

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

RE: Central Vermont Public Service Corporation by
Bernice Lendway
77 Grove Street
Rutland, VT 05701

MEMORANDUM OF DECISION AND
ORDER FOR REMAND
Land Use Permit #**8B0384-EB**

New England Telephone Company
108 Wales Street
Rutland, VT 05701

On March 18, 1987, the Town of Pownal (Town) appealed the issuance of Land Use Permit #**8B0384** authorizing the construction of a **3206-foot** extension of an electric distribution line along Town Highway #**5** in Pownal. The permit was issued by the District #**8** Environmental Commission on February 17, 1987.

Environmental Board Chairman Darby Bradley convened a prehearing conference in **Rutland** on April 14, in which the following persons participated:

Central Vermont Public Service Corporation (**CVPS**) by
Dwight **Ferrick**
Bennington County Regional Commission (Regional
Commission) by Greg Burke
Louise Larus, Pownal resident.

The Town was unable to appear at the prehearing conference, but indicated through Selectman Julius Rosenwald that it would participate in the appeal. The Town subsequently provided, at the request of the Board, copies of the minutes of the Selectmen's meetings from January 29 through March 12, 1987, as well as a written statement from former Selectman Robert Fowler.

The Chairman indicated at the prehearing conference that he would issue a preliminary decision on the issues on appeal, subject to objection by the parties and review by the full Board.

I. ISSUES IN THE APPEAL

Party Status. Louise Larus requested party status in the proceedings on behalf of herself and other residents in the area of the project. Mrs. **Larus's** property does not adjoin the project site. However, she believes that the project would be visible from her property, and that she could provide information to materially assist the Board on the issue of aesthetics and the project's impact on the scenic or natural beauty of the area. The request for party status was made under Board Rule 14(B) (1) and 14(B) (2).

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In the Prehearing Conference Report and Order issued on April 15, Mrs. Larus was required to file, by April 24, a request for party status with the Board explaining in detail how her property interests may be affected by the proposed project and/or how her participating as a party could materially assist the Board. No such filing has been received by the Board. Her request for party status is therefore denied.

This denial of party status applies only to the current appeal proceedings before the Board. Mrs. Larus may request that the District Commission grant her party status in any further proceedings on this project, provided she complies with Board Rule 14(B).

Substantive Issues. The principal issue in this appeal is whether the District Commission erred in issuing Land Use Permit #8B0384 without first convening a public hearing. The Town argues that the Commission should have held a hearing so that local residents could express their opinions on the impact of the project on the scenic beauty of Carpenter Hill in Pownal. CVPS believes that the Board should dismiss the appeal because the Town's request was based upon a matter which is not **justiciable** under Act 250 (compensation paid to an affected landowner), and because the Town subsequently withdrew its request for a hearing.

II. FINDINGS OF FACT

The following findings of fact are based upon the written record before the Board, the minutes of the Selectmen's meetings, and statements of the parties, which were either not in dispute or which the Board has considered in the nature of an offer of proof.

1. On January 27, 1987, CVPS and the New England Telephone Company filed an application to construct a **3206-foot** extension of an electric distribution line along Town Highway #5 (also known as Carpenter Hill Road) in Pownal. The District #8 Environmental Commission handled the application under the minor application procedure set forth in Board Rule 51. A notice of the application and proposed land use permit was published and sent to the parties; the notice required the parties to request a public hearing by February 9.
2. On January 29, the Town Selectmen discussed the request from CVPS to change its power lines on Carpenter Hill Road. According to the minutes of the meeting, Selectman Julius Rosenwald thought that the change would detract from the view on that road, and that other residents in that area would agree with his opinion. Selectman Rosenwald agreed to check the procedure for holding a public hearing.

3. On February 2, the Town Selectmen wrote a letter to the District Commission requesting a public hearing and stating that the full impact of the project must be considered. The letter was signed by all three members of the Board of Selectmen: Julius Rosenwald, Robert Fowler, and Henry Strohmaier. It was mailed on February 3 and was received by the District Commission before February 9.
4. Following receipt of the letter, Assistant Coordinator Timothy Clapp telephoned Selectman Fowler to find out the nature of the Town's objections. Mr. Clapp also talked to CVPS. Although there is some doubt about whether Selectman Fowler indicated that a hearing was not essential, Mr. Clapp understood the conversation to mean that the request for a hearing was being withdrawn.
5. No public meeting of the Selectmen was held to discuss the withdrawal of the request for a hearing. No written request for a withdrawal was filed with the District Commission. Mr. Clapp did not discuss the matter with Selectmen Rosenwald and Palmer.
6. On February 17, the District Commission issued Land Use Permit #8B0384 without convening a public hearing.
7. On March 5, the Selectmen discussed the Town's request for a public hearing with a CVPS representative. The Selectmen affirmed their beliefs that the residents should have a chance to voice their opinions.
8. On March 18, the Town filed its appeal of Land Use Permit #8B0384 with the Board.

III. CONCLUSIONS OF LAW

The principal question to be decided in this case is whether the District Commission erred in issuing a permit without convening a public hearing. The District Commission handled **CVPS's** application under Board Rule 51, the so-called "minor application" rule. This rule, which is authorized under 10 V.S.A. § 6025(b), allows a District Commission to dispense with the normal requirement for a public hearing, provided it prepares a proposed permit including appropriate conditions, publishes notice as required by 10 V.S.A. § 6084, and sends written notice and a copy of the proposed permit to those entitled to written notice under 10 V.S.A. § 6084. If a hearing is requested, the District Commission must convene a hearing, but may limit the hearing to those criteria or subcriteria in Act 250 which the party has raised as issues. The Commission may also convene a hearing on its own motion.

The purpose of Board Rule 51 is to expedite the permit review process for those non-controversial projects in which the applicant has met the criteria of Act 250 to the satisfaction of the District Commission and the parties. Sixty percent of all Act 250 applications are processed under the Rule 51 procedure.

In this case, the Selectmen of the Town filed a request for a hearing in a timely manner. The issue is whether the Town subsequently withdrew that request. Although the Assistant Coordinator understood his conversation with Selectman Fowler to mean that the Town was withdrawing its request, there is no evidence that the Town officially withdrew the request or that Selectmen Rosenwald and Strohmaier had ever authorized or even discussed withdrawing the request.

The Board therefore concludes that the Town did not withdraw the request for a public hearing, and that under Board Rule 51(B), the District Commission was required to convene a public hearing. Since the only issues of concern identified by the Town and other persons seeking party status are the impact of the proposed project on aesthetics and the scenic and natural beauty of the area (Criterion 8 of Act 250, 10 V.S.A. § 6086(a)(8)), the District Commission may limit the hearing to these issues.

The Board shall remand this case to the District #8 Environmental Commission.

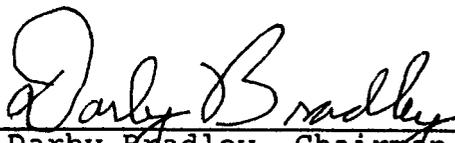
IV. ORDER

1. Mrs. **Larus's** request for party status in this appeal is denied.

2. The Board hereby remands this case to the District #8 Environmental Commission for further proceedings in accordance with this decision. Land Use Permit #8B0384 issued on February 17, 1987, is hereby vacated pending a public hearing and the Commission's decision on the application.

Dated at Montpelier, Vermont this 4th day of May, 1987.

ENVIRONMENTAL BOARD


Darby Bradley, Chairman