

August 2, 2017

*By Hand Delivery and E-Mail*

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 *Surreply to the Neighbors' Opposition to Motion to Strike Portions of Neighbors' Prefiled Testimony* for filing in the above-referenced matter.

Please do not hesitate to contact us with any questions.

Sincerely,



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

cc: Service List

**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, Grace Grundhauser, certify that on August 2, 2017, I forwarded copies of Orchard Road Solar I, LLC's *Surreply to Neighbors' Opposition to Motion to Strike Portions of Neighbors' Prefiled Testimony* to the service list below by the delivery method noted:

**By Hand Delivery and E-Mail:**

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

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Middletown Springs, VT 05757

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P.O. Box 1011  
Middletown Springs, VT 05757

Richard Spitalny  
24 Tanglewild Road  
Chappaqua, NY 10514

Dated at Burlington, Vermont this 2<sup>nd</sup> day of August, 2017.

By:

A handwritten signature in black ink, appearing to be 'GG' or similar initials, written in a cursive style.

Grace Grundhauser  
Office Coordinator

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

CPG #16-0042-NMP

Petition 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 )  
on Orchard Road in Middletown Springs, Vermont, )  
to be known as the “Orchard Road Solar Project” )

**ORCHARD ROAD SOLAR I, LLC SURREPLY TO  
NEIGHBORS’ OPPOSITION TO MOTION TO STRIKE PREFILED TESTIMONY**

**I. Introduction**

Applicant Orchard Road Solar I, LLC (“ORS”) hereby responds to Neighbors’ Opposition to Applicant’s Motion to Strike Portions of Neighbors’ Testimony, filed on July 19, 2017 in response to the Motion to Strike Portions of Testimony filed by ORS on June 30, 2017. Neighbors Richard Spitalny, Robert & Karen Galloway, Daniel McKeen, and Neil & Thomas Russell oppose ORS’s motion, arguing that statements regarding property values, and concerns regarding noise, interference with electronic equipment, and solar glare are properly within the scope of the proceeding. As discussed in more detail below, Neighbors’ arguments incorrectly rely on selective portions of the Hearing Officer’s Order Re: Significant Issues and Notice of Hearing (Feb. 22, 2017) (hereafter “Order re: Significant Issues”) and disregard the Hearing Officer’s clear statements to the contrary regarding the scope of issues in the proceeding. Neighbors further misapply Vermont law and rules of evidence in support of their arguments, and in doing so contradict the plain language of these provisions. For these reasons, the Hearing Officer should grant ORS’s Motion to Strike certain portions of Neighbors’ testimony and exhibits.

## II. Argument

### a. Individual Property Values

Neighbors incorrectly argue that individual property values are within the scope of the proceeding based on statements made by the Hearing Officer in summarizing Neighbors' comments on the Project, and by misapplying 12 V.S.A. § 1604. We address each issue in turn.

First, the statement from the Order re: Significant Issues that Neighbors rely on is a summary of the Neighbors' comments regarding the Rutland Regional Plan and entirely ignores the Hearing Officer's other statements holding that individual property values are not within the scope of the proceeding. Specifically, in the Order re: Motions to Intervene (Jan. 20, 2017) (hereafter "Order re: Intervention"), the Hearing Officer considered Neighbors' arguments regarding potential impacts of the Project on property values and stated that "[t]he Neighbors may not pursue their stated interests in the impact of the Project on individual private property values except to the extent that the Project's aggregate impact on land values in the region could bear on the analysis of the overall economic benefit of the Project to the State and its residents under Section 248(b)(4)." *Order re: Intervention* at 5. Subsequently, in the Order re: Significant Issues, the Hearing Officer clearly ruled that there were no significant issues raised under criterion (b)(4) "[b]ased on [Neighbors'] filings, which are general and speculative in nature and focus on potential tax impacts on individual properties in the vicinity of the Project," and clearly stated that "we decline to grant a hearing on the issue of economic benefit." *Order re: Significant Issues* at 9.

Given these statements in the relevant orders, Neighbors do not have standing to raise any concerns regarding individual property values under any criterion other than (b)(4), and the Hearing Officer has expressly rejected property values as a significant issue under this criterion. Thus, the issue of individual property values has been clearly determined to be outside the scope of the

proceeding. Neighbors cannot now rely on a summary of their own comments on the Rutland Regional Plan to suggest that the Hearing Officer intended to allow individual property values into this proceeding, and the Hearing Officer should therefore reject this argument.

