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July 19, 2017

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

RE: 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, for a 500 KW interconnected group net-metered solar electric generation system in Middletown Springs, Vermont

Dear Ms. Whitney:

Enclosed for filing with the Board in the above referenced matter please find an original and six copies of Neighbors' Opposition to Applicant's Motion to Strike Portions of Neighbors' Prefiled Testimony along with a Certificate of Service evidencing service of same.

Thank you for your kind assistance in this matter.

Very truly yours,

L. Brooke Dingledine, Esq.

LBD/sac
Enclosures
cc: Certificate of Service

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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, for a 500 kW)
interconnected group net-metered solar electric)
Generation system in Middletown Springs, Vermont)**

**NEIGHBORS' OPPOSITION TO
APPLICANT'S MOTION TO STRIKE PORTIONS OF
NEIGHBORS' PREFILED TESTIMONY**

NOW COME Richard Spitalny, Robert & Karen Galloway, Daniel McKeen, and Neil & Thomas Russell, by and through their attorney L. Brooke Dingleline, Esq. of the firm Valsangiacomo, Detora & McQuesten, P.C. and hereby opposes the Applicant's Motions to Strike Portions of Neighbors' Prefiled Testimony as follows:

INTRODUCTION

In its instant motion, Orchard Road Solar I, LLC ("ORS" or "Applicant") requests that the Hearing Officer strike portions of the prefiled testimonies of Neighbors Ted and Dina Fitzpatrick, Karen L. Gutman and Larry L. Springsteen, Richard Spitalny, Roy Cooper, and Peter and Aileen Stevenson, and a portion of an exhibit of witness Todd Thomas, to the extent that they address issues outside the scope of the above-referenced proceeding, lack

personal knowledge or requisite expertise, or constitute hearsay. More specifically, ORS asserts that portions of these prefiled testimonies present information that is not relevant to the issues before the Board pursuant to its February 22, 2017 Order Re: Significant Issues and Notice of Hearing (the “Order”), or otherwise violate the Vermont Rules of Evidence. However, Neighbors contend that the concerns regarding noise, interference with electronic equipment, and solar glare relate to the issue of aesthetics since they will affect the use and enjoyment of the abutting neighbors’ property to the west (Fitzpatricks) and very nearby neighbor’s property (Spitalny) which is abutting the Fitzpatricks’ property. Moreover, Applicant is incorrect with regard to evidence regarding property valuation that have been squarely put into play by the Hearing Officer by virtue of the very Order that Applicant refers to in seeking the exclusion of evidence. Moreover, any Vermont landowner is statutorily deemed competent to testify regarding the value of their property which is relevant to the determination of the Orderly Development criterion as indicated by the Hearing Officer and as referenced in the expert report of Neighbors’ Order Development expert, Todd Thomas. Therefore, Neighbors respectfully request that the Hearing Officer deny the Applicant’s Motion to Strike.

BACKGROUND AND STATEMENT OF LAW

In the February 22, 2017 Order Re: Significant Issues and Notice of Hearing (the “Order”), the Hearing Officer ruled that the significant issues in this Application that are subject to technical hearing concern orderly

development, visual aesthetics, and above-ground historic sites. Order at 6-13. The Order states that “[t]o the extent parties wish to submit testimony or evidence at a hearing *on orderly development, aesthetics, or above-ground historic sites*, they shall provide such testimony or evidence from witnesses with expertise on the relevant issues.” *Id.* at 16 (emphasis added).

However, the Order further states that:

Orderly Development of the Region [30 V.S.A. § 248(b)(1)]

A number of the Neighbors argue that the Project does not comply with the Town Plan as it pertains to scenic and agricultural resources. Specifically, the Neighbors contend that the Project runs counter to the "specific guiding principles for development" set forth in the Town Plan, including the preservation of agriculture, the protection of scenic ridge lines, and the identification by the Town Plan of the ridge line of Coy Mountain, on which, according to the Neighbors, the Project would be sited, as a "Highland Conservation Area." The Neighbors maintain that the Project "would radically disrupt the rural beauty of one of the Town's best known hills, the southern hillside component of Burnham Hollow" and that "it is the general goal of Town policy to conserve the beautiful and scenic rural nature of the Town by supporting agriculture and not industrial development."

The Neighbors further contend that **the Project is not in compliance with the Rutland Regional Plan** adopted on June 16, 2015, emphasizing that **the Regional Plan "stresses that new generation facilities must avoid undue adverse impacts on local communities and the environment" and states that "[t]here is concern that these systems in particular could be responsible for an undue loss of prime agricultural land, forests, wetlands and property values of neighbors."**

The RRPC comments that, with respect to the orderly development criterion of 30 V.S.A. § 248(b)(1), the area in which the Project is proposed to be sited

"is one of the most rural locations in the region for a project of this size" and that the net-metered group being served is located approximately 70 miles away. The RRPC adds that the Project would receive "zero beneficial REC and siting pricing 'adjustors' under the draft Board Rule 5.100."

The Applicant states that some of the renewable energy credits ("RECs") generated by the Project will be the property of Goddard College, the oftaker of the power generated by the Project, while a portion will be retained by the Project owner. In the application, the executive vice president of groSolar, the developer of the Project, testifies that the Project "will not utilize land or resources that are otherwise specifically contemplated for other forms of development under either the town or regional plans."

