

100 EAST STATE STREET | P.O. BOX 1309 | MONTPELIER, VT 05601-1309

January 15, 2016

HAND DELIVERED

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

Re: **Application of BDE East Montpelier Lazar Solar, LLC** pursuant to 30 V.S.A. §§ 219a and Board Rule 5.100 authorizing the installation and operation of a 500 kW ground mounted solar array to be located off Route 2 in East Montpelier, Vermont

Dear Ms. Whitney:

Enclosed for filing, in the above-referenced matter, are an original and six copies of the following:

1. Applicant's Opposition to Zachary Sances' Motion to Intervene and Request for a Hearing;
2. Letters of Support for the proposed Project from 3 adjoining landowners:
 - a. Cliff Hickman at 2589 U.S. Route 2 in East Montpelier;
 - b. Maurice Brown and Barbara Brown at 2641 U.S. Route 2 in East Montpelier; and
 - c. Raymond Stout at 2685 U.S. Route 2 in East Montpelier.
3. Vermont Division of Historic Preservation letter concluding that the proposed Project does not have an undue adverse effect on any historic sites listed in or eligible for inclusion in the State Register of Historic Places. We have marked this letter as Exhibit BDE-AT-8.

Thank you for your attention to this matter. As always, please contact me should you have any questions.

Yours, truly,


Joslyn Wilschek

Enclosures

cc: Certificate of Service

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG # NMP-_____

Application of BDE East Montpelier Lazar Solar, LLC)
Pursuant to 30 V.S.A. § 219a and Board Rule 5.100)
authorizing the installation and operation of a 500 kW)
solar group net-metered electric generation facility)
located off of Route 2 in East Montpelier, Vermont)

CERTIFICATE OF SERVICE

On behalf of BDE East Montpelier Lazar Solar, LLC, I hereby certify that I have this day served one copy of the foregoing Opposition to Zachary Sances' Motion to Intervene and Request for a Hearing, by first class U.S. mail, on the following persons or entities:

Billy Coster
Planning Center, Agency of Natural Resources
Center Building – Third Floor
103 South Main Street
Waterbury, VT 05671-0301

Commissioner Christopher Recchia
Department of Public Service
112 State Street - Third Floor
Montpelier, VT 05620-2601

Geoffrey Commons, Esq.
Department of Public Service
Director of Public Advocacy
112 State Street - Third Floor
Montpelier, VT 05620-2601

Bonnie Waninger, Executive Director
Central Vermont Regional Planning Commission
29 Main Street, Suite 4,
Montpelier, VT 05602

Jean Vissering
East Montpelier Planning Commission Chair
P.O. Box 157
East Montpelier, VT 05651

Bruce Johnson
East Montpelier Zoning Administrator
P.O. Box 157
East Montpelier, VT 05651

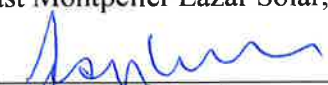
Green Mountain Power Corporation
163 Acorn Lane
Colchester, Vermont 05446-6611

Zachary A. Sances
P.O. Box 141
East Montpelier, VT 05651

DATED at Montpelier, Vermont, this 15th day of January, 2016.

BDE East Montpelier Lazar Solar, LLC

By:



Joslyn L. Wilschek, Esq.
Primmer Piper Eggleston & Cramer PC
100 East State St., PO Box 1309
Montpelier, VT 05602
(802) 223-2102
jwilschek@primmer.com

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NMP-_____

Application of BDE East Montpelier Lazar Solar, LLC)
Pursuant to 30 V.S.A. § 219a and Board Rule 5.100)
authorizing the installation and operation of a 500 kW)
solar group net-metered electric generation facility)
located off of Route 2 in East Montpelier, Vermont)

BDE EAST MONTPELIER LAZAR SOLAR, LLC'S OPPOSITION TO
ZACHARY SANCES' MOTION TO INTERVENE AND REQUEST FOR A HEARING

BDE East Montpelier Lazar Solar, LLC (“BDE” or “Applicant”) filed an application to construct a 500 kW ground mounted net-metering solar facility in East Montpelier, Vermont on January 4, 2016. Having not yet reviewed the application, Zachary Sances moved to intervene in the above matter and requested a hearing on December 31, 2015 (Motion).

