

September 21, 2016

By Hand Delivery

Ms. 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**

Dear Ms. Whitney:

Enclosed please find Orchard Road Solar I LLC's ("ORS") *Response to Motions to Intervene* by the Town of Middletown Springs, a number of residents of Middletown Springs, and the Middletown Springs Historical Society for filing in the above-referenced matter. In addition, ORS is in receipt of comments filed with the Board on September 6, 2016 by the Rutland Regional Planning Commission ("RRPC"). In response to the RRPC's additional comments, ORS offers the following information as it relates to the Board's review of ORS's application.

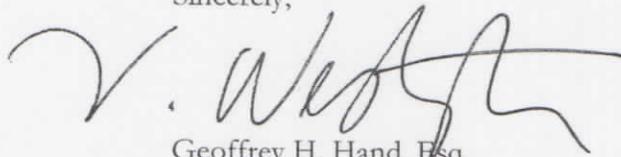
With respect to the RRPC's concern that its May 3, 2016 letter was not referenced in the application, ORS mistakenly omitted a specific reference to the letter in its filing. ORS has nonetheless attempted to address the RRPC's concern in its initial filing and believes the application adequately addresses both questions raised by the RRPC in its May 3, 2016 letter and in its most recent September 6, 2016 comment letter to the Board. Specifically, with regards to the RRPC's concerns over neighbor outreach, we note that neighbor outreach was discussed in the testimony of Rod Viens in the initial application. This was later supplemented in comments to the Board, the RRPC, Mr. Spitalny, and Karen and Robert Galloway in letters dated August 16, 2016. ORS continues to be willing to work with the neighbors to address their concerns and has responded to all questions submitted by neighbors to date. ORS remains committed to providing clear and accurate information about the project, and is not clear as to the basis for the RRPC's statement that this is not the case. Notably, ORS reached out to the RRPC directly following receipt of the initial comment later to the Board indicating our willingness to arrange a site visit. The same offer has been made to some of the neighbors with no response.

With respect to ORS's plans for Renewable Energy Credits (RECs) generated by the project, some will be the property of the off-takers (Goddard College), while a portion will be retained by the project owner. Lastly, with respect to Neighbors' concerns that ORS has not included a decommissioning plan with the application, ORS notes that Board rules specifically exempt projects that are 500 kW and smaller from requirements to submit a decommissioning plan. ORS did state in the prefiled testimony of Rod Viens that it will remove the Project equipment from the site at the

end of its useful life and restore any stockpiled soils to the site. Thus, the Project will be decommissioned, but a specific plan is not required under Board rules.

Please do not hesitate to contact us with any questions.

Sincerely,



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

Encl.

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, Gillian Bergeron, certify that on September 21, 2016, I forwarded copies of Orchard Road Solar I, LLC's *Response to Motions to Intervene* to the service list below by the delivery method noted:

By Hand Delivery:

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

By First Class Mail:

Vermont Agency of Natural Resources
Secretary's Office
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

Vermont Public Service Department
Commissioner's Office and
Director of Public Advocacy
112 State Street, 3rd Floor
Montpelier, VT 05620-2601

Green Mountain Power Corporation
163 Acorn Lane
Colchester, VT 05446

By First Class Mail (Courtesy copy):

Middletown Springs Selectboard
P.O. Box 1232
Middletown Springs, VT 05757

Middletown Springs Historical Society
PO Box 1121
Middletown Springs, VT 05757

Richard M. Spitalny
24 Tanglewild Road
Chappaqua, NY 10514-2516

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

Rutland Regional Planning Commission
c/o Ed Bove
P.O. Box 965
Rutland, VT 05702

Karen and Robert Galloway
883 Chagrin River Road
Gates Mills, OH 44040

Fitzpatrick, Ted & Dina
12525 Jot Em Down Lane
Odessa, FL 33556

Peter and Aileen Stevenson
97 Coy Hill Road
Middletown Springs, VT 05757

Gutmann, Karen L. and Larry L. Springsteen
290 West Street
Middletown Springs, VT 05757

Freilich, Douglas & Sperling, Julie
PO Box 1041
Middletown Springs, VT 05757

Neil & Thomas Russell
PO Box 279
West Rutland, VT 05757

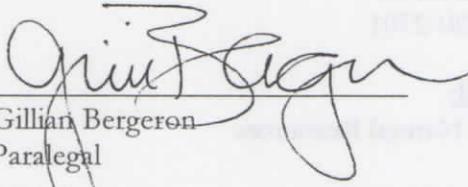
Roy Cooper
327 West St.
Middletown Springs, VT 05757

Elizabeth W. Cooper
49 Rocks and Trees Lane
P.O. Box 1011
Middletown Springs, VT 05757

Daniel McKeen and Ellen Secord
320 West Street
Middletown Springs, VT 05757

Dated at Burlington, Vermont this 21st day of September, 2016.

