

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 5<sup>th</sup> day of October 2020.

CASE NO. 20-0431-E-SCS

RALEIGH SOLAR I, LLC,

A subsidiary of Dakota Renewable Energy, LLC

Application for Solar Siting Certificate to Authorize the Construction and Operation of an Exempt Wholesale Electric Generating Facility in Raleigh County, West Virginia, and Petition for Waiver of Transmission Support Line information

**COMMISSION ORDER**

The Commission approves a Joint Stipulation and Agreement for Settlement and grants a Siting Certificate subject to the terms and conditions set forth in this Order.

**BACKGROUND**

On June 12, 2020, Raleigh Solar I, LLC (Raleigh Solar) filed an application for a siting certificate to construct a solar exempt wholesale electric generating facility in Raleigh County, West Virginia. Raleigh Solar also requested a waiver of the requirement to file information related to a transmission support line.

Raleigh Solar proposes to construct a 90 megawatt solar generating facility in Raleigh County as an exempt wholesale generator under Federal law. The project will include approximately 250,000 individual panels, located on approximately 529 acres of mostly undeveloped, wooded ridge tops at a cost of approximately \$90 million. All of the transmission facilities will be located within the project footprint and will interconnect to an existing Appalachian Power Company (APCo) 138 kV transmission line that crosses the project. In light of this arrangement, Raleigh Solar requested a waiver of the transmission line information required by Rule 3.5 of the Rules Governing Siting Certificates for Solar Exempt Wholesale Generators, 150 C.S.R. 39 (Solar Siting Rules), which is the information required by Rule 9 of the Rules for the Government of Electric Utilities, 150 C.S.R. 3.

Raleigh Solar notes this is the first application for a siting certificate pursuant to Enrolled Committee Substitute for Senate Bill 583 (SB 583) adopted in the 2020 regular session of the West Virginia Legislature, with an effective date of June 3, 2020. SB 583

created W. Va. Code §24-2-10 which provides for an alternative process separate from W. Va. Code §24-2-11c for solar exempt wholesale generators to apply for a siting certificate from the Commission. Raleigh Solar also notes that on May 28, 2020, in General Order 263, the Commission proposed a new set of rules for solar exempt wholesale generators (Solar Siting Rules). While the proposed Solar Siting Rules were not in effect at the time the application was filed, Raleigh Solar's application followed those proposed rules. On August 4, 2020, the Commission finalized the Solar Siting Rules.

The application included the pre-filed direct testimony of Neil Habig, David Capparelli, Kenneth Kinder, Adam Mann, Mitchell Ott and James Joseph.

On June 16, 2020, the Commission ordered Raleigh Solar to give notice of this application in Raleigh and Kanawha Counties. Interested parties were given 30 days to protest or petition to intervene.

On June 18, 2020, Raleigh Solar filed supplemental information. Raleigh Solar provided the information required by Solar Siting Rule 4.1.5.d related to control of liquids and site runoff storm water. Raleigh Solar also provided a viewshed analysis of the project, including renderings of the project.

On June 26, 2020, the Commission issued an order verifying that the application was complete. The Commission also granted the requested waiver of the requirement to provide information related to the transmission line.

A Petition to Intervene was filed by the West Virginia State Building Trades and Construction Trades Council, AFL-CIO (Council) on June 26, 2020, noting the Council was in the process of negotiating a Memorandum Agreement regarding construction of the project that would ensure the use of local workers.

Staff filed its initial recommendations in this matter requesting the Commission set a procedural schedule on July 16, 2020.

Also on July 16, 2020, Raleigh Solar filed affidavits of publication indicating notice of the project was provided in The Register-Herald and The Charleston Gazette Mail on July 10, 2020.

On July 16, 2020, Natural Resources Partners L.P. filed a request for a legible copy of the map published in The Register-Herald on July 10, 2020. Raleigh Solar filed a copy of a letter that same day that was sent to Natural Resources Partners L.P. containing an enlarged version of the map in question.

On July 27, 2020, the Commission adopted a procedural schedule and granted the Council's petition to intervene.

On August 26, 2020, Raleigh Solar filed the direct testimony of Jay Schoenberger that adopted the previously filed testimony of Neil Habig.