The Applicant hereby opposes Mr. Sances’ intervention motion and request for a hearing for the following reasons more fully discussed below: (1) Mr. Sances seeks to address issues that are not relevant to this proceeding and are outside the Board’s jurisdiction; (2) Mr. Sances’ bases for intervention are vague, non-specific, and not are based on the application; (3) other parties represent his interest in natural resource and historic sites issues.; and (4) he has not met Board Rule 5.110(C)’s standard for a hearing. For the reasons set forth below, the Public Service Board (Board) should deny Mr. Sances party status and deny his request for a hearing.

General Intervention Rules

Rule 2.209 requires intervention applicants to prove their right to intervene under either intervention as of right or permissive intervention. Mr. Sances’ Motion does not specify which section, and thus the Board should assess their Motion under permissive intervention.

Under permissive intervention, Board Rule 2.209(B), the applicants must demonstrate that: (1) they have a substantial interest which may be affected by the outcome of the proceedings; (2) the proceeding affords the exclusive means by which the applicant can protect that interest; (3) no other party can adequately protect that interest; and (4) their intervention will not unduly delay the proceedings or prejudice the interests of existing parties. Under Board Rule 2.209(D), a person moving to intervene must “*specifically state*” the manner in which the conditions of Rule 2.209, outlined above, are satisfied. Rule 2.209(D) (emphasis added).

With respect to adjoining landowners, among other things, the Board requires landowners seeking intervention to describe the specific and particularized interest they seek to protect and demonstrate how their participation will be related to the issues subject to review in the 30 V.S.A. § 248 proceeding. *Petition of Georgia Mountain Community Wind, LLC*, Doc. No. 7508 at pg. 3 (July 2, 2009).

Application of Intervention Rules to Motion

The Motion does not comply with Board Rule 2.209(D). The Motion consists of a list of vague objections from Mr. Sances and it does not: (1) state the manner of how the Motion satisfies Rule 2.209; (2) describe the specific and particularized interest he seeks to protect; (3) state how his participation will be related to the issues subject to review in the 30 V.S.A. § 248/219a proceeding; or (4) satisfy the other relevant criteria noted above.

Real Property Issues

Specifically, Mr. Sances does not explain how the following issues he has raised relate to any of the issues in a § 219a net-metering proceeding and these issues are in fact outside the scope of this docket and beyond the Board's jurisdiction:

-“That all 7 lots are currently governed by covenants which restrict the development on the lots to residential and the plan that is proposed is clearly nonresidential and is in violation of this part of the covenants.”

-“That the covenants also restrict all utility lines to be buried underground and the plan that is proposed violates this tenet as set forth in the covenants.”

-“That the access road to be built runs through my property and is a limited right of way for the purpose of access to residential property and was neither designed nor anticipated for a solar project.”

-“That using this access road for other purposes would interfere with my property rights.”

-“That building any power lines on or over my property would also interfere with my property rights.”

These are all issues related to real property issues, and the Applicant disagrees with Mr. Sances and has sent a letter to him addressing these real property issues. The Board has concluded numerous times that it has no authority to adjudicate issues relating to real property claims, including Lowell Mountain Wind, Docket 7558, Order Re: Motions to Intervene (11/30/2009), where the Board held on a similar motion to intervene:

The Days' motion raised concerns about the use of their private road to access the proposed site. The Board does not have jurisdiction over property disputes, and instead is limited in this proceeding to a review of the proposed project under the Section 248 criteria. It is up to the petitioner to ensure that it has appropriate legal rights to use planned access routes, and any disputes over those property rights are a matter for the civil courts, not this Board. Petition of UPC Vermont Wind, Docket 7156, Order of 8/8/07 at 59; Petition of Vermont Community Wind, Docket 7518, Order of 8/28/09 at 8; Petition of Vermont Community Wind, Docket 7526, Order of 8/28/09 at 5.

