VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

Re: Washington Electric Cooperative, Inc./Chelsea
Declaratory Ruling Reque[redacted]

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This Declaratory Ruling petition concerns whether the proposed installation by Washington Electric Cooperative, Inc. ("WEC") of an electric line across property owned by Robert Farnham and Craig Byrne ("Petitioners") to the home owned by Jay Ratico ("Ratico") on Town Highway #60 in Chelsea, Vermont ("Project") requires a Land Use Permit pursuant to 10 V.S.A. §§ 6001-6092 ("Act 250") and Appendix A of the Environmental Board Rules ("EBR" or "Rule").

I. PROCEDURAL SUMMARY

On January 12, 1999, District #3 Environmental Commission Coordinator Julia Schmitz ("District Coordinator") issued Jurisdictional Opinion #3-71 ("Original J.O.") in which she determined that the Project required a Land Use Permit.

On February 11, 1999, WEC requested a reconsideration of the Original J.O.

On March 12, 1999, the District Coordinator issued a reconsidered Jurisdictional Opinion in which she determined that the Project was not subject to Act 250 due to a reduction in the width of the right-of-way from 50' to 30' ("Revised J.O.").

On April 12, 1999, Petitioners filed a petition for declaratory ruling ("Petition") with the Vermont Environmental Board ("Board"), appealing the Revised J.O. The Petition is filed pursuant to 10 V.S.A. § 6007(c) and EBR 3. The Petitioners seek the reversal of the Revised J.O. and the reinstatement of the Original J.O. The Petitioners contend that the Project requires a Land Use Permit.

On July 7, 1999, Environmental Board Chair Marcy Harding convened a site visit and a hearing before the entire Board in Chelsea, Vermont with the following entities participating:

WEC by Steven P. Robinson, Esq.
Petitioners by Marc Eagle, Esq.
Jay Ratico, ***pro se***

The Petitioners and WEC filed Proposed Findings of Fact and Conclusions of Law on July 14 and July 20, 1999 respectively.

On July 7 and August 18, 1999, the Board deliberated on this matter. Following a review of the evidence and arguments presented, the Board declared the Record complete and adjourned. This matter is now ready for final decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied. See *Secretary, Agency of Natural Resources v. Upper Valley Regional Landfill Corporation, 167* Vt. 228, 241-42 (1997); *Petition of Village of Hardwick Electric Department, 143* Vt. 437,445 (1983).

II. ISSUE

As framed in the May 12, 1999 Prehearing Conference Report and Order, the issue in the Declaratory Ruling is "Whether Act 250 jurisdiction attached to the Project prior to execution of the Quitclaim such that a land use permit was and is required."

III. FINDINGS OF FACT

1. In 1984, Jay Ratico bought 39.59 acres of land from Richard Maclaurin in Chelsea, Vermont. Included in the conveyance was a 50' wide right-of-way "for all lawful purposes" over property now owned by the Petitioners.[1]

2. In 1985, Jay Ratico contacted WEC about securing electrical service to his property.

3. On July 23, 1987, Maclaurin granted WEC a 50' utility easement over property now owned by Petitioners to property owned by Ratico for the purpose of transmission and distribution of electricity. The easement allows for "proper construction, reconstruction, relocation, replacement, operation, maintenance, repair or removal" of the line as is necessary, as well as allowing the cutting of trees "within and without the easement that interfere" with the line. The easement also allows for guying rights outside the designated easements so long as they are necessary for proper construction.

4. The distance and location of the easement from Maclaurin to WEC is imprecise and undefined, as is generally the case for utility easements.

5. Pole R13 stands about 300 feet to the west of Byrne's residence in a line of trees.

[1] The Petitioners and Ratico dispute the nature and extent of this right-of-way and the right-of-way granted by Maclaurin to WEC. See Findings of Fact 3. This dispute is not an issue in this proceeding, and the Board makes no findings or conclusions as to the validity or extent of any rights-of-way or easements granted to any of the parties.

6. Pole R14 presently stands immediately to the west of and just behind Byrne's residence.

7. An above ground line from Pole R13 to R14 serves the residence of Byrne and has been used for approximately forty years.

8. All proposed lines (both above ground and buried) running easterly from Pole R14 to Ratico's house and the poles for these lines are new. The lines are all within an easement that was not existing, cleared or in use as of June 16, 197 1. Some of the new poles are to be located on the Petitioners' property.

9. In January 1988, WEC created its first plan for extending power to Ratico's home, otherwise known as "Work Order 1" ("WO-1"), after Maclaurin's conveyance of the easement WEC.

