

**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

**MOTION TO CHANGE SCHEDULE, REOPEN DISCOVERY, PERMIT
REBUTTAL TESTIMONY & CONTINUE EVIDENTIARY HEARING**

June 28, 2022

Now come Neighbor Intervenors (“Landowners”) Michael Binder and Joan Allen, *pro se*, and respectfully request that the proceedings in this case be rescheduled for the following reasons:

1) A new Site Plan was filed on June 24, 2022 with the solar panels rearranged at the north end of the array, underground power cables rerouted to a steeper area of the site, changes to the Limits of Disturbance, changes to the delineated wetlands, and lacking an Elevation Drawing. The new Site Plan remains in non-compliance with the Hearing Officer’s request to have a 25% slopes layer applied to the Limits of Disturbance.¹

2) Dori Barton testified on June 24, 2022 that she entered the Landowner’s property on May 11, 2022 to delineate Landowner’s Vernal Pool Complex. She did this without the knowledge or consent of the Landowners who were not present when Ms. Barton was surveying their lands. Ms. Barton has incorporated data and observations from that site visit into her testimony and that data has been incorporated into the new site plan. Because the Petitioner has significantly changed the Site Plan as detailed above, Landowners are entitled to have an opportunity to

¹ See Exhibit MB-32 filed with Mr. Binder’s June 24, 2022 Rebuttal Testimony

discover the facts and data relied upon, what assumptions were made by the expert, and what standards were relied upon in providing this new and different expert opinion, and why the expert significantly altered her prior opinion. Furthermore, Landowners should have the opportunity to rebut this new testimony. Therefore, Landowners request the opportunity to conduct Discovery and serve Interrogatories on Ms. Barton in order to allow the Landowners to adequately prepare for an evidentiary hearing in this matter.

3) Scott Homsted has provided Testimony for the first time in this case. Landowners have not had the opportunity to serve Discovery on him or to rebut his testimony. Therefore, Landowners request the opportunity to conduct Discovery and serve Interrogatories on Mr. Homsted in order to allow Landowners to adequately prepare for trial in this matter. Landowners also note that Mr. Homsted's testimony is not accompanied by a Notarized Affidavit.²

4) Agency of Natural Resources (ANR) has written in their June 24, 2022 comments:

“The Agency respectfully requests that it be granted an opportunity to respond to the Applicant's rebuttal testimony within a reasonable time if need be.

Finally, the Agency received a copy of the Hearing Officer's June 23, 2022 Procedural Motion via electronic ePUC notice at 5:11 p.m. yesterday. The Procedural Motion contains rulings that may have a significant impact on the evidentiary standards and burdens at issue in this case and on other § 248 cases going forward. The Agency is in the process of reviewing the Procedural Motion and is not able to file comments in response to the motion at this time. The Agency, however, reserves the right to respond to the Procedural Motion in a timely fashion.”

² His Affidavit claims: “Notarization waived per order of 3/30/20 in Case No 20-0789-INV”.

5) On March 10, 2022 the Hearing Officer wrote in an Order:

“Because the revised site plan describes and depicts changes to the physical plans or design of the system, the proposed changes constitute an amendment under Commission Rule 5.103.”

If the Hearing Officer rules similarly on the newly filed site plan, Landowners anticipate that the requirement to notify abutters of the Amended Plan will necessitate a delay in the proceedings regardless of the previously mentioned concerns.

OTHER PARTIES

Landowners have contacted the other parties. Ms. Hayden, for the Petitioner, does not assent to a schedule change. Other parties have not made their support, opposition, or indifference known.

CONCLUSION

For all the reasons listed above, Landowners respectfully request that the Hearing Officer change the schedule to reopen Discovery, permit another round of Rebuttal Testimony, Continue the Evidentiary Hearing, and modify the remaining Schedule accordingly. Landowners respectfully request that the Hearing Officer remind the Petitioner to produce a 25% slopes layer for the entire Limits of Disturbance of its new Site Plan.

POST SCRIPT

Landowners are gratified that the Department of Public Service has revised its Comments and changed a word that clarifies a material fact that is important to this case:

October 25, 2021: “The Project will be accessed via an **existing** gravel drive off Davis Road.”

June 24, 2022: “The Project will be accessed via a **new** gravel drive off Davis Road.”

Dated June 28, 2022.

/s/ Joan Allen

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Dated June 28, 2022.

/s/ Michael Binder

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