

March 8, 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 February 21, 2019, enclosed please find Applicant Orchard Road Solar I, LLC's *Response to the Second Supplemental Comments and Motion to Reconsider, Clarify, & Expand Scope of Intervention of Russell Lattuca*.

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 LATTUCA
FEBRUARY 20, 2019 FILING**

On February 20th, 2019, Adjoining Landowner Russell Lattuca filed second supplemental comments regarding Applicant Orchard Road Solar I, LLC’s (“ORS”) February 5, 2019 response to Mr. Lattuca’s initial supplemental comments, as well as a motion to reconsider and clarify the scope of his intervention in this matter. On February 21, 2019, the Hearing Officer set a deadline for replies to Mr. Lattuca’s February 20th filing, and ORS hereby files the following response.

I. *Lattuca Second Supplemental Comments and Response to ORS’s February 5th, 2019 Filing*

Mr. Lattuca’s second supplemental comments and Attachments G and H respond to ORS’s proposed mitigation planting plan and visual simulations of the Project as shown on photographs submitted by Mr. Lattuca.¹ With respect to the visual simulations, ORS prepared and submitted these for the purpose of correcting inaccurate simulations submitted by Mr. Lattuca,² and showing the limited potential view of the Project that Mr. Lattuca will have from his residence during leaf-off conditions. ORS used Mr. Lattuca’s photos as a means of comparison to the evidence he himself submitted. As a result, the opinion submitted by Mr. Lattuca from Landworks with respect to the

¹ See Lattuca Supplemental Comments (Jan. 22, 2019.), Attachment A.

² Mr. Lattuca included simulations of the Project along Orchard Road on pages 5, 7, and 9 of Attachment A.

accuracy of these photos in Attachment H is somewhat disingenuous. But ORS disagrees that revised simulations using independent photos would show any significant difference – Mr. Lattuca’s own images demonstrate the minimal view of the project from his property. ORS further notes that the Landworks’ opinion does not include an assessment of the accuracy of Mr. Lattuca’s own simulations, nor does it render an opinion regarding the aesthetic impact of the Project itself. The fact that Mr. Lattuca’s own aesthetic expert does not offer the opinion that the view of the project would be even adverse (let alone unduly adverse) is telling, but not surprising, given the exceedingly limited view of the project from his property.

Finally, regarding the assessment of ORS’s proposed mitigation plantings, ORS notes that the plantings near the entrance road were proposed by the aesthetic expert for the Department of Public Service, which ORS agreed to include. In addition, the plantings between Mr. Lattuca’s house and the Project are simply intended to further mitigate what is already a very limited viewshed from Mr. Lattuca’s property and is a good faith effort by ORS to address Mr. Lattuca’s concerns, despite the minimal impact of this viewshed.³ ORS has reached out to Mr. Lattuca through counsel multiple times to attempt to consult with him regarding specific requests with respect to the mitigation planting to try to cooperatively resolve his concern but has, as of yet, received no substantive response to this outreach.

With respect to Attachment G, which is a supplemental letter from Birchline Planning LLC, and Section V of Mr. Lattuca’s comments, ORS submits that these relate to the orderly development criterion, and are therefore outside the scope of Mr. Lattuca’s intervention. As Mr. Lattuca does not have standing on this issue, this letter and Mr. Lattuca’s arguments on this issue are irrelevant.

³ ORS notes that landscape screening utilized in other proceedings, as cited by Mr. Lattuca, is irrelevant to this case. Reasonable mitigation measures are assessed on a site-by-site basis, and ORS has submitted expert testimony from its aesthetic expert stating that the measures proposed by ORS meet this standard.

Furthermore, for the reasons stated in its previous responses to Mr. Lattuca's comments, the Project is vested under the prior net-metering rule in place at the time the initial application was filed,⁴ and therefore Birchline and Mr. Lattuca's arguments that the application is "new" are not applicable. Likewise, because the application is vested in the rules in place at the time it was submitted, Commission Rule 5.800 does not apply.

Finally, ORS notes that the letter from the Vermont Division for Historic Preservation ("VDHP") referred to in Mr. Lattuca's comments was filed by VDHP on January 20, 2019.

For the above-stated reasons, Mr. Lattuca's second supplemental comments do not introduce any additional information that meets the threshold for a significant issue with respect to the particularized interests on which he has standing in this proceeding. ORS therefore maintains that the Hearing Officer should not grant a hearing on either of the issues on which Mr. Lattuca has standing.

II. *Lattuca Motion to Reconsider, Clarify, and Expand Scope of Intervention*

ORS objects to Mr. Lattuca's motion to reconsider, clarify, and expand the scope of intervention. Mr. Lattuca does not have a particularized interest in any other criteria beyond his current scope of intervention, and the Hearing Officer should not expand this intervention any further. ORS relies on its previous arguments regarding why the application is vested in the prior net-metering rule, or in the alternative, should qualify for a waiver under Rule 2.207, and requests that the Hearing Officer deny Mr. Lattuca's motion.

Conclusion

Mr. Lattuca's second supplemental comments do not introduce any new information that rises to the level of a substantial issue that warrants a third hearing for this proceeding, and his motion for reconsideration of the scope of his intervention should be denied. ORS respectfully

⁴ Or, alternatively, should qualify for a waiver of the new net-metering rule under PUC Rule 2.207.

renews its request 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 8th day of March, 2019 at Burlington, Vermont.

BY: ORCHARD ROAD SOLAR I, LLC

A handwritten signature in black ink, appearing to read "Geoffrey H. Hand", written over a horizontal line.

Geoffrey H. Hand, Esq.

Victoria M. Westgate, Esq.

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**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Application of Orchard Road Solar I, LLC for a)
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§§ 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 March 8, 2019, I forwarded copies of Orchard Road Solar I, LLC’s *Response to the Second Supplemental Comments and Motion to Reconsider, Clarify, & Expand Scope of Intervention of Russell Lattuca* 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.
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1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

Allison Bates Wannop, Esq.
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John E. Arsenault, Chairman
Middletown Springs Planning Commission
P.O. Box 1232
Middletown Springs, VT 05757

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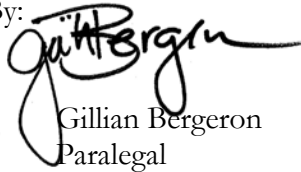
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24 Tanglewild Road
Chappaqua, NY 10514

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

Dated at Burlington, Vermont this 8th day of March, 2019.

By:



Gillian Bergeron
Paralegal