

November 6, 2018

By Hand Delivery

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: CPG #16-0042-NMP - Application of Orchard Road Solar I, LLC

Dear Ms. Whitney:

Enclosed please find Applicant Orchard Road Solar I, LLC's ("ORS") *Response to Comments Received re Amended Application*.

Please do not hesitate to reach out with any questions.

Sincerely,



Geoffrey H. Hand, Esq.
Victoria M. Westgate, Esq.

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND, PLLC

cc: Service List
Enclosures

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

CPG #16-0042-NMP

Application of Orchard Road Solar I, LLC for a)
certificate of public good, pursuant to 30 V.S.A.)
§§ 219a and 248, to install and operate a 500 kW)
group net metered solar electric generation facility)
located on Orchard Road in Middletown Springs,)
Vermont, to be known as the “Orchard Road)
Solar Project”)

**APPLICANT ORCHARD ROAD SOLAR I, LLC’S RESPONSE TO COMMENTS
RECEIVED RE AMENDED APPLICATION**

On November 6th, 2018 Applicant Orchard Road Solar I, LLC (“ORS” or “Applicant”) filed supplemental application materials supporting relocating the proposed Orchard Road Solar Project to an alternative site, as requested by the Neighbors participating in the proceeding. The Hearing Officer set a 21-day comment period, as is the standard comment period allowed for application materials under Commission Rule 5.110(C).¹ On November 30, 2018, comments on ORS’s supplemental materials were submitted by the Department of Public Service (“DPS” or “the Department”), Neighbors,² and adjoining landowner Russell Lattuca, who has not previously participated in the proceeding. Mr. Lattuca also filed a motion to intervene and motion to move the proceeding to ePUC. ORS hereby provides the following response to Mr. Lattuca’s motions and the comments received from Mr. Lattuca and the Department.³

¹ As in effect at the time of the application filing, in June 2016. See Section II for further discussion of Applicant’s vested rights in the Commission rules in effect at the time of the initial application filing.

² Neighbors include Richard Spitalny, Robert & Karen Galloway, Daniel McKeen, and Neil & Thomas Russell.

³ Neighbors comments were fully supportive of ORS’s materials and did not raise any substantive issues. Neighbors’ filing also represents that they are authorized to state that the following parties do not oppose relocation of the project to the alternative site: Ted & Dana Fitzpatrick, Peter & Aileen Stevenson, Karen Gutmann & Larry Springsteen, Douglas Freilich & Julie Sperling, and Elizabeth Cooper.

I. Lattuca Motion to Intervene and Motion to Move Proceeding to ePUC

Mr. Lattuca filed a motion to intervene in this proceeding as of right pursuant to Commission Rule 2.209(A)(3), or in the alternative, by permission under Rule 2.209(B). ORS does not agree that Mr. Lattuca qualifies for intervention as of right, and disagrees that Mr. Lattuca has met the criteria for permissive intervention on a number of the interests stated in his motion.⁴ As discussed below, Mr. Lattuca's claims are largely speculative and general, and do not provide a sufficient basis for intervention. In addition, Mr. Lattuca's interests in the natural environment, use of natural resources, streams, wetlands, soil erosion, and rare or irreplaceable natural areas are all adequately protected by the Agency of Natural Resources ("ANR"), who is a party to this proceeding. Similarly, Mr. Lattuca's generalized interests in system stability and reliability, economic benefits, public health and safety, and burden on local government⁵ are adequately protected by the Department, who is also participating in the proceeding, while the Division for Historic Preservation ("DHP") is adequately protecting Mr. Lattuca's stated interest in archaeological and above-ground historic resources. The Commission has denied intervention to individuals without a particularized interest in these criteria and where an agency is adequately protecting the general public's interest.⁶

In light of the significant process that has already occurred in this case to date, allowing Mr. Lattuca party status on these issues would cause further undue delay in reaching the Commission's final decision on this Project, and would prejudice ORS and the other parties who have participated

⁴ See Lattuca Motion at 6.

⁵ Mr. Lattuca includes this on his list of requested criteria for intervention, but makes no argument as to what his interest is under this criterion.

⁶ See, e.g., *Petition of Swanton Wind LLC*, Case No. 8816, Procedural Order re Intervention (Nov. 18, 2016) (denying intervention on system stability, air and water purity, the natural environment, use of natural resources, streams, wetlands, soil erosion, and rare and irreplaceable natural areas, and historic resources criteria where interests were not unique or different from the general public's interest and would-be intervenor failed to explain why participation by Department, ANR, and DHP on behalf of the public would not sufficient represent interests).

thus far. In the event that intervention is granted, it should be limited to those particularized interests in which Mr. Lattuca has asserted a specific, potential impact as a result of the Project.

Regarding Mr. Lattuca's motion to move the proceeding to ePUC, ORS has no objection to this change, but would request clarification from the Hearing Officer as to how to properly notice those parties who are not currently registered entities on ePUC (i.e. participating Neighbors).