The Board must reach the same conclusion here as issues relating to covenants, easements or other property rights are beyond the scope of this docket and the Board's jurisdiction.

Natural Resource Issues

Mr. Sances seeks intervention because allegedly “the field behind the house which is the proposed site for the solar array contains a rare field of lupines which is well known in the community and is currently a site visited by deer, wild turkeys and other animals.” Mr. Sances does not explain how these issues relate to any criteria as only Rare Irreplaceable Natural Areas,

Necessary Wildlife Habitat as defined by Agency of Natural Resources (ANR) and Board precedent, Endangered Species, are covered in this proceeding and the Applicant addressed these issues in Exhibit BDE-AC-2. Moreover, Mr. Sances does not explain how his interests are not protected by the ANR, the agency charged with reviewing the Project for natural resources impacts.

Historic Sites

Mr. Sances seeks party status under the historic sites criterion and states as follows:

- That there are 7 lots that are part of the subdivision and Lazar Solar plans to develop the solar array on 6 of the lots behind the historic home I currently reside in
- That the home I live in is historic . . .
- That the development of this field would have an adverse effect on the natural beauty, aesthetic, and historic nature of my property . . .
- The proposed project will undermine the historic nature of the village of East Montpelier as a whole due to the prominent location of the proposed array and the clear visibility of the project from various points in the Village.

The Board should deny Mr. Sances party status under this criterion for various reasons. First, he does not clearly identify how the Project would have a substantial impact on his home (the historic structure) or the Village of East Montpelier. The Applicant's aesthetic expert has addressed the views from the village of East Montpelier (Exhibit BDE-AT-7 at pages 3, 6-7), and has proposed landscape mitigation screening (Exhibit BDE-AT-7, Sheet L-1). The Aesthetic report concluded that there is no undue adverse impact given the Projects' 283-foot set back from Route 2, the use of existing vegetation, supplemental screening plantings, and intervening topography.

Second, Mr. Sances does not explain why the Division of Historic Preservation (DHP), the agency charged with reviewing this Project for compliance with the historic sites criterion, does

not adequately represent his interests. DHP issued a letter concluding that the Project has no undue adverse impact with the landscape mitigation.

Aesthetics

Mr. Sances has not expressed a specific and particularized interest in the Project's aesthetics impacts. He simply states that "the development of the field would have an adverse effect on the natural beauty, aesthetic and historic nature of my property." He does not explain how the Project would impact his property. Such vague assertions do not meet the intervention standard or raise a significant issue to require a hearing. He does not address the Applicant's extensive aesthetic report and proposed landscape mitigation.

As the Board has concluded:

[i]n generation facility siting cases such as this, the Board often has denied adjoining landowner intervention on generalized issues because the adjoining landowner failed to raise a particularized interest distinct from that of the general public. This reflects the fact that private landowners' interests are usually limited to issues impacting their property or persons due to their proximity to the proposed project. Further, the Board has found that, absent a showing by the person requesting intervention, these generalized interests are adequately represented by the Department and ANR.¹

Mr. Sances' comments do not raise a particularized interest distinct from the general public, are vague and do not take into account the Applicant's aesthetic analysis.

In sum, the Applicant has no objection to the Board treating Mr. Sances as an "interested party" whereby the Board will send him notices and Board orders. But any other form of participation will unduly significantly increase the legal costs associated with this filing given Mr. Sances's non-compliance with Board rules and the Legislature's mandate to simplify net-metering procedures.

¹ *Petition of Rutland Renewable Energy, LLC*, Docket 8188 (Order of March 3, 2014) at 4.

Objection to Request for Hearing

Mr. Sances has requested a hearing date in order to have his objections to the Project addressed. He has not met Rule 5.110(C)'s requires for hearing which state:

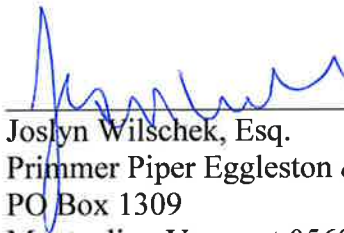
Anyone requesting a hearing must make a showing that the application raises a significant issue regarding one or more of the criteria listed in Section 5.108 or the criteria conditionally waived in that section. Such a showing must go beyond general or speculative claims, and provide specific information regarding potential impacts for the criteria.

