STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-2939-NMP

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	

Order entered:

PROPOSAL FOR DECISION

I. INTRODUCTION

This case involves an application filed by Randolph Davis Solar LLC ("Applicant") with the Vermont Public Utility Commission ("Commission") for a certificate of public good ("CPG"), pursuant to 30 V.S.A. §§ 248 and 8010, to install and operate a 500 kW solar group net-metering system at 0 Davis Road in Randolph, Vermont (the proposed "Project").

Based on the below findings, I recommend that the Commission conclude that the preferred-site letter submitted by the Applicant is not consistent with the criteria or intent of Commission Rule 5.103. Accordingly, I recommend that the application be denied pursuant to Commission Rule 5.104 because the Project is greater than 150 kW in capacity and is not proposed on a preferred site. Therefore, it is not eligible to participate in the net-metering program.

II. PROCEDURAL HISTORY

On August 11, 2021, the Applicant filed an application for the Project with the Commission.

On August 18, 2021, the Commission granted a waiver of Commission Rule 5.107(C)(10)(a) determining that the Application was administratively complete as of August 11, 2021. The Commission also stayed the 30-day period for public comment, notices of intervention, motions to intervene, and requests for hearing until the information required by Commission Rule 5.107(C)(10)(a) was filed.

On September 22, 2021, the Applicant filed a completed Feasibility Study for the Project.

On September 23, 2021, the Commission lifted the stay and set a deadline of October 25, 2021, for filing comments or requesting a hearing in this matter.

On October 20, 2021, the Vermont Agency of Natural Resources ("ANR") filed comments on the Project. ANR recommended that any CPG for the Project include proposed conditions to address wetlands, deer wintering habitat, and water source protection. ANR also requested an additional CPG condition requiring that the Applicant maintain a 50-foot riparian buffer around the stream located south of the Project.

On October 21, 2021, the Vermont Division for Historic Preservation ("VDHP") filed comments stating that the Project would have no effect on historic sites.

On October 25, 2021, the Vermont Agency of Agriculture, Food & Markets ("AAFM") filed comments proposing certain conditions to mitigate impacts on primary agricultural soils. AAFM concluded that with these conditions, the Project would not have an undue adverse effect on primary agricultural soils.

Also on October 25, 2021, the Vermont Department of Public Service ("Department") filed comments on the Project. The Department supported the comments made by the other state agencies and requested a CPG condition requiring the Applicant to notify the Commission, before commissioning the plant, of the actual method used to protect public safety with respect to securing the Project's electrical equipment.

Also on October 25, 2021, adjoining landowners Joan Allen and Michael Binder (the "Landowners") filed a motion to intervene. The Landowners raised concerns related to the Project's conformance with the Randolph Town Plan and natural resources.

On November 8, 2021, the Department filed comments recommending that the Commission treat the Landowners' motion to intervene as a notice of intervention under Commission Rule 5.117(B).

On November 30, 2021, I issued a procedural order requesting the Landowners to clarify whether they were requesting a hearing.

On December 14, 2021, the Landowners filed a request for an evidentiary hearing and moved to stay the proceeding, stating that they had requested the Randolph Planning Commission to revoke its preferred-site designation because portions of the Project would be located on slopes greater than 25%.

On December 15, 2021, the Applicant filed a response to the Landowners' motion. The Applicant also filed a letter from the Randolph Planning Commission dated December 14, 2021, stating acceptance of the Applicant's assurance that the array will be "arranged so that solar panels within the current limit of disturbance are not installed on slopes greater than 25%."

On December 16, 2021, I issued a procedural order denying the Landowners' request for a stay.

On February 16, 2022, I held a scheduling conference.

On February 16, 2022, the Applicant filed a revised site plan (Exh. RDS MS-2 (rev 2-9-22)) to address the Town of Randolph's request to relocate the solar panels on slopes less than 25%.

On February 25, 2022, the Applicant filed a second revised site plan to show the slope of the land (Exh. RDS MS- 2A (rev 2-9-22 with slope layer added 2-22-22)) for the location of the solar panels and the access road. The Applicant also filed letters from the Applicant's engineers certifying the accuracy of the slope layer and documents from the Randolph Planning Commission and Selectboard accepting the Applicant's assurances that the array will not be constructed on slopes greater than 25% and confirming that the preferred-site designation for the Project had not been revoked (exhs. RDS MS-12 through MS-15).

On March 2, 2022, the Landowners filed a motion to dismiss or, alternatively, a second motion to stay, stating that the Project site plan failed to satisfy Commission Rule 5.107(C)(5)(e) regarding project drainage.

On March 10, 2022, the Hearing Officer issued a procedural order requesting the Applicant to clarify whether the revised site plan that relocated the solar panels on land with less than a 25% slope that was filed on February 16 constitutes a minor or major amendment under Commission Rule 5.103.

On March 16, 2022, the Applicant responded to the Landowners' motion to dismiss.

Also on March 16, 2022, the Applicant filed a notice of minor amendment.

On March 25, 2022, I conducted a site visit.

Also on March 25, 2022, the Department filed comments agreeing that the Applicant's proposed adjustment to the array layout constitutes a minor amendment under Commission Rule 5.103.

On March 29, 2022, the Landowners filed a second motion to dismiss or, alternatively, a third motion to stay. The Landowners asserted that the Applicant failed to properly delineate streams and wetlands and failed to provide an accurate representation of a typical cross-section of the access road.

On April 4, 2022, I issued a procedural order requesting additional information from the Applicant on the slope of the land and tree clearing at the Project site.

On April 5, 2022, I approved the Applicant's request for a minor amendment of the Project.

On April 15, 2022, I issued a procedural order denying the Landowners' pending motions to dismiss or stay.

On April 19, 2022, the Applicant filed a supplemental affidavit and exhibits regarding slopes and tree clearing.

On May 6, 2022, the Landowners filed direct testimony and exhibits.

Also on May 6, 2022, AAFM filed prefiled testimony.

On May 31, 2022, the Applicant filed a motion to strike portions of the Landowners' testimony and several exhibits.

On June 23, 2022, I issued a procedural order striking Exhibits MB-2, JA-2, JA-6, JA-7, JA-11, JA-12, and JA-14, and a portion of Michael Binder's testimony.

On June 24, 2022, the Applicant submitted rebuttal testimony and exhibits, including a further revised site plan, Exhibit RDS MS-2 (rev 6-17-22), to delineate a vernal pool on the Binder/Allen parcel and a 100-foot buffer. The Applicant also reduced and adjusted the proposed limit of disturbance to address the Landowners' concerns regarding potential impacts on the vernal pool.