II. Comments from Mr. Lattuca

a. Notice

Mr. Lattuca asserts that ORS was required to provide 45 days' notice of the proposed change to the project location, pursuant to Rule 5.110(C),⁷ and that ORS provided insufficient notice because of the 21-day comment period that was established per the standard review period of application materials under the same rule.

ORS does not agree that the proposed change in project location constitutes a "substantial change" under the rule, and that even if it did constitute such a change, Mr. Lattuca had ample notice of the proposed change. Following multiple years of litigation during which the merits of both the original site and the alternative site have been discussed at length, and in reliance on the Commission's footnote in its July 20th, 2018 Order,⁸ ORS provided supplemental evidence showing that the project *could* be moved to the alternative location on the same project parcel as the initial project location. The evidence provided regarding the possibility of shifting the project from one side of the parcel to another was therefore a mitigation measure entirely proposed as a response to concerns expressed by parties to the proceeding over this extended period of litigation. This is a

⁷ References to Rule 5.110(C) throughout this response refers to the version of Rule 5.100 in effect at the time the initial application was filed.

⁸ The Commission's order stated that: "In these particular circumstances, if the Applicant determines that the Project can in fact be built at one of the alternate sites, we would treat an amended application as a continuation of the current Application for vested rights purposes, including the preferable rates that the Applicant is entitled to under its current Application." Order Reopening the Evidentiary Record at FN8 (Jul. 20, 2018).

distinctly different type of change than one taken by the Applicant for its own purposes (such as moving proposed equipment or adding to the project size, etc.). For a proposed mitigation measure to then be considered a “substantial change” would greatly prejudice ORS, and indeed any applicant responding to issues raised over the course of a proceeding, by essentially restarting the application process all over again with another 45-day notice period. For this reason, the PUC has since clarified in the revised 2017 net-metering rules that “proposing additional aesthetic mitigation” does not constitute a major amendment in a net-metering application.⁹ As the parties to this proceeding have spent significant time and expense on the litigation that has led to this proposed mitigation measure, it would be unfair to these parties who have engaged in good-faith efforts to resolve the issues raised, as well as a deterrent to future parties who strive to reach settlement on appropriate mitigation for a proposed project.

Not only was this not a substantial change requiring 45-day notice, but Mr. Lattuca did not avail himself of the time to review the application and despite offers in writing, never requested the filing. Mr. Lattuca was first provided notice of the application at the time it was initially submitted in 2016, and ORS attempted to contact Mr. Lattuca prior to the filing to review the potential shift in location, but was unable to get in touch with him as he was not at his residence. ORS spoke with Mr. Bartlett, a caretaker for Mr. Lattuca’s property, and was told that Mr. Bartlett would contact Mr. Lattuca to let him know ORS had tried to speak with him. ORS then sent a letter to Mr. Lattuca at the time of the supplemental filing on November 6th, 2018. This letter, which was submitted with the filing as Exhibit ORS-RV-10, offered to provide the supplemental filing upon request, and listed contact information for ORS and the Commission in the event that the recipient had any comments or concerns. Mr. Lattuca never contacted ORS for the supplemental materials, or to express any concerns. As Mr. Lattuca did not avail himself of the opportunity to review the materials, an

⁹ See Rule 5.103 (definition of “minor amendment”).

additional notice period prior to filing the supplemental materials would not have changed the outcome of his comments in any way. ORS therefore requests that the Hearing Officer find that notice was sufficient for this supplemental filing.

b. Applicable Rules and Vested Rights

Mr. Lattuca asserts that the Commission should find that the Commission Rules in effect at the time of ORS's application are not applicable to the Project for two reasons: first, because the Supreme Court has never expressly recognized the Vested Rights Doctrine as applicable to the Commission, and second, because the Project would not qualify as a net-metering project under the 2017 version of the net-metering rules.

Mr. Lattuca is incorrect that the Vested Rights Doctrine does not apply to ORS's application. The Commission has recognized that the same principle underlies Section 248 permit applications as any other permitting matter and has applied the doctrine to a Section 248 permit, holding that the permit application vested at the time the petition, accompanied by supporting evidence addressing each required Section 248 criteria, was filed.¹⁰ This case and others where the Commission has addressed the Vested Rights Doctrine¹¹ have never been overturned by the Supreme Court despite having numerous opportunities.¹² Most recently, in a 2018 Order in *Petition*

¹⁰ See, e.g., *Petition of N. Springfield Sustainable Energy Project LLC, Case No. 7833*, (Feb. 11, 2014) (noting that “[t]he Vermont Supreme Court has held that an applicant’s rights vest in an existing regulation at the time a proper or complete application is filed. . . . An application for a zoning permit is proper when ‘validly brought and pursued in good faith.’ . . . An Act 250 application is complete when it addresses all Act 250 criteria. . . . [Applicant’s § 248] petition was accompanied by supporting testimony and exhibits that addressed each of the required § 248 criteria and was therefore properly considered complete at the time it was filed.”).

