

**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	)	21-2939-NMP
operation of a 500 kW (AC) photovoltaic group	)	
net-metering system in Randolph, Vermont	)	

**PETITIONER’S RESPONSE TO LANDOWNERS’ COMMENTS ON THE
HEARING OFFICER’S SECOND PROPOSAL FOR DECISION**

Now Comes Randolph Davis Solar LLC (“Petitioner” or “Applicant”) and responds to Mr. Binder’s and Ms. Allen’s (“Landowners”) May 17, 2024 comments (“Comments”) on the Hearing Officer’s Second Proposal for Decision (“2nd PFD”).

A. The Project Will Not Unduly Interfere with Orderly Development of the Region Under 30 V.S.A. § 248(b)(1)

In their comments, Landowners take exception to the Hearing Officer’s conclusion that “[t]he character and severity of the Facility’s noncompliance with the Randolph Town Plan do not support a finding of an undue regional impact” under 30 V.S.A. § 248(b)(1). Landowners’ Comments at 3-6; *see* 2nd PFD at 17-18.

The Hearing Officer’s conclusion and reliance on the controlling law is correct: “[T]he Vermont Supreme Court has emphasized that ‘the statutory requirement relates to the orderly development of the region, not to a particular municipality within the region.’” 2nd PFD at 19 (quoting *In re Petition of Rutland Renewable Energy, LLC for Certificate of Public Good Pursuant to 30 V.S.A. §248, et al.*, 2016 VT 50, ¶ 9). As the 2nd PFD points out, unlike the facts of the *Apple Hill* case, which would have resulted in regionally significant impacts because that project area had regional significance as a gateway to Bennington County, no such regional significance or impacts are present here. *See* 2nd PFD at 18 (citing *Petition of Apple Hill Solar LLC*, Docket No. 8454, Order of 5/16/22 at 10).

However, the Hearing Officer’s interpretation that the Facility would be noncompliant with the Randolph Town Plan because portions of the Facility’s access road, fence, interconnection line, and tree clearing “constitute ‘energy facility development’ that the Randolph Town Plan prohibits on slopes greater than 25%”, *see* 2nd PFD at 17, contradicts the Town’s interpretation of

its Town Plan. The term “energy facility development” is not defined in the Town Plan. Importantly, the Town Planning Commission and Selectboard rejected the numerous challenges by Landowners that the Town Plan steep slopes prohibition for “energy facility development” applied to the Facility’s access road, fence, interconnection line, and tree clearing, and instead determined that the phrase is limited to the solar panels only. See Exh. MB-14 (Landowners’ 10/21/21 letter to Planning Commission quoting the Town Plan provision and arguing the Facility and associated clearing and road violates the steep slopes prohibition); exh. B to Petitioner’s 12/15/21 Response to Landowners’ Motion for Stay (Planning Commission 12/7/21 minutes discussing the energy facility development language in the Town Plan); exh. RDS MS-14 (Planning Commission 12/14/21 letter to Petitioner accepting assurances “that ‘prior to installation of the panels, Norwich Technologies *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*’”)(emphasis added); exh. RDS MS-15 (Selectboard 2/10/22 minutes continued discussion to consider the location of the array and steep slopes and concluded not to rescind the preferred site letter). The minutes of the Selectboard’s February 10, 2022 meeting provide a concise summary:

This was a continuation of the discussion about the Davis Road solar project that began at the Board’s 1/13 meeting. Larry asked Brendan Malley from Norwich Solar to present a map the company provided earlier in the day that illustrated how ***the solar array would be situated to avoid areas where the 25% slope prohibition in the Town Plan has been raised.*** Norwich hired a remote licensed surveyor and engineer to draw a new map showing the location of the array. Trevor handed copies out to attendees and screen shared so those on Zoom could see the map. ***After a very long discussion which included the location of the solar array, concerns over slope and whether or not they were addressed, the access road, what constitutes development,*** and alleged violations of open meeting laws, the Selectboard considered putting the open meeting law conversation on a future meeting. ***There was discussion about there being no need to take action on the preferred siting letter if there was no intent or motion to rescind it; the letter’s issuance stands as approved in June 2021 at this time.***

Exhibit RDS MS-15 (emphasis added).

Most recently, Exh. RDS MS-26, the January 4, 2024 Town Selectboard and Planning Commission letter confirmed, again, that “the site plan submitted to the Commission (‘Exhibit RDS MS-2A Site Plan’) shows that the condition of the Town's December 2021 letter (‘Exhibit RDS MS-14’) has been satisfied”.

To apply a different interpretation to the same Town Plan provision here, with respect to orderly development, would contradict the Town's interpretation and actions and conflict with the controlling law that requires the Commission to “look to the interpretation of the plan by the municipal bodies responsible for its implementation and enforcement.” *In re Kisiel*, 172 Vt. 124, 133, 772 A.2d 135 (2000)(citing *In re Mologano*, 163 Vt. 25, 653 A.2d 772(1994)).

At the request of the municipal bodies responsible for the interpretation of the Randolph Town Plan, Petitioner re-aligned the Facility's solar panels to comply with the Town's interpretation of the term energy facility development. As such, the Facility is compliant with the Town Plan.

B. Landowners' Inappropriate and Unsubstantiated Claims of Misrepresentation Should be Rejected

In their Comments, Landowners assert: “The Town's recent Letter of Support [RDS MS-26] is based upon the Applicant's misrepresentation of the project and even more importantly, the Applicant's misrepresentation of the Commission's role in enforcing the Town's slope requirements for a Preferred Sites Letter.” Comments at 13. These incorrect, unsubstantiated, and scurrilous accusations should be disregarded entirely.

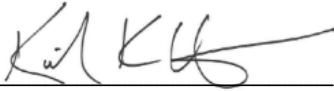
C. Conclusion

The 2nd PFD is both well-reasoned and supported on the issues raised.

For the reasons stated herein, the Petitioner respectfully asks the Commission to reject the Landowners' Comments and deny the request for another site visit. Such request is not supported and will unnecessarily further expend State and parties' resources and further delay the case, which is now pending nearly three years.

DATED at Burlington, Vermont this 21st day of May, 2024.

Randolph Davis Solar LLC

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