Also on June 24, 2022, ANR and the Department filed updated comments. ANR's June Comments stated that it continued to find that the Project as proposed would not have undue adverse effects on the natural environment and the use of natural resources under the relevant criteria in 30 V.S.A. § 248(b)(5), provided the proposed CPG incorporates the conditions outlined in ANR's earlier comments. The Department's June Comments stated that it had reviewed the revised Project plans, the Landowners' testimony, and the parties' discovery responses to date, and maintained that the Department has no significant concerns with respect to

the Project's impact on system stability and reliability, aesthetics, public health and safety, or compliance with setback requirements. The Department stated that it would address the orderly development criteria in its brief.

On June 28, 2022, the Landowners filed a motion to change the schedule and requested that the evidentiary hearing be rescheduled to allow additional time to review the rebuttal testimony, to conduct discovery on the revised site plan and the rebuttal testimony of Dori Barton and Scott Homsted, and to file surrebuttal testimony. The Landowners also raised the issue of whether the revised site plan constitutes an amendment to the petition.

On June 30, 2022, the Applicant filed a request for waiver of Commission Rule 5.108(B) and a determination that an approximately 80-foot shift to the Project's limits of disturbance to provide a buffer for the Landowners' vernal pool constituted a second minor amendment under Commission Rule 5.108(A).

On July 1, 2022, I issued an order granting the Landowners' request for schedule changes and additional process.

On July 13, 2022, the Applicant filed a further revised site plan, Exhibit RDS MS-2 (rev 7-13-22).

On July 22, 2022, AAFM filed supplemental comments.

On August 8, 2022, the Commission issued an order granting the request for a second minor amendment to the Project.

On September 9, 2022, the Applicant and the Landowners filed surrebuttal testimony.

Also on September 9, 2022, ANR, DPS, and AAFM filed supplemental comments that reinforced the earlier comments supporting issuance of a CPG for the Project, subject to conditions. ANR also requested that an additional condition be included in any CPG issued for the Project as follows: "The CPG Holder shall not disturb or impact vernal pools and their 100-foot buffer zones."

On September 12, 2022, the Applicant filed a motion to strike portions of the Landowners' surrebuttal testimony and certain exhibits.

On September 25, 2022, L. Brooke Dingledine, Esq., entered a notice of limited appearance for the purpose of acting as counsel at the evidentiary hearing on behalf of Joan Allen.

On September 27, 2022, the Applicant filed a request for clarification regarding the limited notice of appearance filed by Attorney Dingledine.

On October 31, 2022, I issued an order striking Exhibits JA-21 and MB-54.

On November 7, 2022, I issued a memorandum instructing Mr. Binder and Attorney Dingledine to coordinate their cross-examination of the Applicant's witnesses to ensure that their questions would not be duplicative.

On November 14, 2022, the Landowners filed a motion to withdraw their request for a hearing. The Landowners stated that the evidence in the record is sufficient and that no further cross-examination of the Applicant's witnesses would materially add to the evidentiary record.

Also on November 14, 2022, I issued an order cancelling the evidentiary hearing that had been scheduled for November 15, 2022.

On November 16, 2022, the Applicant filed a list of all parties' prefiled testimony and exhibits, as well as the comments from the Department, ANR, and AAFM. There were no objections filed as to the accuracy of this list (to be admitted as Exhibit Commission-1).

On December 16, 2022, ANR filed a request for judicial notice of three things: the Vermont Department of Environmental Conservation's ("DEC") authorization of the Applicant's Notice of Intent ("NOI") for the discharge of stormwater runoff at the Project site, issued on October 25, 2022 (Attachment 1); the site plan map submitted by the Applicant in support of its NOI filed with DEC (Attachment 2); and the DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, which is incorporated by reference in the NOI authorization (Attachment 3). These three documents were included as Attachments 1, 2 and 3, respectively. There were no objections to ANR's request for judicial notice (to be admitted as ANR-Attachment-1, -2, and -3).

On December 23, 2022, the Landowners filed a request for clarification of ANR's request for judicial notice. The Landowners argued that the documents included with ANR's request for judicial notice were not responsive to their concerns regarding locating solar panels on steep slopes.

On January 9, 2023, I issued an order explaining that the Landowners should address the arguments raised in their request for clarification during the briefing process.

On January 12, 2023, the Applicant, the Landowners, the Department, and ANR filed initial briefs.

On January 24, 2023, ANR filed a revised initial brief.

On January 26, 2023, the Applicant, the Landowners, and AAFM filed reply briefs. The Applicant's reply brief also included a motion to strike portions of the Landowners' initial brief.

On February 6, 2023, the Landowners filed a response to the Applicant's motion to strike.

There were no public comments filed in this case.

The Landowners withdrew their request for an evidentiary hearing, and no other party has requested an evidentiary hearing. Accordingly, Exhibit Commission-1 and all prefiled testimony, affidavits, exhibits, and comments included on that list are admitted as if presented at a hearing. In addition, ANR's request for judicial notice of Attachments 1, 2, and 3 to its December 16 request is granted.

III. LEGAL FRAMEWORK

The net-metering program is a financial incentive framework intended to promote the development of distributed energy resources in Vermont.[1] Normally, the price paid to producers of electric energy is regulated by the Federal Energy Regulatory Commission and governed by federal law.[2] Net-metering, on the other hand, is a state-jurisdictional retail transaction that allows producers of renewable energy to receive monetary credits on their electricity bill. The value of these retail credits is generally greater than the compensation a similar generator would receive if it were not net-metered. Net-metering provides substantial benefits to Vermont in the form of locally produced renewable energy and economic development. However, these benefits come at a cost to all ratepayers in the form of increased power supply costs.[3]

The Commission's net-metering rule is statutorily required to balance several competing goals so that the rule:

> (A) advances the goals and total renewables targets of this chapter and the goals of 10 V.S.A. § 578 (greenhouse gas reduction) and is consistent with the criteria of subsection 248(b) of this title;

[1] 30 V.S.A. §§ 8001 and 8010.
[2] 16 U.S.C. §§ 791 et. seq.
[3] *In re: biennial update of the net-metering program*, Case No. 22-0334-INV, Order of 6/17/2022 at 2-3.