¹¹ See, e.g., *Petition of Chelsea Solar LLC*, Case No. 17-5024-PET, Final Order at 1 (Apr. 12, 2018) (addressing Vermont’s adoption of minority rule for Vested Rights Doctrine); *Application of Seneca Mountain Wind, LLC*, Case No. 7867, Order (Aug. 9, 2013) (Deciding that the pending ordinance doctrine did not apply to case “particularly in light of the great weight of the [Supreme] Court’s precedent in other administrative proceedings that an applicant’s rights vest at the time a proper application is filed.”); see also *Petition of Barton Solar LLC, Case No. 8148*, Order Denying Motion to Suspend the Schedule (Mar. 7, 2014) (denying intervenor’s motion where Applicant objected in part based on the Vested Rights Doctrine, and noting that intervenors “must take the case as they find it.”).

¹² See, e.g., *In re Petition of LK Holdings, LLC*, 2018 VT 109. The Supreme Court has held that in certain instances the Vested Rights Doctrine does not apply to matters under the purview of the Commission, such as PURPA rates, but has

of *Chelsea Solar LLC*, the Commission expressly stated that Vermont applies the “minority rule” for vested rights, under which “a permit applicant gains a vested right in the governing regulations in existence when a full and complete permit application is filed.”¹³ If the Vested Rights Doctrine did not apply to permit applications before the Commission, it would open the door to uncertainty and an overflow of challenges anytime a rule was revised. For these reasons, the Vested Rights Doctrine applies in this case.

Even if the Vested Rights Doctrine didn’t apply here, which it does, in Act 99, the source of the revised Rule 5.100, the Legislature expressly directed the Commission to review “pre-existing” applications under the version of Rule 5.100 that was in effect at the time of the filing and the Supreme Court has recognized and applied this in the context of this very rule.¹⁴ Thus, in addition to being sound policy and in line with Commission precedent, the Commission is required by the Legislature to apply the prior rule to this application. ORS’s application was thus fully vested in the version of Commission Rule 5.100 that was in effect at the time the complete application was filed in July of 2016, and Mr. Lattuca’s assertion that the Commission should apply the current net-metering rules to deny the Project a Certificate of Public Good is incorrect.

To the extent that Mr. Lattuca is arguing that the Commission was not authorized under the pre-2017 net-metering rules to allow for an amendment to ORS’s application, ORS would note that

never stated such with respect to Section 248 permit applications despite reviewing 248 cases where a vested rights argument has been made. In distinguishing the application of the Vested Rights Doctrine to PURPA rates in *Petition of Dept. of Public Service*, 157 Vt. 120, 127 (1991), the Court went to great lengths to explain why it was not applying the doctrine to this “special case,” where the Court was persuaded that PURPA itself set out an “equation of public benefit and public burden” that would have been changed by the Vested Rights Doctrine, and therefore it declined to require electricity consumers to pay rates above those established by the marketplace. If the Court was of the belief that the Vested Rights Doctrine simply did not apply to permit applications outside of zoning applications, as Mr. Lattuca asserts, it would not have deemed the PURPA context a “special case” and would have clearly stated this when reviewing a vested rights argument applied to a Section 248 permit. As the Court has not ruled that the Vested Rights Doctrine does not apply to a Section 248 permit application, but rather has implied that it does, there is no precedent to suggest the Commission cannot apply this doctrine.

¹³ *Petition of Chelsea Solar LLC*, *supra* note 11.

¹⁴ See 2013, No. 99 (Adj. Sess.), § 10(f) (“30 V.S.A. § 219a and rules adopted under that section shall govern applications for net metering systems filed prior to January 1, 2017.”); *In re Stowe Cady Hill Solar, LLC*, 2018 VT 3, ¶ 28.

the Commission has authority to waive any of its rules for good cause under Commission Rule 2.107. Rule 2.107 expressly permits the Commission to waive the application of any rule “[i]n order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause,” unless the waiver of the rule is precluded by the rule itself. Here, there is no such preclusion, and allowing for an amended application to accommodate a mitigation measure that resolves a number of parties’ concerns qualifies as good cause. Thus, the Commission was fully within its rights to allow for ORS to amend its application under the net-metering rules in effect at the time of the original application. In the unlikely event that the Commission determines the 2017 net-metering rules do apply here, ORS requests that the Commission grant a waiver pursuant to this rule, and apply the version of Rule 5.100 in effect at the time of the application.

c. Request for Hearing – Section 248 Criteria & Other Matters

In addition to the arguments addressed above, Mr. Lattuca requests a hearing on the following Section 248 criteria: aesthetics, orderly development, historic resources, primary agricultural soils, necessary wildlife habitat, wetlands, water supply, soil erosion, traffic impacts during construction, system stability and reliability, and economic benefits. Mr. Lattuca has not made the requisite showing that the potential shift in the location of the project on the project parcel raises a “significant issue” with respect to any of these issues. Such a showing is required to “go beyond general or speculative claims, and provide specific information regarding the potential impacts for the criteria.”¹⁵ Mr. Lattuca’s assertions regarding these criteria do not rise to the necessary level of specificity; rather, Mr. Lattuca’s concerns are generalized and speculative, and often based on inaccuracies stemming from not having properly reviewed ORS’s filing. As such, the

¹⁵ Rule 5.110(C).