10. WO-1 contemplated the extension of above ground service to Ratico's home from Pole R13 to Pole R14 (in its existing placement), thence 160' to a new Pole R15 to the northeast of Pole R14, and thence in a generally easterly direction 970' to Pole R19 at the approximate site of Petitioners'/Ratico's property line. After Pole R19, WO-1 planned for 350' of secondary underground service leading to Ratico's house.

11. WEC does not own or control property between R17 and R19 on WO-1.

12. WEC had no control over the planned secondary underground service between R-19 and Ratico's house. This secondary line was entirely Ratico's responsibility to install; it does not belong to WEC, although WEC would ensure that it was properly installed and up to code before connecting power.

13. WO-1 was never implemented.

14. In 199 1, Maclaurin sold to Petitioners jointly a parcel of land of about 95 acres located off of Town Road 60 in Chelsea adjacent to the land owned by Ratico. The Petitioners' land consists of meadows, woodland property, some dwellings and a pond.

15. In the general vicinity approaching Petitioners' property up to Town Road 60, there are numerous power lines that criss-cross the roads and not many that run alongside the roads.

16. As noted above, two easements run through the Petitioners' property, one easement to Ratico, and one to WEC. As early as 1992 Petitioners became concerned about the potential installation of a power line over their property and retained an attorney to assist in the matter.

17. WEC met with Petitioners sometime after they had purchased their property and before July 1992. As a result of this meeting, WEC agreed to relocate Pole R14 about 50' to the north of its present location, farther away from Byrne's house.

18. The relocation of Pole R14 was solely for the benefit of the Petitioners, not WEC or Ratico. The relocation would be an added expense to WEC, since WEC could use Pole R14 in its original location to run power to Ratico's home.

19. WEC has maintained that if the relocation of Pole R14 would trigger Act 250 jurisdiction, then there would be no relocation.

20. In July 1992, WEC created Work Order 2 ("WO-2") to depict the changes to the relocation of Pole R14 to the north of its present location. The relocation would require removing some trees and limbs both at the present site of Pole R13 and at the proposed new site for Pole R14.

21. The relocation of Pole R14 was to occur within the existing right-of-way that had been in use for almost forty years.

22. WO-2 also accounted for the pond, which had just recently been enlarged by Petitioners.

23. WO-2 contemplated running an above ground line from Pole R13 to the relocated Pole R14, thence easterly 400' over the edge of Petitioners' pond to a relocated Pole R15, and thence easterly 682' to Pole R18. At Pole R18, WO-2 again planned for a 350' secondary underground power line to lead directly to Ratico's house.

24. On WO-2, the above ground line to go between Pole R14 and R16 was to be within the right-of-way claimed by WEC.

25. In November and December 1998, Ratico began cutting and removing trees between the site of proposed Poles R16 and R18 along and adjacent to the access right-of-way which was conveyed to him by Maclaurin.

26. While WEC was aware of Ratico's clearing activity, Ratico told WEC that he was cutting within his road right-of-way.

27. WEC did not request, direct, authorize or supervise Ratico's clearing along his right-of-way, nor did WEC pay Ratico for the cutting which he did.

28. WEC does not permit its customers to cut on other people's property.

29. WEC would have had to clear the power line right-of-way had Ratico not done so. WEC will make use of all the cutting that Ratico did.

30. WEC began planning for the installation of the line in late November or early December 1998 when it came to the Petitioners' property to secure final pole locations and set survey stakes near new proposed poles as depicted on WO-2 to confirm the measurements in wo-2.

31. Stakes for utility lines are usually set on a preliminary basis only, subject to, change; the precise location of where a pole will be set is not known until the power lines are actually installed.

32. In early December 1998 WEC inspected the cutting which Ratico had done in order to determine if further work was necessary for the installation of its line; further cutting and clearing was necessary.

33. On December 22, 1998, WEC formally notified the Petitioners that it would be commencing the line installation project on December 3 1, 1998. This notification allowed for changes to occur to the project at the request of Petitioners up until the time the project commenced.

34. On December 30, 1999 WEC contacted Coordinator Julia Schmitz about the proposed line installation. Schmitz suggested that Act 250 jurisdiction might apply to WO-2 because the Project might exceed one acre.

