

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-2939-NMP

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	
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**NEIGHBOR INTERVENORS' REPLY TO PETITIONER'S RESPONSE TO
MOTIONS TO STAY/DISMISS AND CHANGE SCHEDULE**

Now come Neighbor Intervenors Michael Binder and Joan Allen, *pro se*, and respond to Petitioner's April 7, 2022 response to Intervenors' Motions to Stay/Dismiss, and Motion to Change Schedule.

Petitioner wrote in their April 7, 2022 response:

“Petitioner responded to Landowners’ 1st Motion to Dismiss on March 16, 2022. The Hearing Officer has not ruled on that motion. As such, any further amendments or supplements to the 1st Motion to Dismiss require Commission leave.”

Neighbor Intervenors’ 2nd Motion to Stay/Dismiss is not an amendment or supplement to the 1st motion to Stay/Dismiss. The 2nd Motion is based upon observations made at the Site Visit. In particular, non-delineated wetlands were observed, and it was noted that the access road bed was not as depicted in the Site Plan.

Petitioner wrote in their April 7, 2022 response:

“In the case of the survey and slope detail, previously provided additional detail was prepared and provided to the Town. Such information is not required by Commission Rule 5.107 or Section 248(b) and was provided to the Case to document responses to the Town planning and legislative bodies. Petitioner has previously briefed this in detail and such work would cost significant additional time and expense.”

The Slopes Layer requested by the Hearing Officer does not require the expense of a ground based land survey. A greater than 25% slopes layer may be derived from the LIDAR contours

that were used in Petitioner's Exhibit RDS MS-2 (as revised 2-16-22), and the Petitioner has already used that data to provide a slopes layer (more extensive than Exhibit RDS MS-2A) to the Town of Randolph.

Neighbor Intervenors also note that the Petitioner substituted coarser LIDAR contours (2 ft minor, 10 ft major) in Exhibit RDS MS-2A (2/25/22), for the finer LIDAR contours (1 ft minor, 5 ft major) used in Exhibit RDS MS-2 (as revised 2/9/22). Intervenors have previously requested that the finer contours be restored to the Site Plan.

Petitioner wrote in their April 7, 2022 response:

“Similarly, the additional wetlands mapping demanded by Landowners is based solely upon the admittedly non-expert opinion of Mr. Binder where unbeknownst to Petitioner, he entered upon the host parcel (not his land) and posted his own flagging, creating much confusion at the site visit.”

Intervenor Binder flagged the common boundary between the Site property and the Mueller property on 3/24/22 with the verbal permission and affirmative encouragement of both Andy and Lava Mueller. The Site property is not posted. Brendan Malley extended permission (by email¹) to Intervenors Binder and Allen and their neighbors to walk on the Site property and to have a bonfire. Neighbor Intervenor Binder admits to not being a wetland expert, but it is

¹ From: Brendan Malley <malley@norwitech.com>
To: michaeljbinder@yahoo.com
Cc: joanbarballen@gmail.com
Sent: Saturday, February 26, 2022 6:32 PM
Subject: Davis Rd

Good evening, Mr. Binder and Ms. Allen:

I am writing on a topic separate from the proposed solar.

Yesterday, the land closing happened with Norwich Technologies buying the property from the estate of Kenneth Blaisdell.

I just wanted to extend to you a welcome from the new landowner and an invitation to you to continue enjoy access for walks or bonfires.

Should you know of any other neighbors who also use the property please feel welcome to extend the same invitation to them as well as my contact information.

Please don't hesitate to contact me directly on any matter related to the Davis Rd. property or indeed the shared boundary between my personal property and yours.

I find myself looking forward past the end of winter to the beauty of the coming spring.

Best,

Brendan

202.550.0565

common knowledge that cattails, as noted at the Site Visit, are an obligate wetland species.

While flagging the property line, Intervenor Binder noticed a stream crossing from the Mueller property onto the Site property. The stream is not delineated on the Site Plan, has no buffer, and is approximately located at the Limits of Disturbance. The stream was noted at the Site Visit.

The Randolph Town Plan has provisions regarding Slopes that are Prohibited locations for Energy Facility Development.

The Randolph Town Plan has several provisions that refer to Wetlands, including wetlands that are contiguous to a parcel being developed. As noted at the Site Visit, Neighbor Intervenors' Vernal Pool Complex is contiguous to the Limits of Disturbance.

The Randolph Town Plan also "Encourage(s) the protection of upland forests to reduce erosion and increase flood resilience." As noted at the Site Visit, the steepest slopes uphill from the wetlands were not logged when the Red Pine Plantation was clearcut in 2016, leaving at least a 100 ft wooded buffer above the wetlands. The Site Plan shows only a 50 ft buffer above the wetlands.

Neighbor Intervenors are entitled to a Site Plan that provides all the details that have been enumerated in our Motions to Dismiss/Stay, and provides all of the Additional Information requested by the Hearing Officer, and has all the Wetlands delineated.

Neighbor Intervenors require this information so that they may prepare Pre-Filed Testimony regarding DISORDERLY Development in the Town of Randolph.

Therefore, Neighbor Intervenors renew their request for a change in the schedule.

Dated at Randolph, Vermont this 11th day of April, 2022.

/s/ Joan Allen
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/s/ Michael Binder
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