Hearing Officer should not grant a hearing on any of these issues. We address each criterion in turn below.

i. *Aesthetics – Visual & Sound*

Mr. Lattuca's concerns regarding aesthetics focus on the "absence of any visual simulations and viewshed analysis."¹⁶ However, ORS submitted a full aesthetics analysis of the alternative site with its supplemental filing,¹⁷ which Mr. Lattuca never requested a copy of although it was offered in the notice letter Mr. Lattuca received. The aesthetics analysis contained a full report analyzing the project under the *Quechee Test*, summarizing the viewshed of the project and the compatibility of the project with the surrounding landscape, and attaching multiple pages of photographs of the project site from many locations. In the report, Applicant's expert concluded that the viewshed of the alternative site is reduced compared to the original project site, and that the overall impact is adverse, but not unduly adverse.

Having not reviewed the report, Mr. Lattuca's assertions regarding aesthetics do not specifically respond to Applicant's materials, but are rather general statements regarding the project's compatibility with the rural landscape, which has already been discussed at length in the prior testimony and hearings held in this matter. Mr. Lattuca does raise the potential impact of the Project on the view from his residence, but he doesn't specifically allege what impact the Project may have and does not acknowledge or respond to ORS's extensive viewshed analysis. To the extent that mitigating any view from his property is Mr. Lattuca's primary concern here, ORS is open to discussing potential mitigation plantings between the Project and Mr. Lattuca's residence.¹⁸

¹⁶ Lattuca Comments at 10.

¹⁷ Exhibit ORS-MK-5.

¹⁸ ORS does not agree that mitigation plantings are required under Rule 5.800, which did not go into effect until after ORS's application was filed, and therefore does not apply for the same reasons that the most recent version of Rule 5.100 does not apply.

Mr. Lattuca also makes a broad claim that noise presents a substantial issue, but does not make any specific claim of impact other than any noise level from the project would be a disruption. ORS submitted a sound study showing sound levels at the alternative location, which indicates that the Project will not exceed 17 dBA at the nearest residence during daytime hours. This is below the projected maximum sound level at the original site, which the Commission did not find to raise a significant issue,¹⁹ and well below what the Commission has authorized for many other projects.

ii. *Orderly Development*

Mr. Lattuca's argument that there is a substantial issue with respect to orderly development is largely focused on his belief that the current versions of the Town and Regional Plans should apply to the Project, as opposed to the versions in effect at the time of the application.²⁰ As explained above, this is incorrect; ORS has a vested right in the rules and plans in effect at the time the complete application was filed in July 2016. This is also consistent with the Commission's decision in *Application of Seneca Mountain Wind, LLC*, where the Commission held that an existing Town Plan in effect at the time a complete application was submitted applied to the proceeding, even though the Plan expired during the course of the proceeding.²¹ In this case, the Town and Regional Plan in effect at the time of the application have been the subject of extensive testimony already, and Mr. Lattuca has not raised any new arguments regarding these plans. As a result, Mr. Lattuca has not shown that there are any significant issues with respect to orderly development that would warrant a hearing.

iii. *Historic Resources*

The issue raised by Mr. Lattuca with respect to historic resources relates to the presence of an alleged historic barn on Mr. Lattuca's property, and the archaeological remains of a historic

¹⁹ See Order re Significant Issues and Notice of Hearing at 15 (Feb. 22, 2017).

²⁰ Lattuca Comments at 12.

²¹ *Application of Seneca Mountain Wind, LLC*, Case No. 7867, Order (Aug. 9, 2013).

schoolhouse site. With respect to the barn, Mr. Lattuca does not claim that there is a view of the Project site from the barn, and the Division for Historic Preservation concluded that the Project would not have an adverse impact on any above-ground historic resources. Regarding the historic schoolhouse site, Mr. Lattuca does not have a particularized interest in this site that is different from any member of the general public. Regardless, ORS is proposing to move the access road for the Project to accommodate the Department's request (see Section III, below). ORS will also construct the access road on top of geo-textile fabric and use fill material rather than excavation, which will mitigate any potential impact on any archaeological resources. ORS understands that DHP will file a letter confirming this conclusion shortly. As a result, there is no potential for significant issues with respect to this criterion, and a hearing is not necessary.

iv. *Primary Agricultural Soils*

Mr. Lattuca suggests that there is a significant issue with respect to primary agricultural soils, but does not have a particularized interest in these soils and does not elaborate as to why beyond stating that the alternative site contains such soils.²² With its supplemental filing, ORS identified the presence of primary agricultural soils on its site plan, and provided specific testimony regarding how these soils would be treated during construction and operation of the project to avoid any undue adverse impacts.²³ As Mr. Lattuca makes no showing at all as to why he has an interest in this criterion or that there is any potential for significant impact to these soils, the Hearing Officer should not grant a hearing on this issue.

v. *Necessary Wildlife Habitat*

Similarly, Mr. Lattuca does not assert a particularized interest in any necessary wildlife habitat or indeed even assert that the Project is in a necessary wildlife habitat or would have any

²² Lattuca Comments at 14.