35. WEC decided to reduce the size of the Project so that it would not trigger Act 250 jurisdiction.*

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[2] Although it is evident that WEC created WO-3 in order to avoid Act 250 jurisdiction, there is nothing illegal or improper in WEC's actions. There is a difference between ***avoiding*** consequences from the law, and ***evading*** consequences of the law. As Justice Peck wrote in ***In Re Vitale, 15*** 1 Vt. ***580, 589 (1989)*** (Peck, J., dissenting);

> It is a truism that it is entirely proper, legally as well as morally, to "avoid" a law but not to "evade" it. The practical - and legal - application of this truism allows all of us, as a matter of right, and in any field controlled generally by legislative enactments, to take advantage of a circumstance, however narrow and obscure it may be, that is not, in law and fact, covered by the enactments.

Thus, for example, it is acceptable to avoid being audited, by arranging one's accounts in a lawful manner; this is an avoidance of the consequences of the law. However, it is not acceptable to misreport one's accounts to prevent being audited; this is an evasion of the law. See ***Ratzlaf v. United States, 510*** U.S. 135, 144-145 (1994) (Court held that it would be absurd to hold that a small business owner who

36. WO-2 was not implemented.

37. Payments made by Ratico to WEC were calculated based on the distances set out in WO-2.

38. On December 30, 1998, WEC created Work Order 3 ("WO-3"). WO-3 was faxed to Coordinator Schmitz that same day.

39. WO-3 plans to run power above ground a distance of 300' from Pole R13 to the relocated Pole R14 site. WO-3 then calls for running an above ground line a distance of 400' easterly over the Petitioners' pond to Pole R15, thence easterly a distance of 467' to Pole R17.

40. Beyond Pole R17, WO-3 plans to run the line underground 600' to Ratico's house.

41. WEC will require that all work for secondary underground power be re-seeded prior to connection of service to Ratico's house.

42. The Project will take place below the elevation of 2500 feet and is not located in a natural area, scenic area, or scenic corridor as defined in 10 V.S.A. $1309.

43. Clearing, chipping, digging, drilling and cutting by WEC took place along the proposed line (and in particular near Pole R13 and at the relocation site for Pole R14) on December 31, 1998.

44. Tree cuttings at Pole R13 exceeded 30' in width.

45. Cutting occurred approximately 75' north of the location of existing Pole R14 and approximately 26' north of the location of proposed Pole R14.

46. All of the cutting at or near Pole R13 and the proposed relocated site of Pole R14 was for the purpose of relocating Pole R14.

47. WEC did minor cutting and chipping between the proposed locations of Poles R16 and R17.

48. WEC did no cutting beyond Pole R17.

49. WEC stopped all work on the project on January 4, 1999 due to the concerns by the District Coordinator that the Project might be subject to Act 250 jurisdiction.

made two deposits a week just under $10,000 to avoid the risk of an IRS audit is in some way violating the law; such action is perfectly legitimate.)

50. On January 12, 1999 Coordinator Schmitz issued a Jurisdictional Opinion concluding that WEC's project exceeded one acre, and that Act 250 applied.

51. On February 9, 1999 WEC quitclaimed to Petitioners 20' of its 50' wide easement, since it needed to use only a 30' wide strip of its right-of-way.

52. On March 12, 1999, Schmitz issued second Jurisdictional Opinion, this time concluding that, because the right-of-way was now only 30' wide, the project would take place on less than an acre, and therefore Act 250 jurisdiction would not be triggered.

53. The Town of Chelsea does not have permanent subdivision bylaws.

IV. CONCLUSIONS OF LAW

The question presented by this Petition is whether there is Act 250 jurisdiction over an electric transmission line to be installed by WEC over the Petitioners' property to land owned by Ratico in Chelsea, Vermont.

This Petition is governed by Appendix A of the EBR. EBR A-3(a) states:

> Unless specifically exempted under provision A-3(c), no person shall without having obtained a permit under 10 V.S.A chapter 15 1 construct, relocate, reconstruct, or extend any transmission facility for any purpose whether above, below, or on ground if the construction of improvements for the right-of-way involves more than one acre...

A transmission facility is "any wire, conduit, and physical structure or equipment related thereto whether above, below, or on ground used for the purpose of carrying, transmitting, distributing, storing, or consuming of electricity or communications..." Rule A-2.

Three exemptions from the permit requirement are relevant to this case:

a) Rule A-3(c)(ii) states that "an under or on ground transmission facility below the elevation of 2500', reseeded and or reforested provided it is not located in a natural area, scenic area, or scenic corridor as defined in 10 V.S.A. §1309" is exempt....

b) Rule A-3(c)(iii) states "an under or on ground transmission facility within a right-of-way... existing, cleared, and in use, as of the effective date of these rules... provided that such installation will not require widening or changing the character of the existing right-of-way.. .." is likewise exempt.

c) Rule A-3(c)(iv) says that "an above ground transmission facility in a right-of-way existing, cleared, and in use as of the effective date of these rules [June 16, 1971] . . . where such installation will not require widening or changing the character of the right-of-way" is exempt from Act 250.