For the reasons set forth above, Mr. Sances has not raised significant issues beyond mere speculation especially given that he filed his request for hearing before reviewing the full net-metering application and the Application has in fact addressed the issues he has raised. Therefore, the Board cannot grant Mr. Sances' request for hearing.

Dated at Montpelier, Vermont, this 15th day of January, 2016.

BDE EAST MONTPELIER LAZAR SOLAR, LLC

By:



Joslyn Wilschek, Esq.
Primmer Piper Eggleston & Cramer PC
PO Box 1309
Montpelier, Vermont 05601-1309
(802)223-2102
jwilschek@primmer.com

* 52- Cliff Hickman Home
2589 US Route 2

January 10, 2016

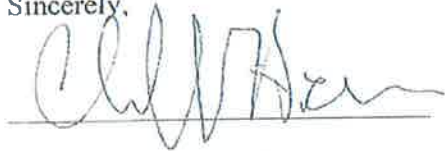
Andrew Thomas
Bullrock Deutsche-Eco, LLC
145 Pine Haven Shores Road Suite 1150
Shelburne, VT 05482

Re: BDE East Montpelier Lazar Solar LLC Proposed 500 kW Ground Mounted Solar Project in East Montpelier.

Dear Mr. Thomas:

On September 29th, 2015, Michael Lazar and yourself met with me and a few of my neighbors to discuss the potential ground mount solar project you have proposed. Michael and you provided an overview of the proposed 500 kW ground mounted solar project and performed a site walk around the project area to help me understand the size and scale of the project. After this session and the with the additional materials that were shared with me, showing the project changes as a result of the meeting, I would like to extend my support for the Petitioner's Section 248 certificate of public good petition to the Vermont Public Service Board for the Project.

Sincerely,



CLIFF HICKMAN

2589 US ROUTE 2
E. MONTPELIER, VT 05651

* 53 - Maurice + Barbara Brown Home
2641 US Route 2

January 8, 2016

Andrew Thomas
Bullrock Deutsche-Eco, LLC
145 Pine Haven Shores Road Suite 1150
Shelburne, VT 05482

Re: BDE East Montpelier Lazar Solar LLC Proposed 500 kW Ground Mounted Solar Project in East Montpelier.

Dear Mr. Thomas:

On September 29th, 2015, Michael Lazar and yourself met with me and a few of my neighbors to discuss the potential ground mount solar project you have proposed. Michael and you provided an overview of the proposed 500 kW ground mounted solar project and performed a site walk around the project area to help me understand the size and scale of the project. After this session and the with the additional materials that were shared with me, showing the project changes as a result of the meeting, I would like to extend my support for the Petitioner's Section 248 certificate of public good petition to the Vermont Public Service Board for the Project.

Sincerely,

Maurice F. Brown
Barbara J. Brown

* 54 - Raymond + Courtney Stout Home,
2685 US Route 2

January 7, 2016

Andrew Thomas
Bullrock Deutsche-Eco, LLC
145 Pine Haven Shores Road Suite 1150
Shelburne, VT 05482

Re: BDE East Montpelier Lazar Solar LLC Proposed 500 kW Ground Mounted Solar Project in East Montpelier.

Dear Mr. Thomas:

On September 29th, 2015, Michael Lazar and yourself met with me and a few of my neighbors to discuss the potential ground mount solar project you have proposed. Michael and you provided an overview of the proposed 500 kW ground mounted solar project and performed a site walk around the project area to help me understand the size and scale of the project. After this session and the with the additional materials that were shared with me, showing the project changes as a result of the meeting, I would like to extend my support for the Petitioner's Section 248 certificate of public good petition to the Vermont Public Service Board for the Project.