²³ See Goddard supplemental pft. at 7.

significant impact on a necessary wildlife habitat. Mr. Lattuca does assert that the Project area is frequented by deer and other animals, but he does not point to any identified deer wintering area or other necessary wildlife habitat in the area that the Project would have an impact on. Thus, Mr. Lattuca's concerns regarding necessary wildlife habitat are purely speculative and do not warrant a hearing. Furthermore, Applicant's expert conducted a full natural resource assessment of the alternative location and concluded that there was no potential for impact on any necessary wildlife habitat, including deer wintering areas.²⁴

vi. *Wetlands*

With respect to wetlands, Mr. Lattuca does not raise any particularized interest in or issue with the presence of wetlands on the alternative site beyond the change in classification from Class II to a Class III following the reassessment conducted in July 2018.²⁵ Mr. Lattuca appears to suggest that any reversal in factual assertion should always result in a hearing,²⁶ regardless of context. This is not a reasonable basis for opening this proceeding up to another round of procedure, particularly where multiple experts have reviewed and agreed on the reclassification. Here, the 2018 wetlands assessment of the alternative site was conducted almost three years after the initial assessment in 2015, and was reviewed by the Agency of Natural Resources staff, who concurred with the result. Mr. Lattuca does not point to any specific aspect of this analysis that he believes incorrect or make any specific claim as to the Project's potential for impact on wetlands. As a result, the Hearing Officer should not grant a hearing on this criterion.

vii. *Water Supply, Soil Erosion*

The issues raised by Mr. Lattuca with respect to water supply and soil erosion appear largely related to Mr. Lattuca's belief that blasting would be required for construction of the project on the

²⁴ See Exhibit ORS-DB-3.

²⁵ See Exhibit ORS-DB-3.

²⁶ Lattuca Comments at 16.

alternative site. Blasting would likely be required at the other alternative site that was previously discussed (referred to as Alternative Site 1), which is located between the original site and the current alternative site on the eastern side of Orchard Road, and has significant topographical rise. The alternative site to the west of Orchard Road, which is the site for which ORS submitted supplemental testimony and evidence regarding the ability to build the project, does not require any blasting to construct the project because the site is level.²⁷ As a result, there is no potential impact on Mr. Lattuca's well.

Furthermore, contrary to Mr. Lattuca's claim that ORS's materials contained scant information regarding soil disturbance, ORS submitted testimony from Mr. Goddard regarding the need for a construction stormwater permit, with detailed information regarding the types of standard Erosion Prevention and Sediment Control ("EPSC") measures that will be taken during installation of the facility to prevent any soil erosion or water quality issues (see Goddard supp. pf. at 4-5 and *Exhibit ORS-RV-2(Rev.)* at 3). Mr. Goddard further notes that the Project qualifies as a "Low Risk" project based on the Risk Assessment form, and that with the control measures outlined will follow the *Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control*, August 2006. Although Mr. Lattuca asserts that he will personally experience impacts to his property and the surrounding water sources, he does not provide any evidence that the EPSC standards outlined in ORS's plans are insufficient to prevent any adverse effects on soil erosion and water quality, and as a result, this claim is purely speculative and does not warrant a hearing.

viii. *Traffic During Construction*

Mr. Lattuca suggests that there is insufficient information in ORS's materials to determine whether the traffic from construction of the facility will damage Orchard Road, because the road has a 24,000 pound weight limit and is a dirt road. The proposed construction schedule and vehicle use

²⁷ See Revised Site Plan, *Exh. ORS-RV-2(Rev.)*.

has not changed since the initial application, with the exception that if the project is constructed on the alternative site, Wescott Road will no longer be used as the Project location will be closer to Route 140.²⁸ As noted in Mr. Viens' initial testimony (see pf. at 15-16), approximately 8 (+/-) tractor trailers will be used to deliver modules, racking, and inverters to the site. Following this initial delivery, construction-related traffic will be limited to more infrequent deliveries for smaller, necessary electrical supplies and workers entering and exiting the site. These vehicles, and any other construction vehicles, will abide by the state weight limits. ORS presented sufficient evidence in both its initial testimony and supplemental materials to conclude that any transportation impacts as a result of the Project will be temporary, and not unreasonable, and Mr. Lattuca has not pointed to any specific information to suggest that this will not be the case. As a result, there should not be a hearing on this criterion.

ix. *System Stability & Reliability*

Mr. Lattuca suggests that a hearing is required on this criterion because it failed a portion of the Fast Track Analysis, and the alternative location would require a shift in interconnection point. Again, Mr. Lattuca has no particularized interest in this criterion.²⁹ Furthermore, contrary to Mr. Lattuca's assertions on these matters, ORS has addressed these issues both in the direct and supplemental testimonies of Mr. Viens. First, in Mr. Viens' direct testimony, he noted that based on the results of the Fast Track, the Project would need to upgrade a short distance of distribution line on Wescott Road from one-phase to three-phase, and that with this upgrade the Project would not have an adverse impact on GMP's system stability and reliability.³⁰ In his supplemental testimony regarding the alternative site, Mr. Viens then noted the proposed shift in interconnection point to the corner of Wescott and Orchard Roads as opposed to connecting two poles farther up Wescott

²⁸ The Hearing Officer previously found the proposed construction plans would not cause unreasonable congestion or unsafe conditions with respect to transportation. See Proposal for Decision at Finding 48 (May 17, 2018).

