

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Randolph Davis Road Solar LLC for a
Certificate of public good, pursuant to 30
V.S.A. §§ 248 and 8010, authorizing the
Installation and operation of a 500kW group
Net-metered solar electric generation system in
Randolph, Vermont

Case No. 21-2939-NMP

NEIGHBOR INTERVENORS' COMMENTS ON PROPOSAL FOR DECISION
and
REQUEST FOR ORAL ARGUMENTS

June 20, 2023

Now come Neighbor Intervenors Joan Allen and Michael Binder, *pro se*, and submit comments in support of the Hearing Officer's June 5th, 2023 Proposal for Decision, and request oral arguments before the Commission.

Comments:

From the Proposal for Decision page 26:

“... 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.”

Neighbor Intervenor's appreciate the legal correctness of the Proposal for Decision and agree with the Hearing Officer's recommendation to deny the Petition. However, Neighbor Intervenor's believe that denial of the Project should also recognize that all of lands within the Limits of Disturbance are part of the proposed Energy Facility Development.

The Randolph Town Plan prohibits Energy Facility Development in “*floodways, class 1 and 2 wetlands, lands within 50 feet of the top of bank of perennial streams, **lands over 25% slope,***” but does not apply to only the footprint of the solar panels themselves, it applies to “development” of the energy project, meaning anywhere there is excavation of land. The term “development” is defined in the Vermont Statutes, which definition was adopted by the Town of Randolph in its Zoning Ordinance:

***Development** - The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, **or of any mining, excavation, or landfill, and any change in the use of** any building or other structure, **or land, or extension of use of land.** [24 VSA §4303(10)]

Randolph Zoning Regulations - Article 6 – Definitions, p. 103.

The proposed solar project involves “excavation” of the entire site (within the limits of disturbance) including construction of an access road on steep slopes up to 39% grade. Because excavation of the site and the road will occur on slopes in excess of 25% slope, and up to 39% in

two sections of the proposed road, it violates the Town Plan prohibition of development of energy projects on lands in excess of 25% slope. Consequently, the site is off limits from being developed for an energy facility without violating the Town Plan 25% slope prohibition. As such, it should never have been designated as a Preferred Site because it doesn't even comply with the Town Plan itself.

Moreover, the proposed project also violates the Randolph Zoning Ordinance which contains a blanket prohibition for ANY development on natural slopes over 30% slope:

7. Maximum slope

No slope shall be created that is over a 50% grade unless if required for stormwater management or landscaping features, and **no development shall take place on any natural slope over 30%.**

Randolph Zoning Regulations - Article 2 – Zoning District Standards, p. 37.

Therefore, Neighbor Intervenor respectfully request that the Commission make the following two findings:

- 1) Randolph's Town Plan prohibition of Energy Facility Development on "*lands over 25% slope*"¹ is a land conservation measure for purposes of Orderly Development.
- 2) All land within the Project's Limits of Disturbance are part of Energy Facility Development, and are subject to the Town Plan's prohibition of development on *lands over 25% slope*.

¹ The Randolph Town Plan contains several Policies that are evinced by this language: "*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.*"

These are policies to protect wetlands and encourage flood resiliency. The language evinces the Chapter 5 Natural Resources Wetland Goal Policies A, B, and C; the Chapter 5 Natural Resources Flood Hazard and Floodplain Goals Policies A and B; the Chapter 2 Land Use Policies A and B; and the Chapter 5 Natural Resources Forest Blocks and Habitat Connectors Policy A1.
See Exh. NI MB-10, Exh. NI MB-5 pp. 9, 22-25

Discussion:

From the Proposal for Decision:

... 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%. ... Without a clear understanding of what [horizontal resolution] standard the Randolph Planning Commission intended ... [page 18]

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. [page 26]

If the Neighbor Intervenor's proposed findings are factual, then it is unnecessary to establish a reasonable standard for the Horizontal Resolution that determines whether any particular solar panel is on a steep slope. It does not matter whether a particular panel is *arguably* on a steep slope if other parts of the development (including the road) are *unequivocally* on steep slopes. There is no reasonable standard for Horizontal Resolution that could possibly show that large portions of the development (including the road) are not on impermissibly steep slopes.

In particular:

- 1) The Petitioner's site plans (4th through 6th) have a LiDAR slope layer that shows much of the road is developed on steep slopes.
- 2) Exhibit NI MB-8 demonstrates that at least two stretches of the road are on a 39% slope (the slopes annotated in exhibit NI MB-8 are average slopes over a 50 foot horizontal distance).
- 3) Most critically, the Petitioner's rebuttal testimony states the following: [Homsted rebT at 4] "exhibit MB-8 shows steep slopes in the areas of the access road. We do not dispute the existence of steep slopes in this area."

Further Discussion:

From the Petitioner's Brief:

"The language in the Randolph Town Plan regarding steep slopes does not state or imply that it is intended to preserve the aesthetic, scenic, or natural beauty of the area. To the contrary, the context of the provision suggests that it is directed to protecting water quality."

Intervenors agree with the Applicant that in context, the Town Plan language regarding *"floodways, class 1 and 2 wetlands, lands within 50 feet of the top of bank of perennial streams, lands over 25% slope"* is directed to protecting water quality. The language in the Town Plan evinces the several Town Plan policies that promote water quality and storm resiliency. The reason for the prohibition in the Town Plan is clear from the language of the prohibition itself. The prohibition language is self-explanatory.

Conclusion:

Neighbor Intervenors support the Hearing Officer's Proposal for Decision to Deny the Project, and respectfully request the Commission modify the Proposal for Decision to recognize that "Energy Facility Development" involves the Project's Limits of Disturbance, not just the footprint of the solar panels.

Neighbor Intervenors respectfully request the opportunity to present Oral Arguments before the Commission.

Dated at Randolph, Vermont this
20th day of June, 2023

/s/ Joan Allen

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Dated at Randolph, Vermont this
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