Sincerely,



RAY STOUT 2685 RT 2



Vermont Division for Historic Preservation
Agency of Commerce and Community Development
One National Life Drive
Davis Building, 6th Floor
Montpelier, VT 05620
http://acd.vermont.gov/strong_communities/preservation/

[phone] 802-828-3211
[fax] 802-828-3206

January 14, 2016

Andrew Thomas
Bullrock Deutsche-Eco Solar
145 Pine Haven Shores Road
Suite 1150
Shelburne, VT 05482

Re: Application of BDE East Montpelier Lazar Solar, LLC pursuant to 30 V.S.A §§ 219a and 248 for a Certificate of Public Good authorizing the installation and operation of a 500 kW group net-metering solar electric generation facility to be located near 2537 Route 2, East Montpelier, Vermont. Public Service Board Review.

Dear Ms. Whitney:

Thank you for the opportunity to comment on the above-referenced project.

The Division for Historic Preservation (VDHP) is reviewing this undertaking for purposes of 30 V.S.A., Section 248. The purpose of the VDHP's comments is to provide the Public Service Board (PSB) with the necessary information for their Section 248 review. Project review consists of identifying the project's potential impacts to historic buildings, structures, historic districts, historic landscapes and settings, and known or potential archeological resources.

The proposed project consists of the construction of a 500 kW solar generation facility on approximately 4 acres of an 8.6 acre parcel of land located behind 2537 VT Route 2 in East Montpelier, Vermont. The facility will consist of approximately 2,700 photovoltaic modules attached to fixed ground mounted racking systems arranged in east to west rows. Related infrastructure includes a new access road from Route 2, post mounted inverters, underground electrical connections, and a perimeter fence. The facility will interconnect to the existing Green Mountain Power Inc. (GMP) three phase distribution system along Route 2 using a new three phase overhead line with at least three new utility poles. The new utility pole closest to the array will include up to three GMP owned pole mounted transformers.

No archaeological sites or archaeologically sensitive areas were identified during the VDHP review of the proposed project plans and application. This assessment was confirmed during a site visit the property conducted on January 13, 2016. In addition to our archaeological review, the VDHP has considered the Project's effect on historic structures, districts, and landscapes. The solar installation is located adjacent to the East Montpelier Village Historic District which was listed in the State Register of Historic Places (#1207-44) on February 14, 1990. There are 10 contributing sites to the historic district on either side of Route 2 southeast of the project. Five of the contributing historic sites are located between Route 2 and the project location. The Applicants landscape mitigation plan proposes to supplement the existing vegetation to provide a continuous vegetative screen between the project



January 14, 2016

BDE East Montpelier Lazar Solar Project, East Montpelier, Vermont

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location and the five contributing historic sites. The VDHP has consulted with the Applicant regarding the indirect effects of the project on above ground historic structures and landscapes. Based on this consultation, review of the surrounding area, and the December 29, 2015 Aesthetic Memorandum prepared by T. J. Boyle Associates LLC, the VDHP has determined that the Projects' proposed landscape mitigation plan dated December 28, 2015 will be sufficient mitigation for the adverse effect to the historic district. Therefore, the VDHP concludes that the installation will not have an undue adverse effect on the historic character of the standing historic structures and historic district.

Based on the above considerations, the VDHP concludes that the BDE East Montpelier Lazar Solar Project will have an **Adverse Effect, Not Undue** on any historic sites listed in or eligible for inclusion in the State Register of Historic Places. This determination is based on the landscape mitigation plan referenced above, and site plans December 29, 2015. Any changes to these plans will require additional review. Thank you for your cooperation in protecting Vermont's irreplaceable historic and archeological heritage. R. Scott Dillon and Elizabeth G. Peebles reviewed this project and prepared this letter. I concur with the findings and conclusions described above.

Sincerely:

VERMONT DIVISION FOR HISTORIC PRESERVATION

E-SIGNED by Laura Trieschmann
on 2016-01-14 20:07:04 GMT

Laura V. Trieschmann
State Historic Preservation Officer

Cc: Joslyn L. Wilschek, Esq., Primmer, Piper, Eggleston & Cramer P.C.
Jeannie Oliver, Esq., Vermont Department of Public Service
Jen Duggan, Esq., Vermont Agency of Natural Resources