²⁹ See *Petition of Swanton Wind LLC*, *supra* note 6.

³⁰ See Viens pf. at 14-15.

Road. Mr. Viens noted that as a result of this change, the upgrades to the poles on Wescott Road are no longer necessary and that GMP has confirmed these changes are acceptable.³¹ Therefore, Mr. Lattuca's claims that there is insufficient evidence regarding the resolution of the failed Fast Track are incorrect and do not rise to the level of a significant issue that would warrant a hearing.

x. *Economic Benefits*

The final criterion that Mr. Lattuca requests a hearing on is economic benefit. Mr. Lattuca's claim of a significant impact is based on the potential for diminished property value, which he asserts amounts to a taking under the Vermont Constitution. As the Commission has regularly held, property values are not an issue within the scope of Section 248 review.³² Mr. Lattuca acknowledges this, but claims that the Vermont Legislature has violated the Constitution by exempting distributed generation facilities from local land use regulation, and that the Commission should therefore hold a hearing on just compensation. This unfounded claim, which is not supported by any citations to caselaw, is a complete departure from Commission precedent, is outside the scope of this proceeding, and has nothing to do with the Section 248 criterion.³³ Economic benefit to the State is a conditionally waived criterion for net-metering projects, and Mr. Lattuca has not presented any specific claim that the Project will not provide economic benefits to the State in the form of taxes and employment of in-state construction workers. Furthermore, a hearing was not granted on speculative assertions regarding property value impacts previously in this proceeding,³⁴ and it should not be granted now.

³¹ Viens supplemental pf. at 10.

³² See, e.g., *Petition of South Forty Solar, LLC*, Case No. 8600, Order (Dec. 18, 2015) (noting that “the valuation of any specific property is not within the scope of this Section 248 review”); citing to *Vt. Elec. Power Co. v. Bandel*, 135 Vt. 141, 145 (1977) (“Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved.”).

³³ The Commission has previously noted that it is without authority to render judgment on the constitutionality of legislative enactments. See, e.g., *Petition of Otter Creek LLC*, Case No. 17-3727-PET, Order (Feb. 13, 2018); see also *Westover v. Vill. of Barton Elec. Dep't*, 149 Vt. 356, 359, 543 A.2d 698, 699–700 (1988) (noting that “the power to decide constitutional issues is vested in the courts” and not with the Commission).

³⁴ See Order re Significant Issues and Notice of Hearing at 8-9 (Feb. 22, 2017).

In sum, Mr. Lattuca's claims regarding the need for a hearing under the criteria listed above are largely speculative or unsupported by fact, and do not rise to the level of a significant issue on which a hearing should be held.

III. Comments from the Department

Following review of ORS's supplemental filing, the Department states that with respect to orderly development, the conclusion that the Project will not unduly interfere with orderly development of the region is even more supported at the alternative site than the original project site. The Department does raise two issues with respect to aesthetics and system stability, but does not suggest that a hearing is necessary for resolution of its concerns.³⁵

First, the Department notes that its aesthetic expert, Mr. Owens, suggests that the access road be moved to help screen the array and that a small area of mitigation planting be placed on either side of the road to help shield views from Orchard Road. Mr. Owens concurs with ORS's expert, Mr. Kane, that the Project will not have an undue adverse impact on visual aesthetics, stating that his assessment of the Project is that the aesthetic impact is "marginally adverse, with the qualification that adversity is a low standard," and that "[i]n the context of the greater area of Middletown Springs, Mr. Owens perceives the project as not very adverse."³⁶ ORS agrees to move the access road as indicated on the Department's diagram, and to discuss small clusters of mitigation plantings at either side of the entrance.

The second issue raised by the Department is a request for ORS to verify its intention to comply with the National Electric Safety Code ("NESC") and to join DigSafe or agree to turn over the ownership of the underground primary line to the interconnecting utility. ORS verifies that it

³⁵ Department Comment at 5-6.

³⁶ Department Comment at 4.

intends for the Project to comply with the NESC and that GMP is the responsible party for registering the underground line from the Project transformer to the riser pole at the road, and ORS has confirmed this with GMP. Finally, the Department requests documentation verifying the new inverters proposed on the alternative site will comply with the UL and IEEE standards in effect as of the original application, and provide updated product specification sheets for these inverters. Specification sheets listing compliance with UL and IEEE standards are provided in *Attachment 1* to this response.

