

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 21-2939-PET

Petition of Randolph Davis Solar LLC for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 500-kW group net-metered solar electric generation system in Randolph, Vermont	
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THE VERMONT DEPARTMENT OF PUBLIC SERVICE’S BRIEF

This matter involves a petition by Randolph Davis Solar LLC (the “Petitioner”) filed with the Vermont Public Utility Commission (the “Commission”), pursuant to 30 V.S.A. (s)(s) 248 and 8010, for a certificate of public good (“CPG”) authorizing construction and operation of a 500-kW group net-metered solar electric generation system in Randolph, Vermont (the “Project”). At issue in this case, as raised by Joan Allen and Michael Binder (the “Intervenors”), is the Project’s impact on the orderly development of the region, pursuant to Section 248(b)(1).¹ The Vermont Department of Public Service (the “Department”) responds to the Intervenors’ concerns below.

The Intervenors contend that the Project violates the Town of Randolph’s Plan (“Town Plan”) which specifically prohibits the siting of electric generation facilities on “lands over 25% slope.”² The Intervenors assert that because the Project does not comply with the Town Plan’s electric generation facility siting provision, the Project presents undue interference with the orderly development of the region and should be denied. The Department disagrees with the

¹ The Intervenors have also raised concerns with the Project’s impact to primary agricultural soils, the use of natural resources, wetlands, and soil erosion. The Department defers to the Agency of Natural Resources’s and the Agency of Agriculture, Food, and Markets’ findings and conclusions regarding any associated impacts.

² “For all energy generation facilities, the following policies apply:

1. Prohibited Locations: Energy Facility development shall have to meet principal structure setback for the relevant area in the town zoning, and shall be prohibited in floodways, class 1 and 2 wetlands, lands within 50 feet of the top of bank of perennial streams, *lands over 25% slope.*” Exhibit MB-5, Randolph Town Plan at 29 (emphasis added).

Intervenors' assertion and concludes that the Petitioner has given due consideration to the Town Plan and the Town of Randolph Planning Commission's concerns with respect to the slope prohibition by amending the Project site plan to relocate the Project's solar arrays on slopes less than 25%. Additionally, as indicated in the Department's initial October 25, 2021 comments, the Department has no further concerns with the Section 248(b) criteria subject to its review and recommends that the Commission approve the Project.

Under 30 V.S.A. (s) 248(b)(1), the Commission may issue a certificate of public good provided that it finds that the Project does not

unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.³

Importantly, "substantial deference" must be given to "land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. (s) 4352."⁴ Substantial deference "means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy."⁵ The Town of Randolph Planning Commission did not adopt an enhanced energy plan that has received an affirmative determination of energy compliance under 24 V.S.A. (s) 4252.⁶ As such,

³ 30 V.S.A. (s) 248(b)(1).

⁴ 30 V.S.A. (s) 248(b)(1)(C).

⁵ *Id.*

⁶ The Town Plan incorrectly states that the "Plan has been updated so that now the Public Utility Commission can give clearly stated policies herein 'substantial deference' in their proceedings." Exhibit MB-5 at 29. To date, the Randolph Town Plan has not received a Determination of Energy Compliance by the Two Rivers-Ottawaquechee Regional Commission.

Randolph's Town Plan is afforded "due consideration," not "substantial deference," by the Commission under the Section 248(b)(1) criteria.

Specific to the Intervenor's concerns, due consideration would be afforded to land conservation measures within the Town Plan. However, the cited slope prohibition relied upon by the Intervenor does not appear to constitute a land conservation measure that would be afforded due consideration, consistent with the plain language of Section 248(b)(1). The Town Plan contains a general prohibition of all energy generation facility development within areas with greater than a 25% slope, however it does not specify the purpose or policy for the general prohibition.⁷ Rather, the slope prohibition appears more analogous to a municipal zoning regulation. As such, the slope prohibition contained in the Town Plan may not constitute a land conservation measure that is afforded due consideration by the Commission.

Even assuming the prohibition may constitute a land conservation measure, the Petitioner has amended the Project plans, in response to the Intervenor's and the Town of Randolph Planning Commission's concerns, to relocate the facility's proposed solar panels on land at the Project site that is less than a 25% slope.⁸ Importantly, the Project was designated as a "preferred location" consistent with the Town Plan's siting policies⁹, as the Town, by joint letter of the Planning Commission and Selectboard, designated the site as a preferred site.¹⁰

⁷ Land conservation measures must evince a specific policy directed towards land conservation; general policy statements in plans that apply indiscriminately throughout the municipality do not rise to the level of a land conservation measure. *See Petition of Vermont Electric Power Company, Inc. and Green Mountain Power Corporation for a certificate of public good, pursuant to 30 V.S.A. Section 248, authorizing VELCO to construct the so-called Northwest Vermont Reliability Project*, Docket 6860, Order at 201-202 (Jan. 25, 2005).

⁸ Exhibit RDS MS-2, Site Plan (rev 7-13.22); *See also* Exhibit RDS A, Letter to Norwich Technologies – Acceptance of their assurance of no panels on 25% slopes.

⁹ "Preferred Locations: . . . the Town, by joint letter of the Planning Commission and Selectboard, may designate a site as preferred if the total project area of panels encompasses 10 acres or less and if the project, as designed, will not be visible in the growing season from town or state highways." Town Plan at 29.

¹⁰ Exhibit RDS MS-5, Preferred siting letter.

Furthermore, the Commission has previously held that “in some instances localized impacts may be found to interfere with orderly regional development due to their character or severity,” however there must be “credible evidence” of a regional impact to reach a finding of an undue interference with orderly development of the region.¹¹ Given the limited scope and characteristics of the Project, any non-compliance with the Town Plan’s slope prohibition would be localized in nature and does not pose a demonstrable impact to the region. On balance and considering the Petitioner’s efforts in amending the Project to address the Randolph Planning Commission’s concerns and conformance with the Town Plan, the Project does not present an undue interference with the orderly development of the region.

The Petitioner has sufficiently demonstrated overall conformance with the Town Plan’s slope prohibition and has reasonably conferred with the Town Planning Commission to amend the Project to address the Intervenor’s concerns. Based on the foregoing, the Department recommends that the Commission approve the Project as amended and conclude that it presents no undue impact to the Section 248(b)(1) criteria.

DATED at Montpelier, Vermont this 12th day of January 2023.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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¹¹ *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 12, 202 Vt. 59, 66, 147 A.3d 621, 626 (2016).