

Sept. 9, 2016

Judith Whitney, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701

Re: CPG #16-0042-NMP

Dear Ms. Whitney,

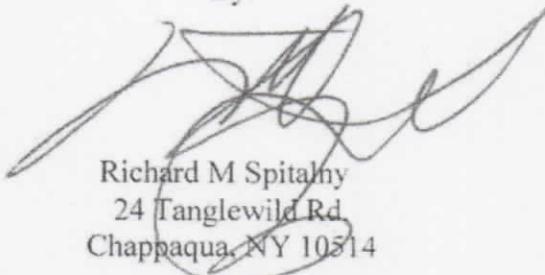
Please find Neighbors of Orchard Road Solar I's Corrected Reply to Response from Applicant. Please discard the document filed on Sept. 6 and replace it with the document enclosed. We apologize for the error.

Hard copies are being mailed to the Service List, as noted on the Certificate of Service.

Thank you.

On behalf of Neighbors of Orchard Road Solar I,

By:



Richard M Spitalny
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Chappaqua, NY 10514

914-329-9690
rspitalny@hotmail.com

**Neighbors' Reply to Comments re: Dunkiel Saunders Elliot Raubvogel & Hand, PLLC
Letter of August 18, 2016 In Response To PSB's August 4, 2016 Order:**

On August 4, 2016 the Public Service Board ordered Applicant to respond to preliminary comments by Richard Spitalny; Robert and Karen Galloway, as well as the Rutland Regional Planning Commission. *Dunkiel Saunders Elliot Raubvogel & Hand, PLLC's* August 18, 2016 letter to the PSB, also sent via first class mail to Mr. Spitalny, the Galloways, and the RRPC, served as Applicant's response.

Our response to the Applicant's August 18 letter is below, in summary form because the details are fleshed out in our Comment Letter and Motions to Intervene. As demonstrated in our Comment Letter, the Application is fundamentally incomplete. Applicant's attorneys' reply to preliminary comments by Mr. Spitalny, the Galloways, and the RRPC does not sufficiently address the numerous deficiencies, omissions and erroneous statements in its application.

The above referenced letter from Applicant's attorney still refers to residences to the north being over 3,000 feet away. This simply is not true. Tom Russell's historic house and barn at 300 West Street are less than 2,000 feet away. "Orchard View Farm", located at 290 West St., owned by Karen Gutmann and Larry Springsteen is located approximately 1,650 feet north of the proposed project site. Further, the site can be seen from the second floor windows of the historic house at 30 Orchard Street (on the west side), less than 1,000 feet from the proposed project site.

In their letter Mr. Hand and Ms. Westgate state Applicant only need be concerned with views from 'public vantage points in the area'. However, according to the Vermont Supreme Court in In re Petition of Rutland Renewable Energy, LLC, 2016 VT 50, the Public Service Board "can and should consider all vantage points, including from private property." Further, the proposed Project site is visible from numerous public vantage points, including Wescott Road, Spruce Knob Road, Coy Hill Road, and Norton Road, among other places, in addition to Route 140.

As can be read throughout the Comment Letter and his Motion To Intervene, Mr. Spitalny's claims are neither 'general' nor 'speculative'.

Mr. Kane's August 10, 2016 letter to Mr. Viens is in response to Mr. Bove's August 2, 2016 letter, on behalf of the RRPC, to the PSB. In his letter, Mr. Kane makes a few points. Please note our comments below, using the same numbering as in Mr. Kane's letter:

1) Ignores the public roads mentioned above, and again states the closest house is over 3,000 feet away ... when ... as stated above there are two Historic house nearby in addition to 'Orchard View Farm'. e.g. one less than 1,000 feet away; another approximately 1,650 feet away and the other less than 2,000 away.

2) Reference to pictures and studies by SE Group, as part of their Quechee Analysis, taken from the north, looking south at the proposed project site not being included in the Application raises the question: Why were they not included? Once the PSB finishes reviewing the Comment Letter, including the many pictures we have provided looking south, from the north, we expect the PSB will know why those pictures were not included. (Because they would clearly demonstrate the proposed Project would unduly adversely affect the aesthetics.)