IV. Conclusion

This net-metering application has been the subject of prolonged process, including two evidentiary hearings. ORS's supplemental filing affirming that the Project could be shifted to the alternative site was a good faith effort on the part of ORS and other parties to bring this proceeding to a satisfactory conclusion following years of litigation, and to take reasonable mitigating measures to reduce the aesthetic impact of the Project on the surrounding area as a whole. With the supplemental filing supporting this mitigation measure, ORS provided substantial evidence of the alternative location's compliance with all applicable Section 248 criteria. To now open the proceeding back up to fully litigate the same Section 248 criteria or more that have already been the source of multiple years of scrutiny would unjustly prejudice the parties who have participated so far to great expense, and is not necessary based on the arguments raised by Mr. Lattuca in favor of a hearing.

While ORS appreciates Mr. Lattuca's concerns regarding any potential impact of the Project on his residence, ORS does not believe that Mr. Lattuca has met the required threshold for a hearing on any of the criteria under which he raises an issue. Mr. Lattuca's concerns are largely generalized and speculative, or alternatively based on a misunderstanding or misstatement of fact regarding

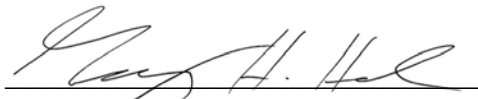
ORS's supplemental filing. As a result, a hearing should not be granted on any of these Section 248 criteria.

However, in response to the Department and Mr. Lattuca's comments regarding aesthetics, ORS is willing to discuss limited mitigation plantings that will further mitigate any view of the Project from Mr. Lattuca's residence to the Project site, and will soften views of the Project from Orchard Road.

In conclusion, ORS submits that no hearing is necessary or warranted, and respectfully requests that the Hearing Officer deny Mr. Lattuca's request for a hearing on all criteria.

DATED this 18th day of December, 2018 at Burlington, Vermont.

BY: ORCHARD ROAD SOLAR I, LLC



Geoffrey H. Hand, Esq.

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Smart String Inverter

SUN2000-33/36/40KTL-US



Smart

- 8 strings intelligent monitoring and fast trouble-shooting
- Power Line Communication (PLC) supported
- Smart I-V Curve Diagnosis supported

Efficient

- Max. efficiency 98.9%, CEC. efficiency 98.5%
- 4 MPPTs for versatile adaption to different layouts

Safe

- DC AFCI compliant to UL 1699B Type I
- Type II surge arresters for both DC and AC
- Residual Current Monitoring Unit (RCMU) integrated inside
- Fuse free design

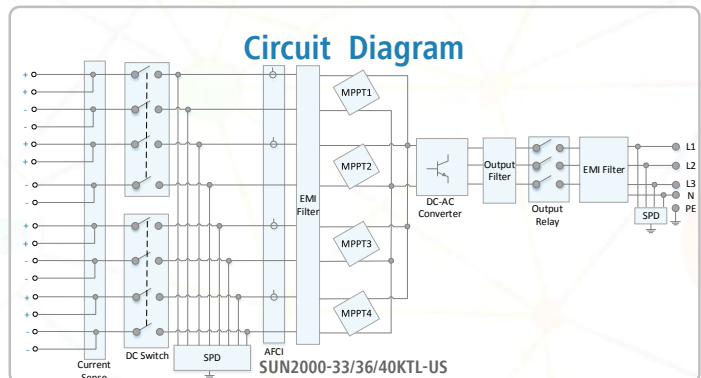
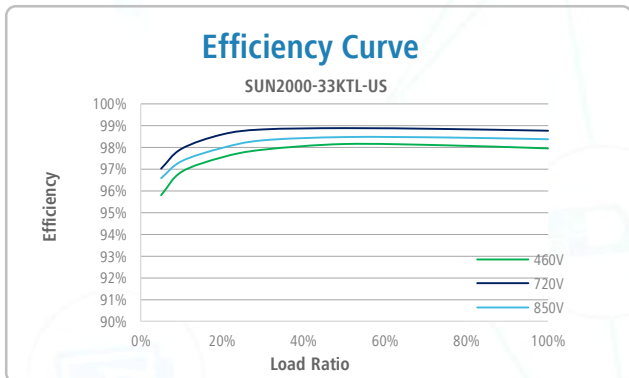
Reliable

- Natural cooling technology
- Protection rating of NEMA Type 4X

Smart String Inverter (SUN2000-33/36/40KTL-US)



