

**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 MOTION TO STRIKE SURREBUTTAL EVIDENCE**  
**SUBMITTED BY MICHAEL BINDER AND JOAN ALLEN**

NOW COMES Randolph Davis Solar LLC (the “Petitioner”) and moves the Vermont Public Utility Commission (“Commission”) to strike certain prefiled surrebuttal testimony and exhibits submitted by witnesses Michael Binder and Joan Allen (collectively, the “Landowners”) on September 9, 2022.

**Impermissible Hearsay Evidence**

Under V.R.E. 801, hearsay, which is “an out-of-court statement offered for the truth of the matter asserted”, is inadmissible. See V.R.E. 801, 802; *Petition of Randolph Davis Solar LLC*, Case No. 21-2939-NMP, Order of 06/23/2022 at 4; *Petition of Georgia Mountain Community Wind, LLC*, Docket 7508, Order of 2/2/10 at 4. In her June 23, 2022 evidentiary ruling, the Hearing Officer excluded similar Landowner exhibits and quotes from such exhibits, holding that Landowners “may not provide out-of-court statements to prove the truth of the matter asserted.” *Petition of Randolph Davis Solar LLC*, Case No. 21-2939-NMP, Order of 06/23/2022 at 4.

Petitioner objects to the admission of Landowners’ exhibits JA-20, JA-21, JA-23, MB-40, MB-42- MB-43, MB-44(A&B), MB-45, MB-46, MB47, MB-48, MB-52, and MB-54, because they are “out-of-court statements to prove the truth of the matter asserted” and therefore impermissible hearsay.

The following portions of Ms. Allen’s and Mr. Binder’s surrebuttal testimony, which relies on hearsay exhibits for the truth of the matter asserted, are also hearsay: Allen A5, fifth and sixth sentences; Binder A10, third sentence (including the block quote); Binder A8-A9; Binder A10, second sentence; Binder A17, second sentence; and Binder A18, second sentence.

**Impermissible Lay Witness Testimony**

“Under Rule 701, a non-expert witness may offer testimony in the form of opinions or inferences that are (a) rationally based on the perception of the witness, (b) helpful to a clear

understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of V.R.E. 702." *Petition of Randolph Davis Solar LLC*, Case No. 21-2939-NMP, Order of 06/23/2022 at 4.

As acknowledged by the Hearing Officer's June 23, 2022 procedural ruling, Mr. Binder is not a stormwater expert, nor does he claim to or have scientific, technical or other specialized knowledge regarding stormwater. The Hearing Officer found that Mr. Binder's direct testimony regarding his perception of measured distances and dimensions regarding slopes at the Project site were not improper lay witness testimony because as a lay person Mr. Binder could speak to his personal perception as to such matters. *See id.*

However, Mr. Binder's surrebuttal testimony goes well beyond his personal perceptions. In Questions and Answers 8-11 and Question and Answer 18, Mr. Binder purports to offer scientific, technical and other specialized knowledge about stormwater impacts and policy, which is impermissible under V.R.E. 701. Similarly, Mr. Binder's surrebuttal Questions and Answers 14-17 purport to offer scientific, technical and other specialized knowledge about primary agricultural soils ("PAS"), and such statements therefore are also inadmissible under V.R.E. 701.

**Request for Relief**

For the foregoing reasons, Petitioner respectfully asks the Commission to strike the above identified evidence.

Dated at Burlington, Vermont, this 12th day of September, 2022.

Respectfully submitted,

Randolph Davis Solar LLC



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