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VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151

**RE:** Washington Electric  
Cooperative, Inc.  
P.O. Box 8, Route 14  
East Montpelier, VT 05651

Memorandum of Decision  
Land Use Permit  
**#5W1036-EB**

This decision pertains to the findings made by the District #5 Environmental Commission with respect to the above permit. As is explained below, this appeal is remanded to the District Commission for preparation of written findings pursuant to 10 V.S.A. sec. 6086(a)(1) through (6).

On June 14, 1989, the District Commission issued land use permit #5W1036, which authorizes the construction of a 7.2 KV aerial electric distribution utility line along Town Highway #1 in the Town of Washington. The District Commission's findings of fact for this permit contain explicit findings only on Criteria 7 through 10 of 10 V.S.A. sec. 6086(a), and a summary statement that the project will have no substantial impacts on Criteria 1 through 6.

On July 12, 1989, Jonathan Abts filed an appeal of this permit regarding all ten criteria with the Environmental Board. Board Chairman Leonard U. Wilson convened a prehearing conference on July 27, 1989. At the prehearing, issues were identified concerning the propriety of the District Commission's treatment of Criteria 1 through 6 and Mr. Abts' right to appeal certain criteria. The parties agreed that the Board's Assistant Executive Officer should review the tape of the District Commission's proceedings. After completing this review, the Assistant Executive Officer sent a memorandum to the parties on August 8 summarizing his findings and requesting memoranda on the issues described above. On August 10, the Board issued a prehearing conference report and order.

Mr. Abts filed a memorandum on August 14. The Applicant filed a response on August 15. The Board deliberated on this matter on August 23 in Montpelier, Vermont.

DECISION

Two issues are before the Board: (1) whether, and in what manner, to remand this matter to the District Commission for findings on Criteria 1 through 6; and (2) whether Mr. Abts Pay appeal any criteria except those on which he requested party status .

The Board concludes that the matter must be remanded to the District Commission. 10 V.S.A. sec. 6086(a) states: "Before granting a permit, the board or district commission shall find that the subdivision or development [meets ten listed criteria]: . . ." (Emphasis added.) There is no evidence that the District Commission found that the application for this power

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line meets Criteria 1 through 6. The District Commission's decision simply states that there will be no "substantial **impacts**" under these criteria. The question, however, is not whether there will be substantial impacts: the question is whether the criteria are met.

The Assistant Executive Officer's review of the tape of the District Commission's proceedings does not provide a ground for concluding that the District Commission found that Criteria 1 through 6 have been met. That review indicates that the District Commission only took evidence on Criteria 7 through 10, and that it did so after asking the persons present whether they had concerns on the other criteria and concluding that they did not have such concerns.

The Board therefore directs the District Commission to redraft its decision to contain written findings on Criteria 1 through 6. If the District Commission is able in its judgment to make such findings based on the application as it stands without holding a hearing, it may do so. If, however, it finds that the application contains insufficient information on which to base such findings, it must hold a hearing.

Because the Board is remanding the matter to the District Commission, the Board declines to address Mr. **Abts'** right to appeal certain criteria and dismisses the remainder of his appeal without prejudice. Mr. Abts may re-file his appeal within thirty days of the District Commission's issuance of a redrafted decision.

The Board recognizes that this decision will result in delay to the Applicant. The Board regrets such delay but is constrained to insure that the provisions of Act 250 are properly followed.

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ORDER

This matter is remanded to the District #5 Environmental Commission for preparation of a redrafted decision containing the findings on Criteria 1 through 6 of 10 V.S.A. sec. 6086(a). The remainder of the appeal filed by Jonathan Abts is dismissed without prejudice.

Dated at Montpelier, Vermont this 29th day of August, 1989.

ENVIRONMENTAL BOARD



Leonard U. Wilson, Chairman  
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