

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

RE: Central Vermont Public Service Corporation
Application #7C0734-EB

MEMORANDUM OF DECISION

This decision, dated **August 6, 1991**, pertains to an appeal filed on March 24, 1989, by Central Vermont Public Service Corporation (CVPS) from a decision of the District #7 Environmental Commission ordering Roland **Dupont**, who owns the land to be served by the proposed utility line extension, to sign the application as co-applicant.

A proposed decision was issued by Elizabeth Courtney, Chair of the Environmental Board, on May 14, 1991 and an opportunity to submit written comments and request oral argument was provided to the parties. Having received no comments or requests for oral argument, the Board deliberated on June 27, 1991.

I. BACKGROUND

On January 9, 1989, CVPS filed an Act 250 application for the construction of 5,179 feet of electric distribution line on a tract of land of approximately 930 acres owned by Roland **Dupont** in the Towns of Kirby and Concord, Vermont. Mr. **Dupont** had conveyed a 50-foot wide easement to CVPS for the right to "construct, inspect, operate, maintain, reconstruct and remove a line or lines for the transmission of electricity"

The purpose of the line extension is to provide electric service to a camp that Mr. **Dupont** intends to build. The District Commission ordered Mr. **Dupont** to sign as co-applicant pursuant to its discretion under Rule 10(A) because of its belief that the construction of the power line on Mr. **Dupont's** land "creates infrastructure which may well result in further development of the tract."

CVPS believes that because all necessary construction work will be accomplished within the easement, CVPS has total control over the project within bounds of the easement, and it is therefore not necessary to make the underlying landowner co-applicant. CVPS objects to the requirement that Mr. **Dupont** co-sign the application because it believes it would require CVPS to assume liabilities for activity on lands of Mr. **Dupont** outside of the easement.

A prehearing conference was convened on April 18, 1989, with Acting Chair Jan S. Eastman, presiding. Attending the prehearing conference was Timonty J. Clapp on behalf of CVPS; Mr. **Dupont** did not attend. Acting Chair Eastman and

434

Mr. Clapp agreed that the Executive Officer should contact Mr. Dupont to explain the potential consequences to him of this proceeding. A prehearing conference report was issued on May 2, 1989. Subsequently, the Executive Officer tried to reach Mr. Dupont but was unsuccessful.

II. DECISION

Rule 10(A) states: "The record owner(s) of the tract(s) of involved land shall be the applicant(s) or co-applicant(s) unless good cause is shown to support waiver of this requirement." The Board concludes that Mr. Dupont should not be required to sign as co-applicant to this project, which consists solely of the construction of a power line to a camp. Although Mr. Dupont still owns the land subject to the utility easement, effective control has been transferred to CVPS by the easement. Most importantly, CVPS states that it can accomplish all the necessary construction work to install and maintain the power line within the 50-foot easement, so that no other land of Mr. Dupont will be involved. See Re: A Safe Place Limited Partnership, #8B0404-EB, Findings of Fact, Conclusions of Law and Order at 6 (June 20, 1989).

While the Board recognizes that construction of the power line likely is creating infrastructure for future development of this tract, any development of the tract that is subject to Act 250 jurisdiction will be reviewed by the District Commission. Moreover, the District Commission can require in the CVPS permit that any future extensions of this power line on Mr. Dupont's land will require an amendment to the permit.

Accordingly, the Board will return jurisdiction to the District #7 Environmental Commission for further proceedings consistent with this decision.

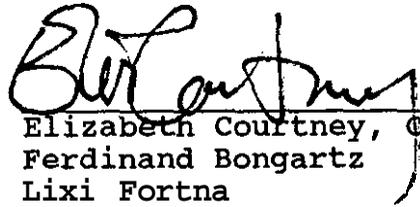
RE: Central Vermont Public Service Corporation
Application #7C0734-EB
Memorandum of Decision
Page 3

III. ORDER

Roland Dupont does not need to be co-applicant to this application. Jurisdiction over this matter is returned to the District #7 Environmental Commission for further proceedings consistent with this decision.

Dated at Montpelier, Vermont this 6th day of August, 1991.

ENVIRONMENTAL BOARD


Elizabeth Courtney, Chair
Ferdinand Bongartz
Lixi Fortna
Arthur Gibb
Charles F. Storrow
Steve E. Wright

A:cvps (P15)