition and review process as appropriate."

For the reasons stated herein, the Applicant respectfully asks the Commission to waive Rules 5.108(B), and treat the proposed Project change as a minor amendment under Rule 5.108(A).

In accordance with Commission Rule 5.108(A), the Petitioner today is concurrently providing a Notice of Second Minor Amendment to all persons and entities who were entitled to receive a copy of the original application.

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

RANDOLPH DAVIS SOLAR LLC



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