Also on August 26, 2020, Staff filed the direct testimony of Daniel Egnatoff. Staff concluded the project is not contrary to the public interest and noted the lack of public protest suggested the people likely to be impacted by the project do not object to its construction.

The Council filed the direct testimony of Steve White and Christine Risch on August 26, 2020. Mr. White testified that the Council has finalized a Memorandum Agreement with Raleigh Solar that ensures the project will be constructed by local, union workers. Ms. Risch testified the construction of the project will have a substantial positive impact on the local economy and local employment.

No party filed rebuttal testimony.

On September 9, 2020, the parties filed a Joint Stipulation and Agreement for Settlement. Also on September 9, 2020 the parties filed a Joint Stipulation of Pre-Filed Testimony, Motion to Waive Appearance at Hearing and Motion to Conduct the Hearing Telephonically.

On September 14, 2020, the Commission issued an order cancelling the hearing scheduled for September 18, 2020.

The Commission received letters of support from The Honorable Sue Cline, 9<sup>th</sup> Senatorial District, The Honorable Rollen Roberts, 9<sup>th</sup> Senatorial District, The Honorable Jeffery Pack, 28<sup>th</sup> Delegate District, The Honorable Brandon Steele, 29<sup>th</sup> Delegate District, The Honorable Mick Bates, 30<sup>th</sup> Delegate District, The Honorable Chris Toney, 31<sup>st</sup> Delegate District, The Honorable Mitch Carmichael, Senate President, Mayor Rob Rappold, City of Beckley and the West Virginia Development Office. The West Virginia Chapter of the Sierra Club filed a letter in support of the project, subject to certain conditions.

### **DISCUSSION**

W.Va. Code §24-2-1o(n) states:

Notwithstanding the provisions of §24-2-11c of this code, any person or entity: (1) who is not an electric utility; (2) who intends to purchase or construct and operate an electric generating facility as an

exempt wholesale generator under federal law; (3) who will generate electricity solely through solar photovoltaic or other solar methods; and (4) who, if desired, intends to purchase or construct and operate energy storage for such electricity may file an application with the Public Service Commission under this section in such detail and with such publication requirements as the commission may prescribe; and the commission shall hold a hearing, unless waived, within 90 days of publication and issue a final order on a siting certificate or modification thereof within 150 days of the application filing date. No other provision of this section shall apply to these exempt wholesale generators.

By order dated August 4, 2020, the Commission adopted its Solar Siting Rules governing filings made under W. Va. Code §24-2-1o(n). Rule 8.1 of the Solar Siting Rules contains the standard of review the Commission applies in deciding whether to grant a siting certificate under W. Va. Code §24-2-1o(n). The Commission will grant the certificate if the construction of the facility is not contrary to the public interest.

The Commission received no letters of protest to this project, indicating the public does not object to its construction. Both Raleigh Solar and the Council submitted testimony that indicated the construction of the project will have a positive impact on the local economy and local employment.

The Commission has thoroughly reviewed the record in this matter, including the Joint Stipulation and Agreement for Settlement, and finds the construction of this facility is not contrary to the public interest.

### **FINDINGS OF FACT**

1. On June 12, 2020, Raleigh Solar filed an application pursuant to W. Va. Code §24-2-1o(n) for a siting certificate to construct a 90 MW solar exempt wholesale electric generating facility in Raleigh County, West Virginia. See Application filed on June 12, 2020.

2. Construction of the project is estimated to cost ninety million dollars. Id.

3. All of the transmission facilities will be located within the project footprint and will interconnect to an existing APCo 138 kV transmission line that crosses the project. Id.

4. The Commission granted a waiver of Solar Siting Rule 3.5. Commission Order, June 26, 2020.

5. The Commission received ten written comments in support of the project. See case file generally.

6. Raleigh Solar, Staff and the Council filed a Joint Stipulation recommending that the Commission grant a Siting Certificate to Raleigh Solar subject to certain conditions. Joint Stipulation, August 9, 2020.

7. There will be economic gain to the local economy and the local employment during the construction of the project. Pre-filed direct testimony of Joseph James, June 12, 2020, pre-filed direct testimony of Christine Risch, August 26, 2020.

### **CONCLUSIONS OF LAW**

1. The construction of the project is not contrary to the public interest.

2. The Joint Stipulation, including the conditions for this facility agreed to by the parties, is reasonable in this proceeding and should be adopted.

