

**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.	)	December 16, 2022
§§ 248 and 8010, authorizing the installation	)	
and operation of a 500 kW group net-metered	)	<i>Filed electronically via ePUC</i>
solar electric generation system in Randolph,	)	
Vermont	)	

**VERMONT AGENCY OF NATURAL RESOURCES’S REQUEST FOR THE PUBLIC
UTILITY COMMISSION TO TAKE NOTICE OF JUDICIALLY COGNIZABLE FACTS**

The Vermont Agency of Natural Resources (“Agency”) requests that the Vermont Public Utility Commission (“Commission”) take official notice of the following judicially cognizable facts: 1) the Vermont Department of Environmental Conservation’s (“DEC”) authorization of petitioner Randolph Davis Solar LLC’s (“Petitioner”) Notice of Intent (“NOI”) for the discharge of stormwater runoff at the proposed project site, issued on October 25, 2022; 2) the site plan map submitted by Petitioner in support of its NOI filed with DEC; and 3) the DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control. The three documents are attached hereto as Attachments 1, 2, and 3 respectively.

Section 810(4) of the Vermont Administrative Procedures Act, as incorporated by Commission Rule 2.216(A), provides that “[n]otice may be taken of judicially cognizable facts” by an agency. Furthermore, Vermont Rule of Evidence 201(d), as incorporated by 3 V.S.A. § 810(1) and Commission Rule 2.216(A), directs that an agency “shall take judicial notice if requested by a party and supplied with the necessary information.” Judicial notice may be taken at any stage of a proceeding. V.R.E. 201(f). “A judicially noticed fact must be one that is not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by

resort to sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b); see also *In re Handy*, 144 VT 610, 612-13 (1984).

The Hearing Officer assigned to this case issued a procedural order seeking the “perspective of the [Agency]” related to intervenor Michael Binder’s “concerns related to the management of stormwater at solar facilities.” Order of October 31, 2022. The Agency informed the Hearing Officer that it would address Mr. Binders concerns through briefing. The materials that the Agency now asks the Commission to judicially notice are critical to the Agency’s response to the Hearing Officer’s request, and noticing the materials will allow the Commission to make findings of fact related to this issue pursuant to 3 V.S.A. § 809(g).

The materials were either generated by or relied upon by DEC in its review of Petitioner’s NOI. DEC, in its role as the state agency charged with reviewing and authorizing NOIs for stormwater construction discharge, is a source that cannot reasonably be questioned with respect to these materials and its reliance thereon.

Based on the foregoing, the Agency requests that the Commission take judicial notice of the three documents attached to this filing

Respectfully submitted,

VERMONT AGENCY OF NATURAL RESOURCES

By:



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