- 4) The vegetation Applicant plans on leaving does not mitigate views from public roads and homes, to the north, that are higher in elevation than Wescott Road and the proposed Project site.
- 5) We find it of note that Applicant plans on planting trees as part of their mitigation plan on the Querreys' private property, outside the 5 acre site. This is completely inappropriate, as they have no way of assuring that those trees will remain.
- 6) To imply that because what is seen from the north would be the backs of the 2,250, nine foot tall panels, and their shadows and that this somehow decreases visibility of the project and helps it blend in with the mass of the existing hillside and vegetation is, candidly, for lack of a better word, absurd. The proposed Project site is currently a meadow, with the corresponding seasonally changing colors of its vegetation; not metal, industrial installations dark-blue/gray in color.
- 7) Because the solar array starts low and gets higher to the south more (not less) of it will be visible than if the land sloped lower towards the south.

Mr. Viens' August 16, 2016 letter to Mr. Spitalny is in response to Mr. Spitalny's July 28, 2016¹ letter to the PSB as well as prior emails from Mr. Spitalny to the PSB. Please note our comments below, pertaining to Mr. Viens' letter below:

- As is demonstrated elsewhere in the Historic section of the Comment Letter, the July 26, 2016 letter from the Vermont Department of Historic Preservation is incorrect and incomplete. The house and barn at 30 Orchard Rd are both historic buildings, and the proposed Project site can be seen, year round, from the second floor windows of the house. Further, the house and barns at 300 West St., less than 2,000 north of the proposed Project site, are also historic buildings and the proposed project site can be seen, year round, from there as well.
- Experts with experience in related construction tell us that a significant amount of soil will be disturbed in order to build the 12 foot wide gravel road, and the 10 foot x 20 foot concrete slab to house the equipment and to adequately anchor 2,250 panels that are each nine feet tall, with a surface of over 21 square feet, weighing more than 52 pounds, such that they will withstand the winds and snow at the proposed elevation of over 1,000. Being that the proposed Project site is above and about 1,400 from the Poultney River as well as wetlands that are even closer, the soils must be tested to ensure that such disturbance will not contaminate the river or people's water supplies.
- We appreciate Applicant's offer to provide two photo simulations from the location of our choice. We have selected one from the location the Fitzpatrick's have indicated as the site of their home to be built on the property to the west and contiguous with the

¹ In his first sentence, Mr. Viens refers to a letter from Mr. Spitalny dated July 29, 2016. The letter sent to the PSB and service list was dated July 28, 2016. There were numerous emails about this time to the PSB but there does not seem to be a July 29th letter.

proposed project site. The other simulation we request is from the Galloway home on Norton Road. Given the numerous other views of the site, such as from Spruce Knob Road, we think more than two simulations should be provided.

- The meeting originally scheduled with Mr. Spitalny for April 25th was to review alternative locations for the proposed Project site. However, once Mr. Spitalny learned that one of the alternative sites he had in mind was designated as wetlands and that a second alternative site would be highly visible from public roads and homes to the north, he cancelled the meeting.
- The assertion that references in SE Group's report to the closest residences being more than 3,000 feet from the proposed Project site does not apply to 300 West Street (or others on West St.) makes no sense. That address, like others, is indeed to the north, with structures on a portion of the hillside. "No or limited visibility" is an interesting term. Obviously nobody from the SE Group looked out of the window of Mr. Russell's home. Of if they did, it was obviously not in the winter. This is one the oldest homes in Middletown Springs. It is, as documented elsewhere, in the Comment Letter and in Tom and Neil Russell's Motions To Intervene of great historic importance.
- We do not dispute that the closest solar panel might be approximately 400 feet from the house at 67 Wescott Road. However, in some places in the Application Mr. Viens himself states that the project (not the closet panels) are approximately 400 feet from said house. The owner of that house, Mr. Spitalny, continues to make the point that the 7 to 8 foot tall fence will be approximately 300 feet (not 400 feet) from his house and just 185 feet from his property.
- Regarding the assertion that there is not any mapped deer wintering area is not the point. These maps are not made each year. If you use the maps in the Middletown Springs current Town Plan, then the proposed Project site is still a working orchard. Once the owners of the orchard stopped running it as a commercial concern and the deer gates that used to block access to the orchard from the southern portion of Orchard Road and the western portion of Wescott Road were removed, large number of deer winter in the location of the proposed Project site. Those of us who live here know this to be true.
- The statement that Woodcock do not have necessary habitat associated with their life cycle is not the case, according to the National Audubon Society:

"Although woodcocks nest in forested areas, they prefer to perform their courtship displays in more open habitat. For this reason, old pastures and the margins of wooded wetlands are some of the best places to look for singing woodcocks."
- The landowners to the west, Ted and Dina Fitzpatrick, signatories to the Comment Letter, dispute Applicant's assertion that Applicant has provided a plan with adequate mitigation. For Applicant to continue to assert that 2,250 solar panels that will face the Fitzpatricks as they look north from their new home, with just a 50 foot set back, will not

be shocking to the average person and not have an unduly adverse impact on aesthetics is simply not credible.

- As stated above, in the third bullet point, without soil testing Ms. Baron's conclusions in her natural resources report remain questionable.
- Mr. Spitalny appreciates Applicant's offer to discuss specific mitigation steps to further mitigate the view from his house at 67 Wescott Road should Applicant receive a Certificate of Public Good.

Above and elsewhere in the Comment Letter we have cited numerous deficiencies, omissions and erroneous statements by Applicant and again ask the PSB to require Applicant to prepare and submit an accurate and complete Application, as the current Application is incomplete and inaccurate and therefore does not provide an accurate picture of this Project to the Board for its review.

Dated this 6th day of September, 2016,

By:



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Chappaqua, NY 10514

914-329-9690
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**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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) CPG #16-0042-NMP
group net metered solar electric generation facility)
located on Orchard Road in Middletown Springs,)
Vermont, to be known as the "Orchard Road)
Solar Project")

CERTIFICATE OF SERVICE

I, Richard Spitalny, on behalf of myself and Ted & Dina Fitzpatrick, Daniel McKeen & Ellen Secord, Neil & Thomas Russell, Elizabeth Cooper, Karen & Robert Galloway, Peter & Aileen Stevenson, Karen Gutmann & Larry Springsteen, Doug Freilich & Julie Sperling, and Roy Cooper certify this on date, I mailed copies of the enclosed documents to the below Service List.

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

Middletown Springs Planning Commission
PO Box 1232
Middletown Springs, VT 05757

Victoria Westgate
Geoffrey Hand
Dunkiel Saunders Elliott Raubvogel & Hand
PO Box 545
Burlington, Vermont 05402-0545

Green Mountain Power Corporation
163 Acorn Lane
Colchester, VT 05446

Middletown Springs Selectboard
PO Box 1232
Middletown Springs, VT 05757

Vermont Agency of Natural Resources
Secretary's Office
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Director of Public Advocacy
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Rutland Regional Planning Commission
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Rutland, VT 05702

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Middletown Springs, VT 05757

Russell, Thomas
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Middletown Springs, VT 05757

Cooper, Roy
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Middletown Springs, VT 05757

Marcy, Marilyn & Labate, Maureen
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Middletown Springs, VT 05757

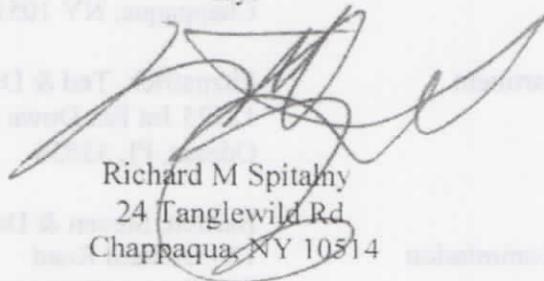
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Parker, Jerry
425 East Road
Poultney, VT 05764

Russell, Neil & Elizabeth
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West Rutland, VT 05777

Dated this 9th day of September, 2016

By:



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