3. Based on the entire record, all filings in the case, and the analysis contained in this order, the Commission should issue Raleigh Solar a Siting Certificate for this project, subject to the conditions adopted in this Order.

### **ORDER**

IT IS THEREFORE ORDERED that Raleigh Solar I, LLC is granted a Siting Certificate, pursuant to W.Va. Code §24-2-1o(n), for the construction and operation of a 90 MW solar generating facility to be located in Raleigh County, West Virginia, subject to the following conditions:

a. Raleigh Solar receiving all the permits and approvals from other agencies required to construct the project and to file those with the Commission, as they are received, as closed entries.

b. Raleigh Solar, or its assigns, commencing continuous construction of the project within five years of the date of this order granting a solar exempt wholesale generator siting certificate to Raleigh Solar, and to complete construction within ten years of this same order.

c. Raleigh Solar entering into a decommissioning agreement with the Raleigh County Commission with an initial minimum of \$50,000 security. A copy of the executed decommissioning agreement should be filed with the Commission as a closed entry in this case.

d. Raleigh Solar complying with Solar Siting Rules 7.1 and 9.1, as applicable, as the project develops.

IT IS FURTHER ORDERED that the Memorandum Agreement dated August 19, 2020, between Raleigh Solar I, LLC, the Charleston West Virginia Building Construction Trades Council, AFL-CIO, and the West Virginia State Building and Construction Trades Council, AFL-CIO is approved in relation to the project. The Commission anticipates that all representations and commitments made by the parties therein will be kept by the parties. Approval of the Memorandum Agreement by the Commission does not mean the Commission is the proper forum to resolve any disputes which may arise from operating under such Agreement.

IT IS FURTHER ORDERED that the Joint Stipulation and Agreement for Settlement attached to this Order as Attachment A is adopted by the Commission.

IT IS FURTHER ORDERED that, pursuant to Rule 9.1 of the Rules Governing Siting Certificates for Solar Exempt Wholesale Generators, 150 C.S.R. 39, all of the terms and conditions of this Order apply to any subsequent owners or operators of the project.

IT IS FURTHER ORDERED that upon entry of this Order this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,



Connie Graley, Executive Secretary

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STATE OF WEST VIRGINIA  
PUBLIC SERVICE COMMISSION  
CHARLESTON

Raleigh Solar I, LLC  
Case No. 20-0431 -E-SCS

**JOINT STIPULATION AND SETTLEMENT AGREEMENT**

COMES NOW Raleigh Solar I, LLC, (“Raleigh Solar”), the Staff of the Commission (“Staff”), and the West Virginia State Building Trades and Construction Trades Council, AFL-CIO (“Council”), (collectively, the “Parties”), by their respective undersigned counsel, constituting all of the parties to the above captioned proceeding, to propose and recommend to the Commission that it approve and adopt this Joint Stipulation and Settlement Agreement (“Settlement Agreement”) of all issues raised on the terms and conditions set forth below, and in support of the Settlement Agreement, the Parties state as follows:

**I. PROCEDURAL HISTORY**

1. On June 12, 2020, Raleigh Solar filed an application (“Application”) for a siting certificate to construct a solar exempt wholesale electric generating facility (“Project”) in Raleigh County, West Virginia. Raleigh Solar also requested a waiver of the requirement to file information related to a transmission support line. Raleigh Solar include with its Application the following pre-filed direct testimony in support of the Application:

- a. Direct Testimony of Neil Habig.
- b. Direct Testimony of David Capparelli.
- c. Direct Testimony of Charles Cook.
- d. Direct Testimony of Kenneth Kinder.
- e. Direct Testimony of Adam Mann.



- f. Direct Testimony of Mitchell Ott.
- g. Direct Testimony of James Joseph.

2. Raleigh Solar proposes to construct a 90-megawatt solar generating facility in Raleigh County as an exempt wholesale generator under Federal law. The Project will include approximately 250,000 individual panels, located on approximately 529 acres of mostly previously used agricultural land with some undeveloped wooded areas with ongoing timbering operations at a cost of approximately \$90 million dollars. All of the transmission facilities will be located within the project footprint and will interconnect to an existing Appalachian Power Company (“APCo”) 138 kV transmission line that crosses the Project. In light of this arrangement, Raleigh Solar requested a waiver of the transmission line information required by Rule 3.5 of the then proposed Rules Governing Siting Certificates for Solar Exempt Wholesale Generators, 150 C.S.R. 39 (“Solar Siting Rules”), which is the information required by Rule 9 of the Rules for the Government of Electric Utilities, 150 C.S.R. 3.

