

ELIZABETH W. COOPER

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June 1, 2018

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

Re: CPG#16-0042-NMP – Application of Orchard Road Solar I, LLC

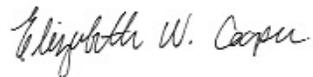
Dear Ms. Whitney:

Enclosed please find an original and six copies of the Request for Oral Argument and Comment of Elizabeth Cooper in Opposition for filing in the above-referenced matter.

Electronic copies are being sent today to the parties as per agreement of the parties.

Thank you.

Sincerely,



Elizabeth W. Cooper, Pro Se Neighbor

Cc: Attached Service List

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CPG No. 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 the installation)
and operation of a 500 kW interconnected group)
net-metered solar electric facility in)
Middletown Springs, Vermont)

**REQUEST FOR ORAL ARGUMENT AND
COMMENT OF ELIZABETH COOPER IN OPPOSITION**

Intervenor Elizabeth Cooper, *pro se neighbor*, requests along with “The Neighbors”, the opportunity to present oral argument to the Public Utility Commission, and further requests that the full Public Utility Commission visit the site before rendering a decision in this matter. Intervenor Cooper hereby submits comments in opposition to the Hearing Officer’s Proposal for Decision and requests that the Public Utility Commission deny issuance of a Certificate of Public Good to Orchard Road Solar

Intervenor Cooper is a resident of Middletown Springs and has shared ownership (a member of Rocks and Trees Inc.) of land north of the proposed project site. As a “Neighbor of Orchard Road Solar I”, Cooper has followed and participated in the proceedings for Application of Orchard Road Solar I from the time the Applicant first notified neighbors and townspeople in May of 2016 through July 15, 2016 when the Applicant filed the Application with the Commission to the present. On January 20, 2017, a motion to intervene was granted to Elizabeth Cooper along with others (collectively the

“Pro Se Neighbors). On October 5, 2017, the Neighbors filed a motion for a second visit to the Project site in Middletown Springs. On October 31, 2017 the Pro Se Neighbors filed a motion for leave to file additional limited evidence. It should be noted that there was little progress in proceedings from late October 2017 until February 2018 seemingly due to the fact that Lynn Fabrizio, the Hearing Officer appointed in February 2017, left the Commission’s employ in December 2017 after which the case was reassigned to Hearing Officer Tousley in January 2018. Hearing Officer Tousley issued an order scheduling a second site visit on February 9, 2018 that was held on February 20, 2018. Tousley denied the motions by the Neighbors and the Pro se Neighbors to reopen the record for the filing of additional evidence in an order issued on March 14, 2018.

Intervenor Cooper along with “The Neighbors” has provided argument and comment regarding the undue adverse impact and the development, operations, and maintenance of the Orchard Road Solar project in this highly visible site on a prominent hillside and disagrees with the conclusion that this project will not have an undue adverse impact on the scenic or natural beauty of the area.

In the Proposal for Decision (PFD), Hearing Officer Tousley has ignored those arguments in the presentation of proposed findings and in the conclusion that, “The Project will not have an undue adverse impact on aesthetics, including sound, or on the scenic or natural beauty of the area, nor will the Project have an undue adverse effect on historic sites or rare and irreplaceable natural areas.” (p 14, 49.)

The Hearing Officer supports this conclusion with selected findings that disregard important factual evidence in this case which is the high visibility of the project site and its location on the height of a north-facing slope situated at the foot of the Coy Mountain

Ridgeline in the very center of the viewshed from surrounding properties, public and private roads and the Rte. 140 corridor. Rather than fleshing out the arguments to identify specifically how the project impacts the neighbors in particular, and the town, and region, the applicant is attempting to gloss over the impact, and the Hearing Officer deflects to a discussion based on findings that support the applicant and ignores the concerns of neighbors and townspeople.

Intervenor Cooper urges the Commission to carefully consider all of the arguments presented, including those raised in the Neighbors testimonies and brief to evaluate the impact of this project.