Based on the filings, we find that the comments have raised issues concerning orderly development that are not directly addressed in the application and therefore merit further scrutiny. Accordingly, we find that a hearing on the issue of orderly development is warranted.

Order at pp. 6-8 (emphasis supplied). Thus, the objection that property values are outside the scope of this proceeding must be overruled because the hearing officer has allowed for the issues that were raised (which include property values) to be addressed at the hearing.

Vermont Statutes and Rules of Evidence clearly allow for excluding irrelevant testimony from the record. See 3 V.S.A. § 810(1) ("[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded") and V.R.E. Rule 402 ("Evidence which is not relevant is not admissible."). Under V.R.E. Rule 401, relevant evidence means evidence "having any tendency to make the existence of any fact *that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence"

(emphasis added).

In the case at bar, the Neighbors' orderly development expert witness, Todd Thomas, explained the relevance of property values as they relate to the municipal and regional plans, and concluded that, "[t]his report has shown that the Orchard Road Solar Project unduly interferes with the orderly development of the region because its visible location runs contrary to the very reason someone would want to invest and live in this bucolic area." He explained in paragraph his report the following:

As the preceding paragraphs have shown, the Orchard Road Solar Project unduly interferes with the orderly development of the region because it contravenes clearly written standards in both the regional and town plans. It is also easy to argue that the Orchard Road Solar Project unduly interferes with the orderly development of the region because its very visible location runs contrary to very reason someone would want to live in this bucolic area. A choice to vacation, buy property or to live full-time in Middletown Springs is undoubtedly made with an eye towards enjoying its natural and beautiful mountain setting. The proposed Orchard Road Solar Project would blemish this natural mountain setting from too many vantage points in the community, which far outweighs the public good that producing renewable energy would provide at this specific location. The Orchard Road Solar Project, if constructed, would be completely out of character with the surrounding landscape of Middletown Spring's hillsides. **This fact that many neighboring properties cannot be adequately screened from view of this solar farm will result in diminished property values and undermine the reason why many of the Neighbors invested in Middletown Springs.**

See Prefiled testimony of Todd Thomas at par. 4. Therefore, under V.R.E. Rule 401, Todd Thomas' testimony provides that the effect of the project on

property values in the area is relevant evidence because of its “tendency to make the existence of any fact *that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence” (emphasis added), in this case, whether the project is in compliance with the municipal and regional plans which would be undermined by the siting of the project in the beautiful natural mountain setting which will affect investment and tourism in the area.

Moreover, with regard to whether landowners have person knowledge or whether they are competent to testify about property values, Vermont state statute specifies that owners of real property are competent to testify as to the value of their own property:

12 VSA § 1604. Value of property; owner as competent witness

The owner of real or personal property shall be a competent witness to testify as to the value thereof.

12 V.S.A. § 1604. Thus, each of the neighbors are competent as a matter of law, to testify as to the value of their property and the diminution thereof by the siting of a solar array in the center of the bucolic viewshed which defines Middletown Springs. Thus the objection that property values are not within the personal knowledge of the neighbors or that the neighbors are not qualified experts must be overruled.

Finally, Neighbors oppose ORS’s request that the Hearing Officer strike Exhibit NN, which is a petition signed by 118 residents

of Middletown Springs expressing opposition to the project including concerns about aesthetics and orderly development. There is also an objection at to Mr. Spitalny's testimony establishing the foundation for the exhibit. The Applicant objects on hearsay grounds and claims the exhibit will be more prejudicial than probative under Rule 403. With all due respect, the professional Hearing Officer and PUC Board members are not lay jurors who will be unduly influenced by the admission of a community petition; thus, the basis for the objection is of no validity as the Hearing Officer and Board can easily assign whatever weight they deem appropriate while allowing for public comments to be made and considered by the Board.

CONCLUSION

Neighbors oppose the objections of the Applicant regarding concerns that bear on the analysis of aesthetics for abutting and neighbors in close proximity to the project including noise and solar glare. Neighbors also oppose the objection of the Applicant regarding lack of personal knowledge and non-expert opinion testimony regarding real estate valuation as state statute proscribes the competence of landowners to testify regarding the value of their property. Moreover, Todd Thomas has provided an expert opinion that establishes the relevance of diminution of real estate values which are in conflict with the town and regional plans under the orderly development criterion.

WHEREFORE, Neighbors respectfully request that the Applicant's Motion to Strike be denied.

DATED at City of Barre, County of Washington and State of Vermont this 18th day of July, 2017.

Richard Spitalny, Robert & Karen Galloway,
Daniel McKeen, and Neil & Thomas Russell



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CERTIFICATE OF SERVICE

NOW COMES L. Brooke Dingledine, Esquire, of the law firm of Valsangiacomo, Detora & McQuesten, P.C., and certifies that on July 19, 2017 I forwarded by electronic mail as noted on the attached Service List the following document:

Neighbors' Opposition to Applicant's Motion to Strike Portions of
Neighbors' Prefiled Testimony

DATED at Barre, County of Washington and State of Vermont this 19th day of July, 2017.



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CPG #16-0042-NMP - SERVICE LIST

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