> (B) achieves a level of deployment that is consistent with the recommendations of the Electrical Energy and Comprehensive Energy Plans under sections 202 and 202b of this title, unless the Commission determines that this level is inconsistent with the goals and targets identified in subdivision (1)(A) of this subsection (c). Under this subdivision (B), the Commission shall consider the Plans most recently issued at the time the Commission adopts or amends the rules;
>
> (C) to the extent feasible, ensures that net metering does not shift costs included in each retail electricity provider's revenue requirement between net metering customers and other customers;
>
> (D) accounts for all costs and benefits of net metering, including the potential for net metering to contribute toward relieving supply constraints in the transmission and distribution systems and to reduce consumption of fossil fuels for heating and transportation;
>
> (E) ensures that all customers who want to participate in net metering have the opportunity to do so;
>
> (F) balances, over time, the pace of deployment and cost of the program with the program's impact on rates; [and]
>
> (G) accounts for changes over time in the cost of technology . . . .[4]

Accordingly, the net-metering rule includes unique requirements for net-metering systems that do not apply to other electric generation facilities. These requirements help balance the benefits and costs of net-metering systems.

One example of such a requirement is that net-metering systems greater than 150 kW must be located on what is known a "preferred site."[5] In adopting this rule, the Commission explained to the General Assembly that:

> Larger net-metering systems that are not built on preferred sites are more like merchant generators. Such systems rely on the grid to export power to other retail users. As a matter of policy this type of development should be compensated through bilateral contracts or through participation in the regional wholesale market and not through the preferential terms offered by net-metering. Furthermore, given the size and scope of these facilities, it is appropriate to review proposals for these facilities that are located on green fields using the full procedures of Section 248. For these reasons, the [Commission] finds that it is in the public good to require

[4] 30 V.S.A. § 8010(c)(1).
[5] Commission Rules 5.103 and 5.104.

> that large net-metering systems be located on preferred sites in order to justify the significant financial and procedural advantages that net-metering systems receive in comparison to other generation projects.[6]

Commission Rule 5.103 describes nine types of preferred sites. A preferred site may include a location identified in a town plan or "a specific location that is identified in a joint letter of support from the municipal legislative body and municipal and regional planning commissions in the community where the net-metering system will be located."[7] The "letter of support" provision was added to the Commission's rules to give localities flexibility in identifying appropriate sites where they preferred the construction of net-metering systems because the process for identifying preferred sites in a regional or town plan could take years.[8]

Thus, the net-metering rule gives municipalities a greater role in the siting of net-metering facilities as compared to the siting of other energy facilities because municipalities can steer development of net-metering facilities to areas that they prefer. The rule does not impose an obligation on municipalities to designate preferred sites if they do not wish to. While the rule does require that net-metering facilities larger than 150 kW must be on a preferred site, the rule does not give municipalities the ability to prohibit all large net-metering facilities. Rather, the rule designates some sites – including rooftops, brownfields, parking lots, previously developed sites, landfills, quarries, and projects collocated with electric load – as preferred sites irrespective of municipal support. Alternatively, a customer may construct a net-metering system with a capacity of up to 150 kW on a site that is not preferred, provided it meets all other applicable siting criteria. Net-metering facilities not located on preferred sites receive a reduced financial incentive through the rule's system of siting adjustors.[9]

In addition to the Commission's net-metering rule, Act 174 of 2016 is also relevant to the Commission's consideration of the issues related to the Project's preferred-site letter in this case.

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[6] REPORT TO THE VERMONT GENERAL ASSEMBLY ON THE NET-METERING PROGRAM PURSUANT TO ACT 99 OF 2014, VERMONT PUBLIC UTILITY COMMISSION at 21 ("Act 99 Report"). The Act 99 Report, which was required to be filed contemporaneously with the filing of a revised net-metering rule, included a description of the public process that led to the revised rule, a discussion of the alternative approaches to net-metering that the Commission considered in developing a revised net-metering program, and a synopsis of the rule text and the Commission's response to significant comments received during the rulemaking process.

[7] Commission Rule 5.103.

[8] Act 99 Report at 20.

[9] Commission Rule 5.127.

Act 174 authorized the Department to issue "optional determination[s] of energy compliance" for regional energy plans. To receive a determination, the Department must find that the regional energy plan is consistent with Vermont's energy and greenhouse gas policies. The text of Act 174 does not address preferred sites in the context of net-metering.[10] The Department adopted detailed standards and guidance for regional and municipal planning bodies describing how a plan may earn an affirmative determination. These guidelines encourage municipalities to identify "preferred areas for siting particular types and/or scales of renewable generation."[11] The guidelines provide guidance to municipalities about how to draft standards that will be treated as "land conservation measures" in Commission proceedings.[12]

When regional planning commissions have received an affirmative determination of energy compliance for their regional plan, they may review and issue a determination of energy compliance to municipal plans in the region, provided those plans are also consistent with state energy policy. Act 174 does not require a regional or municipal planning body to seek a determination of energy compliance. One benefit of receiving an affirmative determination of energy compliance is that the land conservation measures and specific policies contained in a compliant plan is afforded "substantial deference" as opposed to "due consideration" when the Commission determines whether a proposed facility will unduly interfere with the orderly development of the region under Section 248(b)(1).

Finally, it is the Applicant's burden to demonstrate that a proposed net-metering facility meets all applicable requirements.[13]

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[10] Act 174 established a pilot program of "preferred locations" for standard-offer plants that was modeled on the Commission's preferred-site rule, which had been implemented by order of the Commission in 2016. Public Act 174 of 2016 (Vt., Bienn. Sess.) § 12a; *In Re: Revised net-metering rule pursuant to Act 99 of 2014*, Order of June 30, 2016.

[11] VERMONT DEPARTMENT OF PUBLIC SERVICE, GUIDANCE FOR MUNICIPAL ENHANCED ENERGY PLANNING STANDARDS 20 (2017) *Available at*: https://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Act_174/Municipal%20Guidance_Final.pdf.

[12] *Id*. at 19.

[13] *In Re Tom Halnon*, Case No. NM-25, Order of March 15, 200, at 13.

IV. FINDINGS

Based on the application and its accompanying documents and the other evidence admitted into the record as noted above, I recommend that the Commission make the following findings in this matter.

Description of the Project

1. The Project would consist of a solar electric system with a total capacity of 500 kW AC on a 20.7-acre parcel located approximately 1,500 feet north of the intersection of Davis Road and Rt. 14 in Randolph, Vermont. Martha Staskus, Applicant ("Staskus") pf. at 4; exh. RDS MS-2 (rev. 7-13-22).