By:


Gillian Bergeron
Paralegal

STATE OF VERMONT
PUBLIC SERVICE BOARD

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Vermont, to be known as the "Orchard Road)
Solar Project")

Applicant Orchard Road Solar I, LLC's Response to Motions to Intervene

Applicant Orchard Road Solar I, LLC ("ORS") hereby responds to the motions to intervene filed by the Town of Middletown Springs, a number of residents of Middletown Springs, and the Middletown Springs Historical Society ("MSHS").¹ Applicant does not object to the participation of any of these individuals or groups, limited to the interests in which the intervention standards under Board Rule 2.209 have been met. Applicant has no objection to the Town's participation, or to the participation of the Middletown Springs Historical Society on Criterion (b)(5) issues related to above-ground historic resources. With respect to the Middletown Springs residents, Applicant submits several issues raised in the individual motions are outside the scope of Section 248, or not particularized to the individual raising the issues, or will be adequately represented by an existing party. For the sake of efficiency, Applicant has outlined these specific issues below, and respectfully requests that the Board limit participation of individual residents accordingly.

I. Intervention Standards

Board rule 2.209 governs intervention in Board proceedings and provides as follows:

(A) Intervention as of right. Upon timely application, a person shall be permitted to intervene in any proceeding: (1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the

¹ These are the only motions to intervene received by Applicant; if the Board received any additional motions not properly served on Applicant, Applicant requests the opportunity to respond to those motions once it receives them.

condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.

(B) Permissive intervention. Upon timely application, a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Board shall consider: (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

As stated above, Applicant does not object to the Town's participation as of right, pursuant to 30 V.S.A. § 248(a)(4)(F). Because MSHS and the individual residents have filed for permissive intervention pursuant to subsection (B) of Rule 2.209, under the language of that section each must demonstrate a substantial, particularized interest within the scope of Section 248 review, and even where such an interest is raised, the Board will consider whether another party will adequately represent that interest. Applicant believes MSHS has met the standard for intervention with respect to historic structures. As to the individual residents, collectively "neighbors," who submitted substantially similar motions in many respects, Applicant asserts that the Board should limit intervention as follows.

II. Scope of Neighbors' Intervention

a. Issues within the scope of Neighbors' interest

Although the Applicant disagrees that any of the issues raised by Neighbors present a significant issue that requires a hearing on this application, Applicant does not object to Neighbors' participation on the following issues, where these concerns are individually asserted visual

aesthetics,² noise,³ and potential health impacts. Applicant also does not object to the participation of certain Neighbor's on the issue of historic structures; however, Applicant believes only those Neighbors who have a historic structure on their land should be allowed to participate on this issue. Of the Neighbors, Karen Gutmann and Larry Springsteen, and Thomas Russell have stated in their motions that a historic structure is present on their property. For those neighbors who do not have a historic structure on their property, their interest in historic resources is generalized and the same as any town resident, and will be adequately represented by MSHS. Thus, Applicant does not believe the Board should grant intervention to those neighbors on this issue.

b. Issues outside the scope of Neighbors' interests, or of Section 248/219a review

Applicant does not believe that the scope of Neighbors' intervention should extend to issues related to water quality, rare, threatened and endangered species ("RTE"), decommissioning, property values, alternative locations for the Project, and orderly development of the region, and respectfully requests that the Board limit Neighbor's intervention accordingly.

First, as Applicant explained in its response to Mr. Spitalny's preliminary comments, filed with the Board on August 16th, the Project site is not mapped as a deer wintering area, and the Woodcock is not a rare, threatened or endangered species, and Neighbors have not submitted any evidence contradicting Applicant on these two points. Sightings of deer, bear, and woodcock are not sufficient to meet the standard for a substantial interest in this criterion. Furthermore, whatever concerns Neighbors have about the potential presence of these animals will be adequately represented by the Agency of Natural Resources, which is a statutory party required to participate in Section 248 proceedings, and has the expertise of the Fish and Wildlife Department at its disposal.

² Limited to the properties owned by Neighbors as they currently exist. To the extent that Ted and Dina Fitzpatrick seek to raise aesthetic issues with respect to a house they have not yet built on their property, Applicant submits that the Board should not require Applicant to address prospective, theoretical aesthetic impacts on a house that is not currently built or under construction.

