

February 5, 2019

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:

Pursuant to the PUC's procedural Order dated January 30, 2019, enclosed please find Applicant Orchard Road Solar I, LLC's ("ORS") *Response to Supplemental Comments of Russell Lattuca*, accompanied by *Exhibit ORS-MK-6 (Supplemental Viewshed Figures – Revised Site Location)* and *Affidavit of Mark Kane*. In addition, ORS has revised the Project site plan to reflect a minor change to the location of the access road that it previously committed to in response to comments submitted by the Department of Public Service. The revised site plan is enclosed as *Exhibit ORS-RV-2 (Rev. 2)* and supported by the *Affidavit of Rod Viens*.

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 SUPPLEMENTAL
COMMENTS OF RUSSELL LATTUCA**

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 Neighbors¹ participating in the proceeding. On November 30, 2018, comments on ORS’s supplemental materials were submitted by the Department of Public Service (“DPS” or “the Department”), Neighbors², and adjoining landowner Russell Lattuca,³ who has not previously participated in the proceeding. ORS responded to these comments on December 18, 2018. Following the Hearing Officer’s extension to the comment period for Mr. Lattuca to fully review ORS’s filing materials, Mr. Lattuca filed supplemental and responsive comments on January 22, 2019. In addition to the response already provided by ORS on the issues raised by Mr. Lattuca on December 18, 2018, ORS provides the following further response to the supplemental information and attachments submitted by Mr. Lattuca on January 22nd. Because Mr. Lattuca has

¹ Neighbors include Richard Spitalny, Robert & Karen Galloway, Daniel McKeen, and Neil & Thomas Russell. Neighbors’ filing represented that they were also 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.

² Neighbors comments were fully supportive of ORS’s materials and did not raise any substantive issues.

³ Mr. Lattuca also filed a motion to intervene and motion to move the proceeding to ePUC. On January 25, 2019, he Hearing Officer issued an order denying Mr. Lattuca’s motion to migrate the proceeding to ePUC. On January 30, 2019, the Hearing Officer issued an order Mr. Lattuca intervention in the proceeding on two limited issues: 1) potential impacts on the view from Mr. Lattuca’s residence, and 2) potential impacts on Mr. Lattuca’s well.

since been granted intervention on the limited issues of the view from his residence and potential impacts to his well, ORS's response is limited to these issues.⁴

As discussed in more detail below, Mr. Lattuca has not met the threshold for a significant issue with respect to either of the particularized interests on which he has standing in this proceeding, and therefore the Hearing Officer should not grant a hearing on either issue.

I. Aesthetic Impact on Mr. Lattuca's Residence

Mr. Lattuca's comments do not raise a significant issue with respect to views from his residence; in fact, the available information shows that Mr. Lattuca will have an extremely limited view of a very small portion of the Project site. Mr. Lattuca's supplemental comments were accompanied by several figures of views toward the Project site from Mr. Lattuca's residence and along Orchard Road, including several figures attempting to show possible views of the Project from Orchard Road.⁵ Mr. Lattuca also included a hand-drawn elevation map.⁶ ORS's aesthetics expert, Mr. Kane, has reviewed these materials, and produced two simulations as well as an elevation drawing showing the topography between Mr. Lattuca's residence and the Project.⁷

With respect to the view of the Project from Mr. Lattuca's residence, Figures 5 and 6 in *Exhibit ORS-MK-6* show the limited potential impact of the Project on the viewshed of Mr. Lattuca's residence using his photos. This simulation was completed using a 3D model of the Project that

⁴ ORS stands on its previous response with respect to Mr. Lattuca's arguments on ORS's vested rights in the net-metering rule (Commission Rule 5.100) in effect at the time the application was submitted in June 2016. For the reasons stated in that response, ORS maintains that it has a valid interest and that it is vested in the prior Rule 5.100. Nonetheless, ORS also reiterates that the Commission has the authority under Rule 2.107 to waive its own rules for good cause, and requests that in the alternative, the Commission issue a waiver pursuant to this authority and apply the version of Rule 5.100 in effect at the time of the application.

⁵ See Lattuca Supplemental Comments, Attachment A.

⁶ See Lattuca Supplemental Comments, Attachment B. In addition to Attachments A and B, Mr. Lattuca included figures showing the location of the Project relative to the prior site from vantage points across the valley. As Mr. Lattuca's intervention is limited to views from his residence, these views are not within the scope of Mr. Lattuca's interests and therefore ORS has not responded to these or other attachments pertaining to issues outside of Mr. Lattuca's intervention.

⁷ See *Exhibit ORS-MK-6*.

included reference points (i.e. edges of the roadway, topographic features, the tree line) observed in the provided photos. As noted by Mr. Kane in the attached affidavit, while these reference points allow for an accurate determination of the position of the array within the landscape, the simulations are still approximate because they rely on Mr. Lattuca's photos, which may have either been cropped or taken using a telephoto lens. As a result, it is likely that the perspective shown on the simulation presents a closer impression of the distant field where the Project will be located and is not reflective of actual human perception from that viewpoint.⁸ Even with this potential exaggeration, however, the view is limited to a small portion of the Project. In full leaf-off conditions (as seen in the photo), only the very southeastern end of the Project will be visible through the trees as the southwestern portion of the project is mostly screened by the intervening vegetation and landform. This limited view is further mitigated by the distance (approximately 1,300 feet) between the closest panel and Mr. Lattuca's residence. In leaf-on conditions, Mr. Lattuca's view of the Project would be further reduced by intervening vegetation.⁹ Thus, even assuming that the photos submitted by Mr. Lattuca represent an accurate viewshed, Mr. Lattuca would have, at most, a very limited, seasonal view of the Project at considerable distance.