2. The Project would be interconnected with the Green Mountain Power Corporation ("GMP") electric distribution system. Staskus pf. at 6.

3. The Project would occupy approximately 11.9 acres of the larger 20.7-acre parcel. Staskus pf. at 5; Staskus affidavit dated 4/19/22; exh. RDS MS-2 (rev. 7-13-22).

4. The Project would include approximately 25 rows of solar panels mounted on racking anchored to the ground. The rows would run east-west with panels facing to the south. The panels would have an anti-glare coating and are expected to be a dark color. There would be 10 string inverters and electrical lines connecting the rows of solar panels, as well as three pole-mounted transformers on a new GMP distribution pole. There would also be an eight-foot-high wildlife fence, with mesh size no smaller than 6 inches by 6 inches secured by a locked gate. Alternatively, if a fence is not required, then energized equipment would be rated for outdoor use, securely shielded by locked enclosure covers, and otherwise be code compliant for the "Guarding of Live Parts." Staskus pf. at 5-7; exh. RDS MS-2 (rev. 7-13-22).

5. The limits of disturbance for the Project would be approximately 11.9 acres, and the entire limits of disturbance would be subject to tree clearing. Staskus pf. at 5; Staskus affidavit dated 4/19/22; exh. RDS MS-2 (rev. 7-13-22).

6. The Project would be accessed from Davis Road via a gravel access drive. Staskus pf. at 8; exh. RDS MS-2 (rev. 7-13-22).

7. The access drive would require areas of cut and fill due to the slopes under the access road's path. The limits of disturbance around the access drive would be more than 200 feet wide at the lower section of the access drive. Exh. RDS MS-2 (rev. 7-13-22).

Project Site Slopes

8. The Project's initial design would have located the Project's panels, access road, and distribution line in areas with slopes that exceed 25%. Exh. MB-33.

9. The Applicant revised the Project's layout in response to the slopes issues raised by the Landowners and the Randolph Selectboard. Exh. RDS-MS-2 (rev 7-13-2022).

10. The initial application was developed using slope data provided by LiDAR.[14] The 2016 Vermont Center for Geographic Information LiDAR metadata, from which the LiDAR information was derived, indicate a vertical positional accuracy of 9.25 cm, or about 0.3 feet, in either direction. Exhs. MB-33 and MB-38 at 13.

11. The LiDAR data show areas of greater than 25% slopes in the area of the revised Project's solar panels. Exh. MB-39 at 15-17.

12. The Applicant's surveyor took "on the ground" measurements to create a site plan showing an overlay of areas measured to have slopes greater than 25%. The surveyor took 76 measurements over an area of 4 acres. The field measurements are expected to have a vertical positional accuracy of 0.1 foot. Michael Binder, Landowners ("Binder") pf. sur. (9/9/2022) at 2-3; exhs. MB-38 at 13, RDS-MS-2 (rev 7-13-22).

13. The differences between the LiDAR data and the on-the-ground survey are most likely attributable to differences in the horizontal resolution, not the difference in accuracy between the LiDAR data and field measurements. Binder pf. sur. (9/9/2023) at 2-3.

14. A small horizonal resolution will give very detailed information about slopes over short distances, while a larger horizontal resolution will provide the average slope over that distance. Binder pf. sur. (9/9/2023) at 3.

15. The horizonal resolution of LiDAR measurements is less than 10 feet. Binder pf. sur. (9/9/2023) at 3.

16. The Applicant did not provide the Commission a map of the survey data points or the horizontal resolution of the 76 survey points. It would take approximately 1,800 survey points over an area of 4 acres to achieve a horizontal resolution of 10 feet. Binder pf. sur. (9/9/2023) at 3.

[14] LiDAR, which stands for Light Detection and Ranging, is a remote sensing method that uses light in the form of a pulsed laser to measure the surface of the earth.

17. The slopes in the area where the Project's access road and interconnection equipment would be located are greater than 25% and as much as 39%. Significant areas within the Project's limits of disturbance that are subject to tree clearing would be located on slopes greater than 25%. Exhs. RDS-MS-2 (rev 7-13-22) and MB-8.

Preferred Site Letter

18. The Randolph Selectboard and Planning Commission and the Two Rivers Ottauquechee Regional Planning Commission issued a letter designating 0 Davis Road as a preferred site in June of 2021. Exhs. RDS-MS-5, MB-4.

19. In presenting the Project to the Randolph Selectboard June 10, 2021, the Applicant represented that "somewhere between 4 and 5 acres" of land would accommodate the Project, including areas of clearing for shading and access. Exh. MB-21 at 11:00.[15]

20. At the June 10, 2021, meeting the Applicant stated that "no new access path will be created" and that an existing logging path would be "top dressed" with gravel. Exh. MB-21 at 12:00.

21. The Randolph Town Plan states: "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." Exh. MB-5 at 29.

22. In response to the Landowners raising issues about the Project being located on steep slopes, the Randolph Planning Commission issued a letter titled "Notice of Discrepancy in the Davis Road Preferred Site Location for a Solar Array." The letter stated that "[s]lope issues were not addressed at the June 1st 2021 [Randolph Planning Commission] meeting with [the Applicant] when they gained support for their site as being [designated as] 'preferred.' A more detailed topographical map . . . provided recently by [the Applicant] with an overlay of the planned placement of solar panels shows that most panels will reside on slopes less than 25%. However, the [Randolph Planning] Commission agrees with Mr. Binder's contention that there are some panels on the eastern side of the array that appear to be on slopes greater than 25%. If

[15] Exhibits MB-21 and 23 are recordings of meetings with the Town of Randolph Selectboard and Planning Commission. Where a specific quote is given, I have included the time stamp of the relevant statement.

this proves to be the case then the Town of Randolph may have to rescind our support for this site as being a 'preferred' site." Exh. MB-16 at 3.[16]

23. In response to the Notice of Discrepancy, the Applicant emailed the chair of the Planning Commission on November 11, 2021. The Applicant provided a copy of an email from the Applicant's attorney arguing that "the Randolph Town Plan does not and should not be considered to preclude the Town from designating the project site as preferred." Exh. MB-27 at 8

24. The Applicant's attorney stated: "First, municipal plan provisions regarding solar generation siting are not zoning ordinances and cannot prohibit solar generation siting. In fact, the Supreme Court has held that Section 248 preempts municipal zoning. *In re Petition of Rutland Renewable Energy, LLC. For a Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 36. The steep slopes language in the energy section actually looks like a municipal zoning provision, not an energy plan provision. In any event, the Town would be preempted from prohibiting siting based on this language." Exh. MB-27 at 2.

