

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	
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Order entered: 04/15/2022

ORDER ADJUSTING SCHEDULE AND DENYING INTERVENORS' MOTIONS TO DISMISS OR STAY

I. INTRODUCTION

This proceeding concerns an application filed by Randolph Davis Solar LLC (“Petitioner”) with the Vermont Public Utility Commission (“Commission”) for a certificate of public good (“CPG”) to construct and operate a 500 kW solar group net-metering system in Randolph, Vermont (the proposed “Project”). In today’s order, I deny the Intervenor’s motions to dismiss or stay this proceeding. I grant in part the Intervenor’s motion to adopt a revised schedule for this proceeding.

II. MOTIONS TO DISMISS OR STAY

On March 2, 2022, Michael Binder and Joan Allen (“Intervenor”) filed a motion to dismiss or, in the alternative, motion to stay this proceeding. The Intervenor requests that the Petitioner’s application be dismissed because it does not fully comply with filing requirements. Specifically, the Intervenor argues that the revised site plan does not indicate areas where excavation is required and that the Petitioner has not included detailed plans for drainage and erosion control. The Intervenor also contends that the revised site plan shows the slope layer only on the disturbed area near the solar panels and that the Petitioner reduced the resolution of the contour lines. In the alternative, the Intervenor requests that the Hearing Officer stay the proceeding until the Petitioner addresses these issues.

On March 16, 2022, the Petitioner filed its response stating that the motions should be rejected. The Petitioner argues that the motion is not accompanied by a Memorandum of Law as required by Commission Procedural Rule 2.206 and that the motion fails to satisfy V.R.C.P.

12(b). The Petitioner also states that the stormwater runoff issue raised by the Intervenor is better addressed by the Vermont Agency of Natural Resources (“ANR”). The Petitioner also provides legal briefing regarding the orderly development criteria as related to the Intervenor’s request for a revised site plan that shows the slope of the land within the limit of disturbance.

On March 23, 2022, the Intervenor filed a reply to the Petitioner’s response further explaining their requests for a site plan with slopes greater than 25% and for additional information on drainage and erosion control. The Intervenor’s March 23 reply included new alleged grounds for dismissing the application. Specifically, the Intervenor argue that, in addition to failing to include the information concerning drainage and erosion control features required by Rule, 5.107(C)(5)(e), the Project’s site plan failed to include the information required by Commission Rules 5.107(C)(5)(a), (b), and (g); and 5.107(C)(6)(c) and (d). Therefore, the Intervenor argue that the application must be dismissed because the Petitioner failed to submit a complete application within the time period specified by Commission Rule 5.107(B)(4).

On March 24, 2022, the Petitioner filed a response to the new arguments raised in the Intervenor’s March 23 reply. The Petitioner argues that the application was deemed complete by the Commission within the time period required by Rule 5.107(B)(4).

On March 29, 2022, the Intervenor filed a Second Motion to Dismiss. This motion reiterated the arguments previously raised and further argued that the Petitioner failed to correctly map and delineate streams, wetlands, and vernal pools. The Intervenor also contend that the site plan’s cross section of the proposed access road was inaccurate.

The first issue raised by the Intervenor relates to whether the Petitioner has adequately provided the information that I requested at the scheduling conference in this proceeding. In a separate order, I have asked the Petitioner to file a revised site plan that includes a layer of slopes greater than 25% over the limit of disturbance of the Project. However, this issue does not relate to whether the Petitioner has met the Commission’s filing requirements and, therefore, is not a basis for dismissing the application.

Regarding the drainage control and erosion raised by the Intervenor, the Petitioner states that its site plans provide the detail required by Commission Rule 5.107(C)(5)(e) as related to erosion control. The Petitioner explained that the erosion and sediment control measures described on Sheet 2 of the site plans (exhs. RDS-MS-2 and RDS-MS2A) are similar in nature

and detail to the information regularly submitted to and accepted by the Commission in other net-metering proceedings. Accordingly, I am satisfied that the Petitioner's site plan meets the requirements of Commission rules.

Rules 5.107(C)(5)(a) and (b) require an applicant to submit a site plan that includes the location and dimensions of all project features and improvements. The Intervenor has not identified any specific Project features or improvements that are not adequately addressed by the site plan. As discussed above, it is common practice for site plans to include the details of "typical" temporary erosion control measures without their precise location. The rule does not require the site plan to depict the location and dimensions of erosion control measures, because they are not "features" or "improvements" for purposes of this rule.

Rule 5.107(C)(5)(g) requires the plans of the proposed access road, including a cross section and other details. The Project's site plan contains a set of plans, including a cross section, for the proposed access.¹ It is clear from the Intervenor's numerous filings that the Intervenor believes these plans are inaccurate. However, for purposes of Rule 5.107(B)(4), the Commission's determination that the application was complete is sufficient. If, after the evidentiary hearing, the Commission determines that the Petitioner's filings are so inaccurate as to be unreliable, then the Petitioner faces the risk that they will not carry their burden of persuasion.

Rules 5.107(C)(6)(c) and (d) require the Petitioner to submit an elevation drawing including the height of the structure above grade and the relative height of the facility to the tops of surrounding trees. The Petitioner has provided this information.² Therefore, this argument is not a sufficient basis to dismiss the application.

Regarding the Intervenor's contention that the Petitioner failed to correctly map and delineate streams, wetlands, and vernal pools, the Intervenor will have an opportunity to present testimony on this matter. Again, if the Commission determines that the Petitioner's filing was so inaccurate as to be unreliable, then the Petitioner faces the risk that they will not carry their burden of persuasion.

¹ Exh. RDS-MS-2.

² Exh. RDS-MS-3.

As discussed further below, I am granting in part the Intervenors' request for additional time to review the Petitioner's response to my information request. However, the Intervenors have not provided a persuasive reason for staying this proceeding. Therefore, I deny the Intervenors' motions to stay or dismiss this case.

III. MOTION FOR REVISED SCHEDULE

On April 6, 2022, the Intervenors filed a motion to change the schedule of this proceeding. The Intervenors request that their deadline to file direct testimony be extended by three weeks so that they may have time to evaluate the information provided in response to the Petitioner's information due to be filed on April 19, 2022.³

On April 7, 2022, the Petitioner filed a response to the Intervenors' pending motions to dismiss or stay. The Petitioner also objects to the Intervenors' request to delay filing direct testimony. The Petitioner contends that the Intervenors' issues go to the merits of the case and that they should present their evidence at hearing.

In order to provide the Intervenors with time to review the Petitioner's response to my request for information, I am extending their deadline to file testimony by two weeks. This extension will allow the Intervenors time to review this new information without delaying the ultimate resolution of this case. I have adjusted the deadlines after that date while maintaining the July 12 date for the evidentiary hearing. The adjusted schedule is as follows:

Date	Event
April 19, 2022	Petitioner responds to Hearing Officer's request for additional information
May 6, 2022	Non-Petitioners file testimony
May 20, 2022	Discovery served on Non-Petitioners
June 3, 2022	Non-Petitioners file discovery responses
June 24, 2022	Rebuttal testimony due to be filed by all parties; State agencies should file updated comments if they decide to not file rebuttal testimony

³ I issued an order on April 4, 2022, requesting additional information on slopes within the limit of disturbance and tree clearing.

Tuesday, July 12, 2022, at 1:30 P.M.	Evidentiary hearing
August 4, 2022	Briefs and proposed findings of fact due to be filed

SO ORDERED.


Dated at Montpelier, Vermont, this 15th day of April, 2022.



Andrea Poppiti
Hearing Officer

OFFICE OF THE CLERK

Filed: April 15, 2022

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)

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

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