3. Raleigh Solar noted in its Application that this is the first application for a siting certificate pursuant to Enrolled Committee Substitute for Senate Bill 583 (“SB 583”) adopted in the 2020 regular session of the West Virginia Legislature, with an effective date of June 3, 2020. SB 583 adopted W. Va. Code § 24-2-1o which provides for an alternative process separate from W. Va. Code § 24-2-11c for solar exempt wholesale generators to receive a siting certificate from the Commission. Raleigh Solar also noted that on May 28, 2020, in General Order 263, the Commission proposed a new set of rules for solar exempt wholesale generators (Solar Siting Rules). While the proposed Solar Siting Rules were not in effect at the time the Application was filed, Raleigh Solar's Application followed those proposed rules. Final Solar Siting Rules were adopted by the Commission's August 4, 2020 Order in General Order No. 263.

4. On June 16, 2020, the Commission ordered Raleigh Solar to give notice of the Application in Raleigh and Kanawha Counties. Interested parties were given 30 days to protest or petition to intervene.

5. On June 18, 2020, Raleigh Solar filed supplemental information. Raleigh Solar provided the information required by Solar Siting Rule 4.1.5.d related to control of liquids and site runoff storm water. Raleigh Solar also provided a viewshed analysis of the Project, including renderings of the Project.

6. On June 22, 2020, comments in support of approving the Application were filed by the following:

- West Virginia Senate President Mitch Carmichael and Speaker of the West Virginia House of Delegates Roger Hanshaw
- Robert R. Rappold, Mayor of the City of Beckley
- House of Delegates members Jeffrey Pack, Mick Bates, Brandon Steele, and Chris Toney, all from Raleigh County
- State Senators Sue Cline and Rollan Roberts, from Wyoming and Raleigh Counties, respectively
- Michael Graney, Executive Director of the West Virginia Development Office

7. On June 26, 2020, the Commission issued an order verifying that the Application was complete. The Commission also granted the requested waiver of the requirement to provide information related to the transmission line.

8. A Petition to Intervene was filed by the Council on June 26, 2020, noting the Council was in the process of negotiating a memorandum agreement regarding construction of the Project that would ensure the use of local workers.

9. On July 16, 2020, Raleigh Solar filed affidavits of publication indicating notice of the project was provided in The Register-Herald and The Charleston Gazette Mail on July 10, 2020.

10. On July 16, 2020, Natural Resources Partners L.P. filed a request for a legible copy of the map published in The Register-Herald. Raleigh Solar filed a copy of a letter that same day that was sent to Natural Resources Partners L.P. containing an enlarged version of the map in question. Natural Resources Partners L.P. made no further filings in this matter.

11. On July 27, 2020, the Commission granted the Council's petition to intervene and adopted a procedural schedule. The Commission decided not to conduct a site visit because it is unnecessary for a solar installation. Also, due to the uncertainties surrounding COVID-19, the Commission decided not to conduct a public comment hearing. The commission stated it would continue to receive written public comment filed with the Executive Secretary throughout the pendency of this case. The Commission adopted the following procedural schedule for this case:

EVENT	DEADLINE
Intervention deadline	August 9, 2020
Direct testimony of other parties and rebuttal testimony of other parties to Raleigh Solar's direct testimony	4:00 p.m. August 26, 2020
Last day to issue discovery requests	August 31, 2020
Rebuttal testimony of Raleigh Solar and of the other parties to the direct testimony of the other parties	4:00 pm. September 10, 2020
Agreed order of witness	4:00 p.m. September 14, 2020
Evidentiary hearing	September 18, 2020, beginning at 9:30 a.m. in the Howard M. Cunningham Hearing Room, 201 Brooks St., Charleston, West Virginia

12. On August 26, 2020, Staff submitted the Pre-filed Direct Testimony of Daniel Egnatoff, Technical Analyst Trainee. Mr. Egnatoff recommended that the siting certificate be approved, and

that the Commission grant Raleigh Solar's request to waive presentation of information regarding electric transmission facilities. Mr. Egnatoff did not recommend that the Commission attach any conditions to its approval of the Application.