25. The Applicant's attorney stated: "Second, Randolph's Town Plan has not received a determination of compliance under Act 174 of 2016. This is significant." Exh. MB-27 at 2.

26. The Applicant's attorney argued: "Third, the steep slopes language set forth in the energy chapter of the Randolph Town Plan is not consistent with Act 174, which calls for mapping exercises to identif[y] 'preferred', 'suitable' and 'unsuitable' locations, but does not speak to designations as 'prohibited.' Instead, the framework under Act 174 allows municipalities to identify preferred and constrained areas, based on standards developed by the [Department] pursuant to Act 174. Exh. MB-27 at 2.

27. The Applicant's November 11, 2021, email represented that the "average slope of the array along [the Project's north-south axis] is 15.5% . . . . The average slope of the array along [the Project's east-west axis] is 10%." Exh. MB-27 at 7.

28. The Randolph Planning Commission did not agree with the Applicant's representations about "average slopes." According to the Planning Commission chair, "[t]he

[16] The initial preferred site letter bears a date of June 1, 2020. Exh. RDS-MS-5.

average slope is not the issue. If any number of the panels are intended to be placed on slopes greater than 25% then that needs to be addressed by [the Applicant]." Exh. MB-27 at 27.

29. Staff from the Town of Randolph accepted the Applicant's legal positions and reiterated them to the Planning Commission, stating: "just because our Town Plan says it prohibits solar on slopes of 25% or greater, does not carry any regulatory authority and is purely aspirational, at best." Exh. MB-27 at 58.

30. The Planning Commission chair argued that accepting the Applicant's assurances that the Project would not be located on steep slopes was a "big win" because "[the Applicant] could have held their ground and thrown back at us their attorney's argument that '[t]here are multiple reasons that the steep slopes language in the Randolph Town Plan does not and should not be considered to preclude the Town from designating the project site as preferred.'" Exh. MB-27 at 27.

31. The Randolph Planning Commission chair was concerned about the risk of litigation if it rescinded its preferred-site letter. He argued that "[rescinding the letter] could have led us into fighting a legal battle with Norwich Solar Technologies and the costs could be steep for the town. I based my assessment on what Bennington went through fighting a large out-of-state solar developer—they were eventually successful in their fight but it reportedly cost their town $200,000.00 in legal fees. Exh. MB-27 at 5.

Discussion

I recommend that the Commission conclude that the Applicant's preferred-site letter does not meet the criteria of Commission Rule 5.103 for two reasons. First, the letter does not show an agreement between the Applicant and the Randolph Planning Commission about the "specific location" where the Project will be located. Second, the record does not show that the Randolph Planning Commission "supports" the Project.

The Preferred-Site Letter Does Not Designate a "Specific Location" as Required by Commission Rule 5.103.

To qualify as a preferred site under Commission Rule 5.103, a project must be located on "a specific location that is identified in a joint letter of support from the municipal legislative

body and municipal and regional planning commissions in the community where the net-metering system will be located." The findings above describing the Project site's slope lead me to conclude that it is not possible to determine whether the Project would be located on the specific location agreed to by the Randolph Planning Commission. The initial preferred-site letter designated the entirety of "0 Davis Road, Randolph VT 05602" as a preferred site.[17] However, after the apparent conflict between the Randolph Town Plan and the Project was raised by the Landowners, the Randolph Planning Commission issued a letter titled "Notice of Discrepancy in the Davis Road Preferred Site Location for a Solar Array," which stated:

> [T]he [Planning] Commission agrees with Mr. Binder's contention that there are some panels on the eastern side of the array that appear to be on slopes greater than 25%. If this proves to be the case then the Town of Randolph may have to rescind our support for this site as being a "preferred" site.[18]

The Applicant engaged with members of the Randolph Planning Commission and the town manager via email after the Landowners raised the steep slopes issue.[19] The Applicant's emails challenged both the Town's authority to adopt restrictions on steep slopes and argued that the "average slope of the array along [the Project's north-south axis] is 15.5% . . . . The average slope of the array along [the Project's east-west axis] is 10%."[20]

Communications between the members of the Planning Commission and town staff indicated disagreement with the Applicant's representations regarding the "average slope" of the Project's rows of solar panels. According to the Planning Commission chair, "[t]he <u>average</u> slope is not the issue. If any number of the panels are intended to be placed on slopes greater than 25% then that needs to be addressed by [the Applicant]."[21]

At the conclusion of these email correspondences, the Applicant's response was formalized in a letter dated December 13, 2021, stating that:

> While we all are concerned with the potential erosion from installation of solar panels on slopes greater than 25% slopes, all data presented to date is not site specific. Therefore, prior to installation of the panels, [the Applicant] will confirm the grade slopes in the area of the solar panels by having a Vermont licensed surveyor set grade stakes for the solar array rows location and document the slopes.

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[17] Exh. RDS MS-5.
[18] Exh. MB-16 at 3.
[19] Exh. MB-27 at 17.
[20] *Id*. at 17-18.
[21] *Id*. at 62.

> The parties have noted specific concern to the terrain on the eastern side of the array, and again, confirmation will be secured before any panels are installed in that location. The array will be arranged so that solar panels within the current limit of disturbance are not installed on slopes greater than 25%. The onsite survey data can be provided to the Town and the Allen/Binders upon request.[22]

The Applicant's December 13, 2021, letter further reiterated the Applicant's representation of the Project site's "average slope" as measured across the north-south and east-west axes of the array.

