

**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 RE CLARIFICATION OF
LIMITED NOTICE OF APPEARANCE ON BEHALF OF JOAN ALLEN**

NOW COMES Randolph Davis Solar LLC (the “Petitioner”) and responds to the clarification regarding the limited notice of appearance submitted by Attorney Dingledine. In her response, Attorney Dingledine states that she will appear at the evidentiary hearing on behalf of Joan Allen only, and that Mr. Binder will also appear to represent himself, *pro se*. Attorney Dingledine has also informed the undersigned counsel that as to the evidentiary hearing in this matter, she has consulted with Mr. Binder and they have estimated a “combined amount of time for cross-examination” as follows:

Martha Staskus – 2 hours

Dori Barton – 2 hours

Scott Homsted – 2 hours.

The scope of the multiple representations is inconsistent with recognized procedure, and the proposed combined cross examination of the same witnesses is likely to lead to repetitious questioning and result in needless consumption of time, in contravention of V.R.E. 611(a).

As Petitioner has previously pointed out, Ms. Allen and Mr. Binder (the “Landowners”) jointly intervened as a single party to this case on October 25, 2021, on December 14, 2021, jointly requested a hearing, and on March 1, 2022, and jointly executed and filed a single Notice of Appearance (stating “the undersigned *pro se* parties hereby enter ***our appearance*** in the above-captioned matter”) (emphasis added). Their property adjoining the project parcel is what confers the basis for their joint intervention as of right, and is legally held as tenants by the entirety under the common-law principle of marital unity. See *RBS Citizens v. Ouhrabka*, 2011 VT 86, ¶ 8, 190 Vt. 251, 30 A.3d 1226 (Vt. 2011) (the estate of tenancy by the entirety "result[ed] from the common-law principle of marital unity.") (quoting *Lang v. Comm’r of Internal Revenue*, 289 U.S. 109, 111 (1933)). “The tenancy . . . is said to be *sui generis*.” *Id.* In short, the Landowners

comprise a single party in this case and should be entitled to a single representative for purposes of any direct or cross-examination or legal argument at the hearing.

“The right to confront witnesses and to cross-examine is not absolute. The constitutional right to confront witnesses is an adoption of the common law on the matter. Insofar as this right covers cross-examination, it is subject to the common law exceptions and limitations.” *State v. Berard*, 132 Vt. 138, 146-47, 315 A.2d 501 (Vt. 1974). “Limitation of cross-examination is ... proper where the questions sought to be asked are repetitive or seeking information already elicited.” *Id.*, 132 Vt. at 148. Under Vermont Rule of Evidence 611(a), which applies to Commission proceedings by virtue of 30 V.S.A. § 810, the Commission has “broad power over the ‘mode and order of interrogating witnesses and presenting evidence’ to make the presentation ‘orderly and effective for the ascertainment of the truth’ and to ‘avoid needless consumption of time.’” *State v. Brochu*, 2008 VT 21, ¶ 61 (upholding trial court’s ruling limiting repetitious cross examination where previous questions covered essentially the same ground) (quoting V.R.R. 611(a)). *See also Varnum v. Varnum*, 115 Vt. 376, 390, 586 A.2d 1107, 1115 (1990) (“[T]he power granted by Rule 611(a) includes the authority to set reasonable limits on the consumption of time in examining the witness.”); *State v. Rodriguez*, 136 N.H. 505, 508, 618 A.2d 810 (N.H. 1992) (“Trial courts possess broad discretion to limit the scope of cross-examination to preclude repetitive or unduly harassing interrogation.”) (citing *Davis v. Alaska*, 415 U.S. 308, 316 (1974)).

The extended combined amount of cross examination time estimated by Attorney Dingledine and Mr. Binder for Petitioner’s three witnesses is six hours; two hours per witness. This amount of time is excessive, disproportionate to the matters at issue, and will invariably result in repetitious questioning and needless consumption of time, which is not permitted as a matter of common law or Rule 611(a). Limiting the multiple representations or at the very least the scope of representation to avoid repetitious questioning and the needless consumption of time is further supported by 30 V.S.A. § 8007, which directs the Commission to apply “simplified procedures” in cases involving small renewable energy plants, such as this.

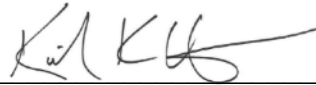
For the above-stated reasons, Petitioner respectfully asks the Hearing Officer to instruct Mr. Binder and Attorney Dingledine to choose a single representative for the hearing. In the

alternative, if this request is not granted, Petitioner asks that Mr. Binder and Attorney Dingleline not be permitted to both cross examine the same witness or on the same matter.

Dated at Burlington, Vermont, this 1st day of November, 2022.

Respectfully submitted,

Randolph Davis Solar LLC



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