13 On August 26, 2020, the Council submitted the Pre-filed Direct Testimony of Steve White, and the Direct Testimony of Christine Risch.

14. Mr. White notes in his testimony that the Trades Council has entered into a Memorandum Agreement with Raleigh Solar, and that Memorandum Agreement was attached to his testimony. Mr. White stated that the Project will require approximately 193,000 craft worker hours to construct, and this would be "a significant amount of work and payroll for local Building Trades Workers." White Direct Testimony, at 2. Mr. White stated that the Project "will result in a substantial positive impact on the local economy and local employment. The construction will also have a positive impact on the State economy." White Testimony, at 3.

15. Ms. Risch is the Director of Resources and Energy Economics for the Center for Business and Economic Research at Marshall University. Risch Testimony, at 1. Ms. Risch states that the Project will result in the payment of "about \$10.7 million in wages and fringe benefits" to up to 225 local union trades workers. Ms. Risch attached her study to her testimony providing detailed estimates of the economic impacts of the Project.

16. On August 26, 2020, Raleigh Solar filed the Direct Testimony of Jay Schoenberger in which Mr. Schoenberger adopted the substance of the Direct Testimony of Neil Habig.

## II. SETTLEMENT TERMS

In resolution of the issues in the above captioned matter, the Parties jointly stipulate and urge the Commission to issue a final order containing the following terms:

1. To find that the Project is not contrary to the public interest, and will increase employment, generate substantial direct and indirect economic benefits for Raleigh County and

the State, will diversity the State's energy portfolio, and will enhance the State's ability to attract employers.

2. To grant a siting certificate to Raleigh Solar for a Solar Exempt Wholesale Generator conditioned upon the following:

a. Raleigh Solar receiving all the permits and approvals from other agencies required to construct the Project and to file those with the Commission as they are received as closed entries in this matter.

b. Raleigh Solar or its assigns commencing continuous construction of the Project within five years of the date of the Commission's final order granting a solar exempt wholesale generator siting certificate to Raleigh Solar, and to complete construction within ten years of that same order.

c. Raleigh Solar entering into a decommissioning agreement with the Raleigh County Commission with an initial minimum of \$50,000 of security to be provided.

d. Raleigh Solar complying with Solar Rules 7.1 and 9.1, as applicable, as the Project develops.

3. To approve the Memorandum Agreement that has been entered into among Raleigh Solar and the Council, and noting that the Commission anticipates that all representations and commitments made by Raleigh Solar and the Council therein shall be kept. The Commission's approval of the Memorandum Agreement does not mean the Commission is the proper forum to resolve any disputes which may arise from operating under such Agreement.

4. This Settlement Agreement is entered into subject to the acceptance and approval of the Commission. It is made without any admission or prejudice to any other positions that may be taken by any Party or other issues, or to positions that may be taken by any Party on the same or similar issues in subsequent proceedings.

5. The Parties agree this Settlement Agreement is in the public interest and represents a consensus of a broad range of interests. The Settlement Agreement is fair, reasonable and supported by the record. The Stipulating Parties acknowledge that it is the Commission's discretion, however, to accept, reject or modify any settlement agreement. In the event that this Settlement Agreement is rejected or modified by the Commission, it is expressly understood that


the Parties are not bound to accept this Settlement Agreement as modified or rejected and may avail themselves of whatever rights are available to them by law including requesting to reconvene the hearing, and may pursue fully all issues and positions herein as if no proposed settlement or stipulation had been agreed to. In such circumstances, this Settlement Agreement shall not be admissible for any purpose other than enforcement of this paragraph.

WHEREFORE, on the basis of the foregoing, the Parties respectfully request the Commission make appropriate findings of fact and conclusions of law adopting and approving this Settlement Agreement.

Dated this 9th day of September, 2020.

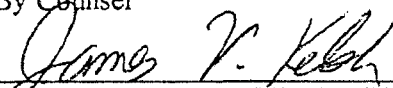
**STAFF OF THE COMMISSION**

By Counsel

  
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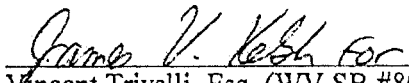
**RALEIGH SOLAR I, LLC**

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WEST VIRGINIA STATE BUILDING TRADES &  
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