The Planning Commission deliberated by email on December 14, 2021, whether to rescind the Project's preferred-site letter.[23] The chair of the Planning Commission noted that the Applicant "still make[s] mention of 'average slopes' which we no longer agree with."[24] However, the chair was "encouraged" by the Applicant's assurances that it would survey the site before construction and move the panels from areas with slopes greater than 25%.[25]

In a letter dated December 14, 2021, the Randolph Planning Commission issued a second letter to the Applicant stating that:

> [T]he Randolph Planning Commission received your response on 13 Dec 2021 and accepts your guarantee that "prior to installation of the panels, [the Applicant] will confirm the grade slopes in the area of the solar panels by having a Vermont licensed surveyor set grade stakes for the solar array rows location and document the slopes. The parties have noted specific concern to the terrain on the eastern side of the array, and again, confirmation will be secured before any panels are installed in that location. The array will be arranged so that solar panels within the current limit of disturbance are not installed on slopes greater than 25%. The onsite survey data can be provided to the Town and the Allen/Binders upon request."[26]

Accordingly, I interpret the December 14, 2021, letter from the Planning Commission as conditioning the preferred-site letter on the Project's solar panels avoiding areas with a slope of greater than 25%. However, the emails between the members of the Randolph Planning Commission indicate that there never was a mutual understanding between the Applicant and the Planning Commission about whether the slope in a specific location or an average slope of a general area was the appropriate benchmark. In other words, the parties never agreed what

[22] Exh. MB-16 at 6.
[23] Exh. MB-27 at 100.
[24] *Id*.
[25] *Id*.
[26] Exh. RDS MS-14.

horizontal resolution should be used to measure the slope of the site and the Planning Commission did not agree with using an "average slope."[27]

This lack of mutual understanding is not a mere technical defect in the Project's preferred-site letter. As discussed in the findings above, the horizontal resolution used to measure the slope of the site likely dictates whether the slopes in the areas of the panels measure greater than 25%. If the Commission were to grant a CPG to the Applicant, it would be appropriate to condition the CPG on the Applicant fulfilling its commitment that "[t]he array will be arranged so that solar panels within the current limit of disturbance are not installed on slopes greater than 25%." Without a clear understanding of what standard the Randolph Planning Commission intended when it accepted the Applicant's assurances, this condition would be vague and could be disputed after a CPG is issued. This uncertainty is inconsistent with Commission Rule 5.103's requirement that a letter identify a "specific location." The reason the rule requires a letter to identify a "specific location" is to avoid ambiguity about what is or is not a preferred site. For this reason, I recommend that the Commission find that the Applicant has failed to demonstrate that the Project will be located on a "specific site" identified in the preferred-site letter as required by Commission Rule 5.103.

The Randolph Planning Commission Does Not "Support" the Project as Required by Commission Rule 5.103.

The Landowners argue that the Applicant's communications misled the chair of the Planning Commission regarding the applicable law.[28] These allegations raise the question of whether the Randolph Planning Commission supports the designation of the Project site as a preferred site or whether the Planning Commission has only acquiesced to the Applicant's proposal in order to avoid litigation.

Before I address this argument, it is important to review the events that led to the issuance of the preferred-site letter and subsequent actions of the Town of Randolph. The preferred-site letter submitted by the Applicant bears a date of June 20, 2020, but the record shows that the Randolph Planning Commission and Selectboard voted to issue the letter at

[27] MB-27 at 3 and 62.
[28] Landowner's Brief at 27.

meetings in June of 2021.[29] The Project's potential siting on slopes greater than 25% was not considered at these meetings.[30] The facts giving rise to this dispute occurred in late 2021 after the Landowners intervened in this proceeding and brought to the attention of the Planning Commission and Selectboard the apparent inconsistencies between the Randolph Town Plan and the Project's location on steep slopes. Thus, in this proceeding, we must address whether our rules permit either a municipality or the Commission to review the validity of a letter of support after it has been issued and, if so, to what extent the Commission will accept letters of support where there is evidence that the municipality was influenced by incorrect or misleading statements made by the Applicant.

I recommend that the Commission hold that Commission Rule 5.103 does not prohibit a municipality or the Commission from reviewing the validity of a letter of support before a CPG is issued. The purpose of the preferred-site letter is to allow towns to steer development to areas where the town supports development. Therefore, a municipality should be able to reconsider a letter, provided this decision is not made for arbitrary or discriminatory reasons. To hold otherwise would encourage developers to refrain from disclosing unfavorable information to municipalities when they request a preferred-site letter, knowing that a decision could not be rescinded. Similarly, the Commission must be able to review the validity of a preferred-site letter, including the accuracy of the representations leading up to the issuance of the letter.

The next issue is whether the Applicant made incorrect or misleading representations that inappropriately influenced the Town of Randolph's decisions in this case. The Applicant responded to the Randolph Planning Commission's concerns about the apparent conflict between the Project and the Town by providing statements from the Applicant's attorney arguing: (1) that town plans may not prohibit solar generation siting and that the Randolph Town Plan provisions regarding steep slopes looked like de facto zoning; (2) that the Randolph Town Plan was only eligible to receive due consideration because the plan has not received an affirmative determination under Act 174; (3) that the steep slope provisions of the Randolph Town Plan are inconsistent with Act 174; and (4) that the steep slope provisions are intended to protect water

[29] Exhs. RDS-MS-5; MB-4.

[30] *See* Exh. MB-27 at 62 ("Attached is the [Planning Commission] Meeting Minutes of June 1st, 2021, when the [Planning Commission] voted to designate [the Applicant's] Solar Array as a preferred site. Note that no mention was made by Norwich of steep slope siting issues.").

resources and that the Project will adequately protect water resources because it will provide erosion control and stormwater protection pursuant to ANR permits and any CPG the Project may receive.[31]

The problem with these arguments is that they give the impression that the Town was obligated to issue a preferred-site letter and prohibited from considering the Randolph Town Plan in its decision on whether to support the Project. The Commission created the preferred-site letter as an optional way for towns to guide the development of large net-metering systems. As discussed further below, the arguments raised by the Applicant are legal standards used in different contexts, but the Applicant presented them in a manner suggesting that the Town of Randolph would be violating these legal standards if the Town rescinded its preferred-site letter.

The first argument is taken from a case that dealt with what weight the Commission gives to local enactments when assessing whether an enactment is a "clear, written community standard" for purposes of assessing a facility's aesthetic impact.[32] This standard does not apply to whether a municipality should issue a preferred-site letter. Commission Rule 5.103 is intended to afford municipalities and regional planning bodies greater input into the siting of net-metering facilities by giving these bodies the option of issuing preferred-site letters or designating preferred sites in a plan. The *Rutland Renewable Energy* case and the Commission's precedent on de facto zoning do not prohibit a town from declining to issue a preferred-site letter based on language contained in a town plan.

The second argument is inapplicable because it states the standard for what weight the Commission must give certain town plans when considering whether a proposed energy facility will unduly interfere with the orderly development of the region under Section 248(b)(1). This standard does not apply to whether a municipality should issue a preferred-site letter. The Commission does not require municipalities to issue a preferred-site letter to any project that meets the Section 248 criteria. Given the significant financial and procedural benefits accorded to net-metering systems, the net-metering rule gives municipalities discretion to adopt more stringent standards for designating preferred sites if they choose.[33]

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[31] Exhs. MB-29, 27 at 18-19.