Based on this assessment, and the accompanying visual simulations, there is no potential for significant issue under the aesthetics criteria with respect to the view of the Project from Mr. Lattuca's residence. However, in an effort to address Mr. Lattuca's concerns, ORS has proposed some mitigation plantings between the Project and Mr. Lattuca's residence to further reduce any

⁸ In addition to the simulation from Mr. Lattuca's residence, ORS has submitted a simulation view of the Project from Orchard Road using another of the photos submitted by Mr. Lattuca. Although Mr. Lattuca's intervention on aesthetics is limited to the view from his residence, ORS was concerned about the representation of the Project along this location provided by Mr. Lattuca in his simulations, which show the Project as much larger and closer to the road than it will actually be.

⁹ See Kane Affidavit ¶ 5-8.

potential views.¹⁰ The proposed plantings, as shown in Figure 7 to *Exhibit ORS-MK-6*, are deciduous shrubs that during the summer months, in combination with the existing hedgerow material along the stream and property boundary, will screen Mr. Lattuca's view of the Project entirely as they grow over the first five years (to a height of 8-10 feet).¹¹ In the winter, the stem density of the plantings will increase over time. This density, combined with the existing hedgerow material, will either screen or greatly reduce the already limited visibility of the project panels. As a result, Mr. Lattuca will have almost no view of the Project. As such, there is no potential for significant impact and a hearing is therefore not necessary or warranted on this issue.

II. *Mr. Lattuca's Well*

The second issue on which Mr. Lattuca has been granted intervention is the Project's potential impact on his well, but Mr. Lattuca's comments on this similarly fail to raise a significant issue. Mr. Lattuca's supplemental comments did not contain any additional information on the basis for his concern regarding potential impacts from the Project beyond what was included in his motion to intervene.¹² As ORS clarified in its previous response to Mr. Lattuca's comments,¹³ Mr. Lattuca's concern regarding his well is based on the misunderstanding that blasting would be

¹⁰ ORS has also proposed some mitigation plantings on either side of the access road to the Project along Orchard Road, per the recommendation of the Department. These plantings will soften and reduce views of the Project from Orchard and Westcott Roads. See Kane Affidavit at ¶ 12-14.

¹¹ See Kane Affidavit at ¶ 15.

¹² Mr. Lattuca stated there that: "Mr. Lattuca's residence and property are served by a well, which, on information and belief, is hydrologically connected to the stream which parallels the proposed new project site, and the wetland underlying the proposed new project site. Previous prefiled rebuttal testimony submitted by the applicant's witness Rod Viens presented evidence that the existing topography of the now-proposed project location was inappropriate for solar installation, and that grading would be required, but impractical due to the extent of bedrock. It was, admittedly, confusing as to which of the alternative sites Mr. Viens was referring with this; however, according to the Agency of Natural Resources' online interactive Natural Resource Atlas, toggled to 'bedrock outcrops', the now-proposed site is fully underlain by the very same bedrock outcrop that underlies the other potential alternative site, so it is difficult to ascertain why the concern would be different between the two potential alternative sites. Alteration of this hydrogeological context by blasting or removing bedrock related to a wetlands system is highly likely to affect the groundwater properties on an adjoining parcel -- that is, Mr. Lattuca's well." *Motion* at ¶ 4.

¹³ See ORS Response (12/18/18) at pp 11-12.

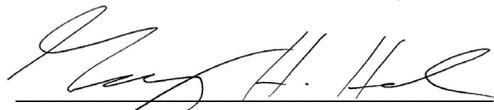
required for construction of the project on the alternative site. However, as ORS clarified, the revised Project location does not require any blasting to construct the project because the site is level. As a result, there is no potential impact on Mr. Lattuca's well. Thus, there is no basis for a hearing on this issue.

Conclusion

As indicated in the attached aesthetics figures and affidavit from ORS's aesthetics expert, there is no potential for significant impact of the Project on Mr. Lattuca's view from his residence. The limited potential view of the Project from over 1,000 feet away for a portion of the year has been further mitigated by proposed plantings from ORS, which will heavily screen the small portion of the Project that may be visible. As a result, Mr. Lattuca will have almost no view of the Project. Furthermore, there is no potential impact on his well as a result of blasting related to the Project, as no blasting is proposed on this site. ORS therefore respectfully requests that the Hearing Officer hold that there is no need for a hearing on either of these issues, and instead issue a proposal for decision on the amended Project as soon as possible.

DATED this 5th day of February, 2019 at Burlington, Vermont.

BY: ORCHARD ROAD SOLAR I, LLC



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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 February 5, 2019, I forwarded copies of Orchard Road Solar I, LLC’s *Response to Supplemental Comments of Russell Lattuca* to the service list below by the delivery method noted:

By Hand Delivery:

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(2 hard copies per 3/27/17 Order)

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

Dated at Burlington, Vermont this 5th day of February, 2019.

By: 
Gillian Bergeron
Paralegal