Furthermore, as property values are not within the scope of the proceedings, any evidence submitted regarding property values is irrelevant and should be excluded from the record. To the extent that Neighbors' rely on Vermont Rule of Evidence 401 to support Mr. Thomas's statements regarding impacts to property values, *Neighbors' Opposition* at 5, ORS reiterates its earlier argument that portions of testimony are not admissible when "they are not relevant to the matters within the scope of [the] proceeding." *Application of Green Mountain Power Corporation, Order Re: Green Mountain Power Corporation's Objection to Testimony, Docket NM-1646 (1/8/2014)*. Similarly, as property values are not at issue in the proceeding, there is no need to further address Neighbors' erroneous reliance on 12 V.S.A. § 1604, the plain language of which does not support speculative assertions regarding potential impacts to property values.

In sum, the Hearing Officer has clearly held that individual property values are not within the scope of issues on which Neighbors have been granted intervention and on which the Hearing Officer has granted a hearing. As a result, any evidence regarding property values is irrelevant and inadmissible under Vermont Rules of Evidence. Even if property values were at issue in the proceeding, Neighbors misinterpret 12 V.S.A. § 1604 as authorizing speculative testimony regarding potential impacts to property values. For these reasons, the Hearing Officer should reject Neighbors' arguments regarding property values and grant ORS's Motion to Strike portions of Neighbors' testimony and exhibits regarding this subject.

b. Noise, Interference with Electronic Equipment, and Solar Glare

In addition to the arguments addressed above, Neighbors make a peripheral contention in the introduction to their motion that noise, interference with electronic equipment, and solar glare are related 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.” *Neighbors’ Opposition* at 2.

As a preliminary matter, this argument is not addressed beyond this single statement in the introduction to the motion. As such, this argument is not adequately briefed and therefore the Hearing Officer need not consider it. *See, e.g., Tallarico v. Brett*, 137 Vt. 52, 61, 400 A.2d 959, 965 (1979) (noting that “[t]his Court is not required nor about to undertake a search for claimed error where it is not adequately briefed, supported by argument, or pointed out in the record before us”). Further, the Hearing Officer clearly considered each of these issues in the context of their potential to impact the Fitzpatricks’ property, which is closest to the Project. *See Order re: Significant Issues* at 14 (stating that “with respect to potential solar glare from the Project . . . Neighbors refer to the Fitzpatricks,” “Neighbors further argue that the Project will unduly interfere with nearby residents’ ability to enjoy their homes and properties because the transformers and other equipment would generate sound during the day,” and that Neighbors “add that the Project could interfere with at least one property owner’s residential electronic equipment because the Project facility will be only 50 feet from the property line”). Having considered each issue in the exact context Neighbors now raise (as “affect[ing] the use and enjoyment of the abutting neighbors’ property”), the Hearing Officer stated that “[w]e find the arguments raised by the Neighbors are speculative in nature, most notably where they suggest potential impacts on a house that has not yet been built” and declined to grant a hearing on these issues. Regardless of whether these issues were discussed under aesthetics or public health and safety, the Hearing Office clearly rejected Neighbors’ arguments as insufficient

evidence to warrant a hearing. Accordingly, these issues are not within the scope of the proceeding, and the Hearing Officer should strike the applicable portions of testimony and exhibits relating to these topics.

*c. Exhibit NN*

Finally, Neighbors state that they oppose ORS's request to strike Exhibit NN, which ORS contends is hearsay because it purports to represent the views and opinions of non-witnesses, and is more prejudicial than probative under V.R.E. 403. The only counter-argument offered by Neighbors is that the Hearing Officer and PUC are not lay jurors that will be influenced by the exhibit. Assuming *arguendo* that Neighbors argument is accepted by the Hearing Officer, this exhibit should still be excluded under V.R.E. 403 because of the potential for confusion of issues to the extent that the exhibit addresses issues outside the scope of the proceeding. Of more significance is the fact that Neighbors do not address ORS's objection on grounds of hearsay. As Neighbors have not rebutted this argument, the Hearing Officer should grant ORS's request to strike this exhibit as hearsay pursuant to V.R.E. 801 and 802.

**Conclusion**

For the above-stated reasons, Neighbors' opposition to ORS's motion to strike improperly ignores the Hearing Officer's clear delineation of the significant issues within the scope of this proceeding, and misapplies Vermont law and rules of evidence. ORS therefore respectfully requests that the Hearing Officer grant its motion to strike the inadmissible portions of prefiled testimony and exhibits identified in ORS's initial motion, and not allow these statements into the record.



DATED this 2nd day of August, 2017 in Burlington, Vermont.

By:

A handwritten signature in black ink, appearing to read "V. Westgate". The signature is fluid and cursive, with a long horizontal stroke at the end.

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