[32] *In re Petition of Rutland Renewable Energy, LLC. for a Certificate of Public Good Pursuant to 30 V.S.A. § 248*, 2016 Vt. 50, ¶ 16.

[33] Act 99 Report at 19.

The third argument is inapplicable because Act 174 created an optional process for adopting and reviewing enhanced energy plans. Act 174 does not regulate town plans generally and has no bearing on the propriety of the steep slopes provision in Randolph's Town Plan. I also note that the Applicant's argument might be wrong because I have found examples of town plans that have received an affirmative determination of energy compliance and contain an identical prohibition of development of solar arrays on steep slopes.[34]

The Applicant's fourth argument that state-issued permits are sufficient to protect the environment is potentially relevant because this argument addresses the Town's concerns about environmental impacts associated with steep slopes. However, the record in this case shows that the Planning Commission's decision not to rescind the Project's preferred-site letter was influenced by the fear of litigation. According to the chair of the Planning Commission:

> [I]f we had agreed to rescinding our letter of support to Norwich which designated Davis Road as a "preferred site" it could have led us into fighting a legal battle with [the Applicant] and the costs could be steep for the town. I based my assessment on what Bennington went through fighting a large out-of-state solar developer—they were eventually successful in their fight but it reportedly cost their town $200,000.00 in legal fees.

Under these circumstances, I recommend that the Commission find that the Randolph Planning Commission's decision here does not reflect the sort of "support" that was intended by Commission Rule 5.103. The purpose of the preferred-site letter is to give a municipality the ability to encourage development in areas deemed desirable by the municipality. It would be inconsistent with the intent of the rule to permit developers to pressure a municipality into designating a location as a preferred site using irrelevant arguments. Accordingly, I recommend that the Commission find that it cannot conclude that the preferred-site letter provided by the Applicant reflects the support of the Town of Randolph because of the influence of the Applicant's incorrect descriptions of the applicable legal standard.

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[34] *E.g.*, Essex Community Enhanced Energy Plan at 4 and 6 (identifying "slopes of 20% and steeper" as a "locally known constraint" and stating that "[d]evelopment[,] including renewable energy generation facilities and associated transmission and distribution infrastructure[,] . . . shall be prohibited on slopes of 20 percent and steeper due to the likelihood of environmental damage") *available at*: https://www.essexvt.org/DocumentCenter/View/1751/Essex-Community-Energy-Plan-approved-by-Town-06172019-Village-08132019.

The Applicant argues that the decision-making procedures that govern town planning commissions and selectboards is set forth in Title 24 of the Vermont Statutes Annotated. According to the Applicant, "[t]he Commission is not delegated any role to arbiter town procedures or considerations when they issue preferred site letters, or to override the Town of Randolph's decision to issue a preferred site letter for the Project."[35] I find this argument unpersuasive. The standard for preferred sites identified in a letter of joint support is governed by Commission Rule 5.103. The Commission has the authority to determine whether a particular site meets the criteria established in Commission Rule 5.103.

The Differences Between the Applicant's Description of the Project to the Town of Randolph and the Plans Submitted to the Commission Make the Preferred-Site Determination Unreliable

The Landowners argue that several allegedly false or misleading statements made by the Applicant "tainted" the Town's decision to designate the site as preferred.[36] Specifically, the Landowners allege that the Applicant misled the Town by claiming that the access road was an existing road that would be top-dressed with gravel.[37] The Landowners contend that the Applicant incorrectly told the Town that using an existing road was not "development" for the purposes of the Randolph Town Plan. As a result, the Landowners argue that the Selectboard mistakenly concluded that changes to the road would be "modest" and not inconsistent with the Randolph Town Plan's prohibition of energy facility development on slopes greater than 25%.[38]

The Landowners also argue that the Applicant misrepresented that the Project's total area, including areas managed for vegetation and access, would only total between 4 and 5 acres. This contrasts with the plans submitted to the Commission, which show an area of 11.9 acres that would be subject to clearing.[39]

The Applicant has not rebutted these allegations. I have reviewed the recordings of the Applicant's presentations to the Selectboard and Planning Commission and agree with the Landowners that the descriptions of the proposed clearing and access drive provided by the Applicant to the Randolph Selectboard and Planning Commission are not consistent with the

[35] Applicant's Reply Brief at 5.
[36] Landowner's Brief at 25.
[37] *Id*. at 31.
[38] *Id*.
[39] Finding 5, above.

materials submitted in this proceeding. Therefore, it is unclear whether the Town of Randolph would support the Project as it has been proposed to the Commission.

I am not recommending that the Commission find that the Town of Randolph incorrectly interpreted the term "development" or misapplied any provision of the Town Plan. However, the record shows that members of the Selectboard and Planning Commission had concerns about construction occurring on slopes greater than 25% and that they based their decision to issue a preferred-site letter on a belief that the Project would require between 4 and 5 acres of clearing and modest improvements to an existing road.[40]

The materials presented in this case show that the Project would require up to 11.9 acres of clearing and that the Project's access drive would require substantial earthworks to construct.[41] While there are existing logging paths on the site, the work necessary to make these rugged paths usable is not limited to top dressing. These facts are inconsistent with the presentations made by the Applicant when it sought a preferred-site letter. These facts were material to the Town's consideration of whether the Project's road constituted "development" that should not be located on steep slopes.[42] Therefore, it is unclear whether the Town of Randolph would support the Project as it has been proposed to the Commission.

The Alleged Open Meeting Law and Conflict-of-Interest Policy Violations Are Not Within the Commission's Jurisdiction to Resolve

The Landowners also contend that "[t]he Preferred Site Letters from the Town of Randolph are . . . tainted by violations of Randolph's Conflict of Interest Policy, [and] tainted by violations of Vermont's Open Meeting Laws[.]"[43] For example, the Landowners argue that the Randolph Planning Commission's many emails deliberating and voting on whether to rescind the preferred-site letter was a violation of Vermont's open meeting law.[44] These arguments are outside of the Commission's jurisdiction to consider. The Commission has previously held, and the Vermont Supreme Court has agreed, that the Commission lacks jurisdiction to adjudicate

[40] Findings 19 and 20 above.
[41] Exh. RDS MS-2 (rev. 7-13-22).
[42] Landowners' Brief at 31.
[43] *Id*. at 32.
[44] *Id*. at 29.

alleged violations of the open meeting law.[45] Any remedy for violations of the open meeting law lies in Superior Court.