³ Limited to impacts on neighbors, not on wildlife, which Applicant submits is not an issue within the scope of the sound aesthetics criteria as the Board has interpreted it.

This is consistent with recent intervention orders issued in solar proceedings. *See, e.g., Petition of S. Forty Solar, LLC*, Docket 8600, Order (Dec. 18, 2015) (denying neighbors intervention on wildlife corridors on basis that ANR would adequately represent this interest). The Board should not grant Neighbors intervention on this criterion in this case as well. Similarly, concerns regarding water quality impacts to Poultney River from disturbed soil on the Project site are within the expertise of ANR, and will be adequately represented by the Agency.

Second, the Board should not allow Neighbors to raise issues related to a decommissioning fund or plan, individual property values, or alternative site locations, as the Board has previously held that these issues are not relevant to a Section 248/219a proceeding. With respect to some Neighbors' claim that the Project has not submitted a decommissioning plan, the Board's rules specifically exempt Projects that are 500 kW and smaller from the requirement to submit a decommissioning plan. *See* Board Rule 5.402(C)(2) ("[R]equirement [for submission of decommissioning plan] does not apply to proposed generation facilities with a capacity of one MW or less."). Applicant's commitment to decommission the Project and restore any stockpiled soils to the site was included in the prefiled testimony of Rod Viens. *See* Viens pf. at 16. The Board has also held that concerns regarding impacts to individual property values are outside the scope of Section 248 review and should not be grounds for intervention. *See Vt. Elec. Power Co. v. Bandel*, 135 Vt. 141, 145 (1977) ("Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved."); *Petition of Bde Grand Isle Solar, LLC*, Docket 8665, Order (Feb. 8, 2016) (citing to *Vt. Elec. Power Co. v. Bandel* in rejecting individual interest in property value). Similarly, the Vermont Supreme Court has expressly rejected the contention that an examination of alternative locations for a project is part of the aesthetic analysis required under Section 248, and stated that petitioners bear no such burden of showing. *In re Petition of Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 28. As a decommissioning plan, individual property

values, and alternative locations have been held by the Board and Court to be outside the scope of issues examined in a Section 248/219a proceeding, Neighbors should not be allowed to raise these issues.

Finally, on the issue of the Project's compliance with the Town Plan, the Town has intervened and will adequately represent Neighbors on this issue. As the Town is in the best position to weigh in on this issue, Neighbors should not be granted intervention on this criterion. Applicant thus respectfully requests that the Board exclude water quality, RTE, decommissioning plan, property values, alternative locations, and orderly development of the region from the scope of Neighbors' intervention.

III. Need for a Hearing

Although Applicant does not oppose participation of these parties, limited to the issues identified above, Applicant does not believe that any issues raised in comments submitted rise to the level of a significant issue that would warrant a hearing for this Project. Rather, the issues raised are general or speculative as to potential impacts, and the Project should be approved forthwith. The fact that ANR has not submitted comments on the environmental concerns raised by Neighbors is an indication that it does not view these as issues, much less as substantial issues. Thus, a hearing should not be required.

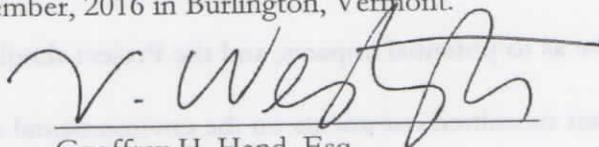
In the event that the Board does determine that a hearing should be held, Applicant submits that neighbors should be required to provide expert testimony or evidence from witnesses with the required expertise in a particular area of concern, rather than rely on hearsay or testimony from unqualified witnesses.

IV. Conclusion

To summarize, Applicant does not oppose the intervention of the Town or of the MSHS on issues related to historic sites. Applicant does not oppose the participation of Neighbors either, but requests that the scope of Neighbors' intervention be limited to those issues on which Neighbors have demonstrated a substantial interest within the scope of the proceeding that will not be adequately represented by another party. Applicant submits that these issues are potential impacts on visual and sound aesthetics and historic structures for those who have such structures on their property, and individual health concerns. Applicant objects to Neighbors' participation on water quality in Poultney River, RTE, decommissioning plan, property values, alternative locations, and orderly development. Finally, Applicant asserts that although it does not outright oppose intervention, it does not think that the issues raised meet the standard for a hearing in this matter and requests that the Board issue a CPG for the project without holding a hearing.

DATED this 21st of September, 2016 in Burlington, Vermont.

BY:



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