

**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

**NEIGHBOR INTERVENORS’S REQUEST FOR CLARIFICATION
OF ANR’S REQUEST FOR THE PUC TO TAKE NOTICE
OF JUDICIALLY COGNIZABLE FACTS**

December 23, 2022

Now come Neighbor Intervenors Michael Binder and Joan Allen, *pro se*, and respectfully seek that the Agency of Natural Resources (ANR) clarify whether its 12/16/22 and 12/22/22 Motions for the Commission to take Notice of Judicially Cognizable Facts are its response to a 10/31/22 Procedural Order Requesting Information.

On 10/31/22 a Procedural Order Requesting Information was entered. The Hearing Officer requested that ANR explain whether and how Vermont’s stormwater management regulations and the Project’s design will address Mr. Binder’s concerns (Binder Surrebuttal Pages 4-6) about locating solar panels on steep slopes.

Pages 4-6 of Mr. Binder’s Surrebuttal is a section titled: “Impervious Precedent”. It explains why the array cannot be treated, from a stormwater perspective, as a pervious surface because of the steep slopes and the orientation of the array against the contour lines. It refers to exhibit MB-40 which, *inter alia*, illustrates Mr. Binder’s testimony. The project will require an Operational Stormwater Permit if the array is treated, from a stormwater perspective, as the impervious surface that it is.

ANR's 12/16/22 and 12/22/22 Motions are about Construction Stormwater Permits. Most of the site preparation and construction (regulated by the Construction Stormwater Permit) will occur before the array is installed. Mr. Binder's concerns are about post-construction concentrated runoff (effluent) from the impervious array.

ANR's motions for the Commission to take Notice of Judicially Cognizable Facts are not responsive replies to the Hearing Officer's request for ANR to address Mr. Binder's concerns about locating solar panels on steep slopes. Neighbor Intervenor respectfully request that ANR clarify whether it will provide a responsive reply to Mr. Binder's concerns about post-construction stormwater management.

In particular, when making its determination that solar arrays do not count as impervious surface, does ANR consider the slope of the land and its effect on effluents, and the availability of streams for disposal of effluents? If not, why not? When making its determination that solar arrays do not count as impervious surface, does ANR take into consideration that siting impervious surfaces on steep slopes, against the contour lines of the land, and without permanent stormwater management structures will cause unreasonable soil erosion? If not, why not?

/s/ Joan Allen

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