

**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

**NEIGHBOR INTERVENORS' REPLY TO PETITIONER'S  
MOTION REQUESTING JUDICIAL NOTICE**

**September 5, 2023**

Now come Neighbor Intervenors Joan Allen and Michael Binder, *pro se*, and oppose the  
Petitioner's August 22, 2023 Motion Requesting the Commission take Judicial Notice of  
Petitioner's exhibits RDS Judicial Notice-1 and RDS Judicial Notice-2.

**Introduction:**

The subject of the Petitioner's Motion is an email sent by the Petitioner on May 3, 2021 to Sonny Holt, Chair of the Randolph Planning Commission.

The text (which Intervenors do not dispute) of the May 3, 2021 email indicates that a draft [preliminary] site plan is attached to the email. However, the proffered Site Plan which Petitioner requests judicial notice of, and which Petitioner represents as the attachment to the May 3, 2021 email, is NOT the same Site Plan attachment that was actually sent to Randolph Planning Commission Chair Sonny Holt on May 3, 2021. Instead, Petitioner has provided the Commission with a different Site Plan, which has been switched with and substituted for the Site Plan that was actually attached to Petitioner's May 3, 2021 email.

Intervenors know this because the Petitioner's May 3, 2021 email and the Site Plan that was actually attached to the email are already in evidence in this case, having been submitted as Exhibit NI MB-17 at pp. 147 & 157 with two email attachments<sup>1</sup> at pp. 151-155. The original source of these exhibits was Journalist Zoe Newmarco of the Randolph Herald, who made public records requests to the Town of Randolph, and which Mr. Binder entered into evidence as Exhibits NI MB-6 and NI MB-17.

Therefore, Intervenors oppose the admission of Exhibit RDS Judicial Notice-1 which contains a Site Plan document that is verifiably erroneous, false and/or misleading.

Exhibit RDS Judicial Notice-2 is the Petitioner's 45 Day Advance Notice. It was submitted so that it might be compared to the (disputed) preliminary site plan in exhibit RDS Judicial Notice-1. Therefore, if the Commission declines to take Judicial Notice of exhibit RDS Judicial Notice-1, then it has no reason to take Judicial Notice of exhibit RDS Judicial Notice-2.

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<sup>1</sup> Attachments to May 3, 2021 email are in Exhibit NI MB-17:  
*10-2018 Preferred Siting (1).doc* is at pp. 151-153.  
*20210430 Randolph Davis Preliminary Site Plan\_11x17.pdf* is at p. 155.

**Comment:**

- 1) The Motion is an untimely attempt to add to the evidentiary record.
- 2) The preliminary site plan in exhibit RDS Judicial Notice-1 is NOT the same as the preliminary site plan that was actually attached to the May 3, 2021 (exhibit NI MB-17 at 155). Most importantly, the preliminary site plan that was actually sent to Chair Holt on May 3, 2021 has no scale or legend, and it does not specify the acreage of the parcel, or the acreage of the limits of disturbance, or any other acreage.
- 3) Exhibit RDS Judicial Notice-1 is incomplete. It does not include the attachment *10-2018 Preferred Siting (1).doc*. (exhibit NI MB-17 at 151-153)
- 4) The preliminary site plan in RDS Judicial Notice-1 has not been authenticated in any way.
- 5) The preliminary site plan in RDS Judicial Notice-1 fails to satisfy VRE 201(b) which states:  
A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- 6) Intervenor's reasonably dispute that the site plan included in Exhibit RDS Judicial Notice-1 is the same site plan that was actually attached to the email sent to Sonny Holt on May 3, 2021.

**Alternative Comment:**

In the event that the Commission does take Judicial Notice of exhibit RDS Judicial Notice-1, the Intervenor's respectfully request the Commission adopt the following Findings:

**Finding 1)** The Judicially Noticed site plan in exhibit RDS Judicial Notice-1 states in fine print:  
“The approximate total limit of disturbance is 11.6 acres.”

**Finding 2)** On June 1, 2021 Mr. Malley, representing the Petitioner, told the Randolph Planning Commission:

“The array takes up about 3 acres and about 5-6 acres of total associated footprint when you include shade tree cuts, roads and fencing.”

[exhibit NI MB-4, Randolph PC Minutes]

**Finding 3)** On June 10, 2021, Mr. Malley, representing the Petitioner, told the Randolph Selectboard:

“it utilizes between 2.5 and 3 acres of solar array footprint and somewhere between 4 and 5 acres of total area including the area around the array where we manage vegetation growth so the array isn't shaded and to account for things like access and a temporary laydown during construction.”

[exhibit NI MB-21 audio recording at 0:11:00, transcription in Binder PFT at 15]

**Finding 4)** The temporal sequence of above three Findings indicates that the Petitioner knew or should have known that their presentations in June 2021 to the Randolph Planning Commission and the Randolph Selectboard, about the acreage of the project, were untruthful.

**Conclusion:**

Neighbor Intervenors oppose the Petitioner's Request for the Commission to take Judicial Notice of exhibits RDS Judicial Notice-1 and RDS Judicial Notice-2.

If the Commission does take Judicial Notice of exhibit RDS Judicial Notice-1, then the judicially noticed evidence clearly shows that the Petitioner knew or should have known that their June 2021 presentations to the Town, regarding the acreage of the project, were untruthful.

The Petitioner's untruthfulness reinforces the PFD's conclusion that the Preferred Site Letters for this project do not reflect the sort of support that was intended by Commission Rule 5.103.

Dated at Randolph, Vermont this  
5th day of September, 2023

**/s/ Joan Allen**

Joan Allen, *pro se*  
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Dated at Randolph, Vermont this  
5th day of September, 2023

**/s/ Michael Binder**

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