

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

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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

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Case No. 21-2939-NMP

**LANDOWNER’S RESPONSE TO PETITIONER’S MOTION AND SUPPLEMENTAL  
MOTION TO STRIKE PORTIONS OF LANDOWNERS’ DIRECT PREFILED  
TESTIMONY AND EXHIBITS**

Now come Neighbor Intervenors (Landowners) Michael Binder and Joan Allen, *pro se*, and hereby oppose Petitioner’s May 31, 2022 Motion and June 6, 2022 Supplemental Motion to Strike Portions of Landowner’s Direct Prefiled Testimony and Exhibits.

**1) Orderly Development** The Petitioner states that:

“Mr. Binder’s Testimony and Exhibits That Challenge the Town of Randolph’s Decision to Issue Preferred Siting for the Randolph Davis Solar Project are Irrelevant to this Proceeding and Should be Stricken”

“The Commission has not been delegated any role by the Legislature, in the context of Section 248 review or otherwise, to override the Town of Randolph’s decision to issue a preferred site letter... “

Orderly Development is a substantive issue for the Commission to consider. Mr. Binder presents evidence that the proposed project does not conform to the Randolph Town Plan.

In his testimony, Mr. Binder does not challenge the Town of Randolph’s authority to issue Preferred Sites Letters. Nor does he testify that the Commission may ignore or override the Letters.

Landowners understand that the Commission will give Due Consideration to the Preferred Sites Letters issued by the Town of Randolph, and Mr. Binder presents relevant evidence that the Commission may weigh in its effort to determine just how much consideration is due the Letters. To the extent that Mr. Binder's testimony reveals the extent of the deception perpetrated on the Town by the Petitioner, it may also inform a decision by the Commission to sanction the Petitioner, and/or to propose new rules that do not permit such deception in the future.

## **2) An Error in Exhibit MB-9**

Landowners have no objection to striking the last line of Answer 1 of Exhibit MB-9. The Line to be stricken is:

*"Much more was said at the March 2022 Planning Committee [exhibit MB-25]"*

Mr. Binder explained why the line may be stricken in his response<sup>1</sup> to Discovery.

## **3) Testimony by Experts (Mr. Binder)** Petitioner states that:

"Mr. Binder is Not Qualified to Testify Regarding Purported Vernal Pool or Wetland Impacts"

The adverse impact of the proposed project on Landowner's Forest and Vernal Pool Complex (which are contiguous with the Limits of Disturbance) is a substantive issue for the Commission to consider.

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<sup>1</sup> A:PET:Binder.1-14: After being served with this discovery request, I reviewed exhibit MB-9 and discovered an error. The last line of the answer to the first question should be stricken.

I had planned to put a narration and transcription of the March 2022 Planning Committee meeting in exhibit MB-25, but I ran out of time before the filing deadline and did not create the exhibit. My error is that I forgot to delete the reference in MB-9 to the exhibit that I never created.

Rather than leaving a gap (MB-25) in my exhibit numbering, or having to renumber all of my exhibits above MB-25, I chose to take what was then my last exhibit (MB-31) and renumber it as MB-25.

Mr. Binder's education in Science (SB and SM in Biology at MIT) as well as his academic career as a Scientist<sup>2</sup> qualify him as expert enough to have researched the ephemeral body of water on his property and determine that it is a Vernal Pool Complex. Exhibit MB-1 demonstrates amphibian eggs in the Vernal Pool Complex on his property.

Mr. Binder's decade working as a surveyor, qualifies him to measure the size of the Vernal Pool Complex on his property.

If the Petitioner feels that Answer 7 of Mr. Binder's testimony is not factually correct, justice would be better served by the Petitioner attempting to rebut that testimony, then by the Commission striking that testimony.

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<sup>2</sup> Mr. Binder's Resumé is submitted with this filing as MB-31

**4) Testimony by Experts (Ms. Allen)** Petitioner states that:

“Portions of Ms. Allen’s Testimony Should Be Stricken Because it is Irrelevant, Without Foundation, and She Has Not Demonstrated That She is Qualified to Offer the Opinions She Provides”

Ms Allen’s Resumé was provided to the Petitioner in Discovery and is submitted with this filing as Exhibit JA-17. Her reply to Q:PET:Allen.1-8 (a) is footnoted here.<sup>3</sup> Her education and work experience qualify her to testify on the effects that this project will have on Natural Resources.

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<sup>3</sup> A:PET:Allen.1-8: (a): I worked for The VT Chapter of The Nature Conservancy from 1998 to 2013. As part of a small team, I was responsible for the direction, coordination and implementation of TNC’s land protection program in Vermont, through real estate and related transactions that served TNC's mission to conserve Vermont's significant ecological and natural features. Duties included applying ecological criteria to prioritize protection projects, cultivation, development, and maintenance of relationships with landowners, partner organizations, communities, local, state, and federal agencies, and regular contact with the public. I established and maintained the Chapter’s involvement with USDA- NRCS, and managed partnerships with U.S. Fish and Wildlife Service, VT Fish and Wildlife Department, and Natural Resources Conservation District programs. I carried out all aspects of land protection, from initial landowner contacts, ecological evaluation, and negotiation through to closing; obtaining grants from public sources, and foundations. I assisted with the refinement of internal land protection goals and stewardship policies, updates to the science-based portfolio, and worked with staff counsel on all aspects of real estate closings.