Technical Specifications	SUN2000-33KTL-US	SUN2000-36KTL-US	SUN2000-40KTL-US
		Efficiency	
Max. Efficiency	98.9%	98.9%	98.9%
CEC. Efficiency	98.5%	98.5%	98.5%
		Input	
Max. Input Voltage	1,000 V	1,000 V	1,000 V
Max. Current per MPPT	22 A	22 A	22 A
Max. Short Circuit Current per MPPT	30 A	30 A	30 A
Start Voltage	250 V	250 V	250 V
MPPT Operating Voltage Range	200 V ~ 1,000 V	200 V ~ 1,000 V	200 V ~ 1,000 V
Max. Number of Inputs	8	8	8
Number of MPP Trackers	4	4	4
		Output	
Rated AC Active Power	33,300 W	36,000 W	40,000 W
Max. AC Apparent Power	36,600 VA	40,000 VA	44,000 VA
Max. AC Active Power (cosφ=1)	36,600 W	40,000 W	44,000 W
Rated Output Voltage	277 V/480 V, 3W+PE / 3W+N+PE	277 V/480 V, 3W+PE / 3W+N+PE	277 V/480 V, 3W+PE / 3W+N+PE
Rated AC Grid Frequency	60 Hz	60 Hz	60 Hz
Rated Output Current	40.1 A	43.4 A	48.2 A
Max. Output Current	44.1 A	48.2 A	53 A
Adjustable Power Factor	0.8 LG ... 0.8 LD	0.8 LG ... 0.8 LD	0.8 LG ... 0.8 LD
Max. Total Harmonic Distortion	< 3%	< 3%	< 3%
		Protection	
DC Arc Fault Circuit Interrupter		Yes, compliant to UL 1699B Type I	
Input-side Disconnection Device		Yes	
Anti-islanding Protection		Yes	
DC Reverse-polarity Protection		Yes	
AC Overcurrent Protection		Yes	
PV-array String Fault Monitoring		Yes	
DC Surge Arrester		Type II	
AC Surge Arrester		Type II	
DC Insulation Detection		Yes	
Residual Current Monitoring Unit		Yes	
		Communication	
Display		LED Indicators, Bluetooth + APP	
USB		Yes	
RS485		Yes	
Power Line Communication (PLC)		Yes	
		General	
Dimensions (W x H x D, with mounting plate)		930 x 550 x 283 mm (36.6 x 21.7 x 11.1 inch)	
Weight (with mounting plate)		62 kg (137 lb.)	
Operation Temperature Range		-25 °C ~ 60 °C (-13 °F ~ 140 °F)	
Cooling		Natural Convection	
Relative Humidity		0 ~ 100%	
DC Connector		Amphenol Helios H4 or MC4	
AC Connector		Waterproof PG Terminal + OT Connector	
Protection Rating		NEMA Type 4X	
Topology		Transformerless	
		Standards Compliance	
Safety / EMC		UL 1741, UL 1699B, UL 1741 SA, CSA C22.2 #107.1-01, FCC Part 15	
Grid Code		IEEE 1547, IEEE 1547a	



The text and figures reflect the current technical state at the time of printing. Subject to technical changes. Errors and omissions excepted. Huawei assumes no liability for mistakes or printing errors. For more information, please visit solar.huawei.com. Version No.:01-(20170926)

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Application of Orchard Road Solar I, LLC for a)
certificate of public good, pursuant to 30 V.S.A.)
§§ 219a and 248, to install and operate a 500 kW)
group net-metered solar electric generation) CPG #16-0042-NMP
facility located on Orchard Road in Middletown)
Springs, Vermont, to be known as the “Orchard)
Road Solar Project”)

CERTIFICATE OF SERVICE

I, Gillian Bergeron, certify that on December 18, 2018, I forwarded copies of Orchard Road Solar I, LLC’s *Response to Comments Received re Amended Application* to the service list below by the delivery method noted:

By Hand Delivery:

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street, Drawer 20
Montpelier, VT 05620-2701
(2 hard copies per 3/27/17 Order)

By Email and First Class Mail:

Randy J. Miller, II, Esq.
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

Brooke Dingledine, Esq.
Valsangiacomo, Detora & McQuesten, P.C.
172 North Main Street
Barre, VT 05641
(for the Neighbors)

Jim Porter, Esq.
Vermont Public Service Department
112 State Street, 3rd Floor
Montpelier, VT 05620-2601

Ted & Dina Fitzpatrick
12525 Jot Em Down Lane
Odessa, FL 33556

John E. Arsenaault, Chairman
Middletown Springs Planning Commission
P.O. Box 1232
Middletown Springs, VT 05757

Peter and Aileen Stevenson
97 Coy Hill Road
Middletown Springs, VT 05757

David P. Wright, President
Middletown Springs Historical Society, Inc.
10 Park Avenue, P.O. Box 1121
Middletown Springs, VT 05757

Karen L. Gutmann and Larry L. Springsteen
290 West Street
Middletown Springs, VT 05757

Douglas Freilich & Julie Sperling
PO Box 1041
Middletown Springs, VT 05757

Elizabeth W. Cooper
49 Rocks and Trees Lane
P.O. Box 1011
Middletown Springs, VT 05757

Richard Spitalny
24 Tanglewild Road
Chappaqua, NY 10514

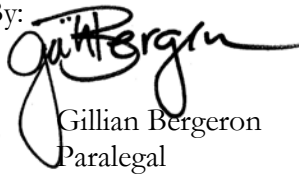
Motion to Intervene Pending (By Email and First Class Mail):

Cindy Ellen Hill, Esq.
Hill Attorney PLLC
144 Mead Lane
Middlebury VT 05753

* Per his request to Applicant, Roy Cooper has been removed from Applicant's mailing list.

Dated at Burlington, Vermont this 18th day of December, 2018.

By:



Gillian Bergeron
Paralegal