The Landowners also allege violations of the Town of Randolph's conflict-of-interest policy. Specifically, they argue that the chair of the Selectboard pushed for "rubber stamping" the issuance of a preferred-site letter at the same time that the chair's father was negotiating the sale of the Project parcel to the Applicant.[46] The Landowners also argue that the same member's participation in an email chain deliberation was a violation of the Town's conflict-of-interest policy. The Landowners argue that a member of the Randolph Planning Commission brokered the sale of the Project parcel and participated in the decision to issue the preferred-site letter. These allegations, if true, are deeply concerning because even the appearance of a conflict of interest can erode the public's trust in the CPG process. However, the Commission is a body of limited jurisdiction and cannot adjudicate whether these actions violate the Town of Randolph's conflict-of-interest policy, which is meant to be enforced by the Selectboard.[47]

Conclusion

In conclusion, I recommend that the Commission find that the Applicant's preferred-site letter is not consistent with the criteria and intent of Commission Rule 5.103. Therefore, the application should be denied because the Project is greater than 150 kW and would not be located on a preferred site, and is therefore ineligible for the net-metering program.

V. APPLICANT'S MOTION TO STRIKE

Figures 1, 2, and 3.

The Landowners' brief includes three figures. Figure 1 is an image from Google Earth showing the Project site. Figures 2 and 3 are portions of Exhibit RDS-MS-2 that have been annotated with text and arrows added by the Landowners. The Applicant objects to the figures because they were "never introduced or admitted into evidence."

These figures have been included in the Landowners' brief for the purpose of arguing how the Commission should interpret Exhibit RDS-MS-2, not as evidence themselves. I have

[45] *In re Petition of Acorn Energy Solar 2, LLC*, 2021 VT 3, ¶ 104.
[46] Landowners' Brief at 26.
[47] Exh. MB-11.

not used these figures to make any factual findings. Therefore, the Applicant's motion to strike these figures is denied.

Witness Credibility

The Applicant argues that pages 33-35 of the Landowners' brief should be struck because they "[do] not address findings [or] address the substantive water resource criteria" but instead challenge the credibility of the Applicant's witness. According to the Applicant, the proper way to attack the credibility of a witness is through cross-examination, which the Landowners did not do.

The Applicant has not cited any rule generally barring litigants from addressing a witness's credibility in a legal brief. The case cited by the Applicant stands for the proposition that counsel may not "engag[e] in a line of questioning designed to mock and belittle a witness."[48] Similarly, Commission Rule 2.204(e) provides that "[u]pon a motion by a party or upon the Commission's own initiative at any time, the Commission may strike from any filing any redundant, immaterial, impertinent, or scandalous matter." The disputed portion of the brief identifies areas where the Landowners argue that the witness mischaracterized the Project site or overlooked certain natural features and argue that these alleged mistakes render the witness unreliable. This argument is substantive, it does not mock or belittle the witness, and it is not redundant, immaterial, impertinent, or scandalous. Therefore, the Applicant's motion to strike pages 33-35 of the Landowners' brief is denied.

VI. CONCLUSION

For the reasons discussed above, I recommend that the Commission find that the preferred-site letter filed by the Applicant does not meet the requirements of Commission Rule 5.103. Therefore, the Project is ineligible to participate in the net-metering program pursuant to Commission Rule 5.104, and the application must be denied.

In the event the Commission does not accept this recommendation, there are at least two factual issues remaining that would require additional information and potentially an evidentiary

[48] *State v. O'Brien-Veader*, 318 Conn. 514, 525 (Conn. 2015).

hearing to resolve. It is my opinion that the information in the evidentiary record is insufficient to determine whether the Project's solar panels would in fact be located on slopes greater than 25%. It is necessary to decide this question given the Applicant's commitment to the Randolph Planning Commission that the Project's panels would not be located on steep slopes. The Applicant and Landowners each present evidence addressing the slope of the area where the Project's panels would be located. The difference between the competing evidence appears to be due to the parties measuring the slope of the land using different horizonal scale between data points. There is not enough evidence in the record to determine which method is more appropriate in this context.

Additionally, the Landowners have raised issues about a condition of approval proposed by AAFM, which would require that primary agricultural soils will not be stockpiled on slopes greater than 15%. Based on the evidence showing steep slopes in the areas where agricultural soils are planned to be stockpiled, it is not clear whether this condition is feasible. Considering these evidentiary gaps and because I believe the issue of the preferred-site letter discussed in this proposal for decision is dispositive, I have not made recommendations addressing the Section 248 criteria.[49]

This proposal for decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated: June 5, 2023

Andrea C Poppiti

Andrea C. Poppiti
Hearing Officer

[49] *In re Application of Derby GLC Solar, LLC*, 2019 VT77 ¶19.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted. All other findings proposed by parties, to the extent that they are inconsistent with this Order, were considered and not adopted.

2. The application 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, is denied.

Dated at Montpelier, Vermont, this _____.

_____	)	
Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
	)	
_____	)	COMMISSION
Margaret Cheney	)	
	)	
	)	OF VERMONT
_____	)	
Riley Allen	)	

OFFICE OF THE CLERK

Filed:

Attest: _____
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 21-2939-NMP - SERVICE LIST

Parties:

Michael Binder, *pro se*
1953 Davis Rd.
Randolph Center, VT 05061
michaeljbinder@yahoo.com

L. Brooke Dingledine, Esq. (for Joan Allen)
Valsangiacomo, Detora & McQuesten, P.C.
P.O. Box 625
Barre, VT 05641
lbrooke@vdmlaw.com

Eric B. Guzman (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
eric.guzman@vermont.gov

Kimberly K. Hayden, Esq. (for Randolph Davis Solar LLC)
Paul Frank + Collins PC
One Church Street 05402
P.O. Box 1307
Burlington, VT 05401
khayden@pfclaw.com

Aaron Kisicki, Esq. (for Vermont Agency of Natural Resources)
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620
aaron.kisicki@vermont.gov

Hannah Yindra (for Agency of Agriculture, Food & Markets)
Vermont Agency of Agriculture, Food and Markets (for Vermont Agency of Agriculture, Food and Markets)
109 State Street
Montpelier, VT 05609-1001
Hannah.yindra@vermont.gov