First, the project violates the sensibilities of nearby neighbors. (I took that out because the Vermont Supreme Court decision on the Cold River Road case directed the PUC to consider neighbors). The issue of impacts on neighbors is one that is fundamental to any development, including consideration of the sensibilities and value impact as part of a broader context. Hearing Officer Tousley notes on PfD pages 15 and 16:

57. “The Project site is on a hillside with scenic value as part of the larger valley setting rising from Burnham Hollow.”

58. “As a 4-acre solar photovoltaic field, the Project will differ from the other uses of the fields, orchards, agricultural infrastructure, and dispersed residences, that fill the hills and valley arising from Burnham Hollow.”

64. “The white and gray back sides of the solar panels and aluminum rack structures will be visible from several south-facing hillside meadows, private roads, and residences north of Route 140, approximately 2,600 to 7,000 feet from the Project site.”

Though the broader context is referenced, the Hearing Officer offers the contradictory conclusion that there is not undue adverse impact when considered from the broader context.

Second, a finding of no undue adverse impact on aesthetics can be made only if there is no Clear Written Community standard for the Project site, and only if the applicant has taken generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings, and only if the project does not offend the sensibilities of the average person because it is not out of character with its surroundings or would not significantly diminish the scenic qualities of the area.

In assessing the Clear Written Community Standard for the Project Site, the Hearing Officer notes in findings that “The Neighbors and their expert witnesses argue that the Project would unduly interfere with orderly development because it deviates from language in the Middletown Springs Town Plan and the Regional Plan.” “I have reviewed both the town plan and the regional plan and do not agree.” (PfD page 10) Does the review and interpretation of the plans by the Hearing Officer override/cancel those of the experts?

The evidence in the record in this case has conflicting opinions regarding whether the adverse impact on aesthetics and the scenic and natural beauty of the area is undue.

1. The Applicant’s expert claims there is no undue adverse impact (Kane).
2. The Department’s expert says that the project as proposed creates an undue adverse impact because it is shocking and offensive and offends the sensibilities of the average person. The Department’s expert believes the same about the Applicant’s revised landscaping plan. However, the expert claims that if the project is altered and

changed to include a different landscaping plan that he himself created, there would be no undue adverse impact. (Owens)

3. The Neighbors' two experts clearly support the conclusion that the adverse impact is undue. (Thomas and Lawrence)
4. All 18 of the Neighbors who testified believe the project will cause an undue adverse impact on public and private views in the area because it violates clear written community standards in the town and regional plan, will be shocking and offensive to the average person, and because the Applicant has failed to take reasonable mitigation measures (Richard Spitalny, Elizabeth Cooper, Douglas Freilich, Julie Sperling, Ted Fitzpatrick, Dina Fitzpatrick, Karen Galloway, Robert Galloway, Karen Gutman, Larry Springsteen, Roy Cooper, Daniel McKeen, Neil Russell, Thomas Russel, Peter Stevenson, and Aileen Stevenson).
5. One-hundred-twelve other Middletown Springs townspeople signed a petition opposing the project because they believe that the project will unduly adversely affect the aesthetics and the scenic and natural beauty of the area, will unduly impact orderly development, and negatively affect the character of Middletown Springs.

In the Proposal for Decision (PFD) it is not clear that the Hearing Officer fully considered and evaluated this conflicting testimony to determine how much weight was given to testimony based on reliability and credibility of witnesses and the information presented. Thus, conclusions drawn based on findings from testimony, particularly with regard to the Applicant's proposed mitigation planting plan and efforts to mitigate visibility, and the appropriateness of the presentation of an alternate mitigation planting plan by the Department's expert are questionable. Also, it is significant that there is no

mention of impact or mitigation for the Fitzpatrick's property, who purchased the adjoining lot to the west of the project site at a premium price with the intention of building and locating their retirement home to take advantage of the view that would be disrupted by the Project.

Bearing in mind that Hearing Officer Tousley was assigned to this case after over a year and a half of proceedings, I recommend that the Commission reconsider the conclusions proposed in the PfD and request along with "The Neighbors", the opportunity to present oral argument to the Public Utility Commission, and further request that the full Public Utility Commission visit the site before rendering a decision in this matter.

Dated at Middletown Springs, Vermont this 1st day of June, 2018.

Respectfully submitted,



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cc: Case No. 16-0042_NMP Service List

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