I worked for Vermont Land Trust from 1994 to 1998. I was Director of the Mettowee Valley Conservation Project, a special project in one of Vermont's premier agricultural districts, and later became Regional Director of the Southwest Region. In that capacity I was VLT's representative in 25 towns in the state's Taconic region. I developed and maintained landowner and community relationships, developed farm and natural area protection strategies, conducted negotiations and follow-through for the purchase and donation of conservation easements on working farms, forestland, wildlife habitat, natural areas, and other properties with conservation values. Other duties included grant writing, writing for the newsletter, managing a local advisory committee, and assistance with local donor relations

Petitioner states:

“Ms. Allen’s testimony regarding purported stormwater impacts also lacks any foundation in that it fails to apply reliable principles and data based upon applicable Vermont stormwater laws and regulations.”

Ms. Allen’s testimony is not about Vermont stormwater laws and regulations, and she is not an expert on the application of these regulations. Vermont stormwater laws and regulations, as they apply to this project are about mitigating the adverse effects of development. Ms. Allen does not testify that the adverse effects of this project cannot be mitigated to some degree; rather her testimony is that the constraints on this particular project site (steepness and soil erodibility) are such that it is in the public interest to avoid, rather than mitigate, the development. Her testimony also reveals that Randolph’s 25% slopes prohibition is generous, many jurisdictions define steep slopes at considerably less than 25%.

Petitioner states:

“Section 248(b)(5) does not specify any standards that impose clearing restrictions on solar generation projects, does not mention forest fragmentation, or identify a statute, criterion, or legal requirement for clearing standards, nor are forest resources recognized generally as a protected resource. . . . Nothing in Section 248 addresses forest protection, forest health, or tree cutting *per se*.”

The effects of this project on water purity, the natural environment, and the use of natural resources are substantive issues for the Commission to consider. Ms. Allen’s testimony about the value of forests to the environment and about the inadequate forested buffers around the wetlands is relevant to the Commission’s responsibility to determine if this project is in the public interest.

Furthermore, Ms. Allen’s testimony is necessary so that the Commission may determine if this development is Orderly. The Randolph Town Plan has many Natural Resource Policies<sup>4</sup> that

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<sup>4</sup> See Mr. Binder’s Exhibit MB-10 filed May 6, 2022

were not considered by the Town when the Preferred Sites Letters were issued. Ms. Allen's testimony about deforestation, forest fragmentation, impacts on wetlands, and impacts on wildlife is material to recognizing that this proposed development is not consistent with many Policies of the Randolph Town Plan.

**5) Ms. Allen's Exhibits** Petitioner states:

“Lines 7 through 10 on page 11 offer a quote from a “Biofinder Update Report,” but fails to identify who prepared the report, its relevance, provide the report, or provide proper page citations for the quote”.

The “2016 BioFinder Update Report” was prepared by the VT ANR BioFinder/Vermont Conservation Design Team, authored by 5 expert naturalists and ecologists, and advised by a Steering Committee of an additional 3 expert members. The full report is readily available online, and is submitted with this filing as Exhibit JA-18. Ms. Allen regrets that she overlooked submitting this document as an exhibit with her prefiled testimony.

Petitioner's motions request that exhibits JA-2, JA-3, JA-6, JA-7, JA-11, JA-12, and JA-14 be struck from Ms. Allen's testimony.

Experts rely on the data, publications, and conclusions of other experts in order to gain and maintain their expertise. Ms. Allen's education, training, and experience qualify her to judge as relevant and reliable these exhibits that she presents in support of her testimony:

**JA-2 Water Runs Downhill**

Southern Tier Central Regional Planning & Development Board

**JA-3 Soil Characteristics**

Soil Data compiled by Ms. Allen from sources shown on page 2 of the exhibit. (Soil Survey of Orange County, VT; USDA publication "Updated T and K Factors, Questions and Answers" Guidance for Agency Act 250 and Section 248; USDA publication "Hydrologic Soil Group"; VT NRCS "Highly Erodible Land Ratings, Orange County, VT")

JA-6 Forest Conservation Targets

Vermont Agency of Natural Resources Biofinder

JA-7 Shrubland and Young Forest Dependent Species

Attribution is on page 2: (Meghan Gilbert, Wildlife Management Institute)

JA-11 Habitat Blocks

Vermont Agency of Natural Resources Natural Resources Atlas

JA-12 Habitat Blocks, Wildlife Corridors, and Core Habitat

Vermont Center for Geographic Information

JA-14 Acceptable Management Practices

Vermont Department of Forests, Parks and Recreation

### **CONCLUSION**

For all of the above reasons, Neighbor Intervenors request the Commission to deny Petitioner's Motions to Strike Portions of Landowners Direct Prefiled Testimony and Exhibits.

**/s/ Joan Allen**

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