A. Commencement of Construction

An initial issue to be determined is which Work Order, WO-2 or WO-3, was in effect at the time construction commenced on the Project. If construction commenced at the time when WO-2 was in effect, then the Board would examine that plan and its particulars to determine whether the electric line installation would require a Land Use Permit. If, however, construction did not commence until WO-3 was in effect, then the particulars of WO-3 would govern the Board's determination.

An Act 250 permit must be obtained prior to commencing development. 10 V.S.A. 608 1 (a). Development includes the construction of improvements on more than one acre of land in a town without both permanent zoning and subdivision bylaws. 10 V.S.A. § 6001(3). The Town of Chelsea does not have permanent subdivision bylaws. The construction of improvements can include the changes made in relation to construction, extension, or relocation of a transmission facility. EBR Appendix A-3(a).

"Commencement of construction" means:

> the construction of the first improvement on the land or to any structure of facility located on the land including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in any way incidental to altering the land according to a plan or intention to improve or to divide the land by sale, lease, partition or otherwise transfer an interest in the land.

EBR 2(C)

1. Staking

Here, cutting by WEC occurred on December 3 1, 1998, one day after WEC adopted WO-3. No other cutting or site work by WEC occurred prior to December 3 1, except that WEC set stakes some time in late November or early December 1998. The question is whether the setting of those stakes commenced construction at the site such that WO-2 is the operative work order for purposes of determining jurisdiction.

It is evident from EBR 2(C) that construction commences as soon as the first improvement upon a parcel occurs. Further, the Rule specifically states that that the "staking

out or use of an right-of-way preparatory to construction" is "commencement of construction." On the one hand, therefore, because the Rule states that staking out **is the commencement of** construction when it is "in any way incidental to altering the land according to a plan or intention to improve," staking out of land for power line installation can be characterized as some type of improvement to the land. If that is the case, then WEC's staking action commenced construction and WO-2 is the operative work order which must be used to determine if Act 250 jurisdiction exists.

On the other hand, EBR 2(C) could be read more narrowly, so that staking out a right-of-way is considered "commencement of construction" only when it is incidental to the "sale, lease, partition or ... transfer [of] an interest in land." If this is the meaning of EBR 2(C), then WEC's staking out of the right-of-way in preparation for an electric line installation is not the "commencement of construction." No sale, lease, partition or sale of land is involved in this matter.

The Board has held that construction commences at the first sign of an improvement that is clearly in preparation for a project. *State Buildings Division,* Declaratory Ruling # 121, Findings of Fact and Conclusions of Law (October 29, 1980), *rev'd, In re Agency of Administration, State Buildings Division,* 141 Vt. 68 (1982) (Board holds that physical alteration of the land in anticipation of later development is commencement of construction); *Aaron and Sons, Inc.,* Declaratory Ruling #359, Findings of Fact, Conclusions of Law and Order, (October 29, 1998) (commencement of construction can include any physical disturbance on a project tract which initiates development). Commencement of construction is achieved when there is "such finality of design that construction can be said to be ready to commence." *Capitol Heights Associates,* Declaratory Ruling # 167, Findings of Fact, Conclusions of Law, and Order (Mar, 27 1985) (the Board has held that the cutting of trees and construction of skidding roads may constitute the "commencement of construction"); US *Quarried Slate Products Inc.,* Declaratory Ruling #279 Findings of Fact, Conclusions of Law, and Order (Reconsidered) (October 1, 1993) (digging a drainage ditch and cutting trees constituted a "commencement of construction").

However, there is also precedent both from the Board and the Vermont Supreme Court which requires some finality in plans before construction can be deemed to have commenced. *In re Vermont Gas Systems, 150* Vt. 34, 38 *(1988)* (Site specific construction details were not yet available for gas pipeline extensions, and therefore a commencement of construction had not taken place; there was not "such finality of design that construction was ready to commence"); *and see In re Agency of Administration, State Buildings Division* (demolition of house is not the construction of improvements unless it is the first step in a proven development project.)

Determination of the "commencement of construction" or the "commencement of development" therefore involves a fact-specific inquiry. For example, while there is no Board precedent, specifically addressing whether staking out land prior to the installation of electrical lines triggers EBR 2(C), the Board has held that, since a logging project was uncertain due to frequent alterations in logging plans, there was no commencement of construction. *Johnson*

Lumber Company, Declaratory Ruling #263, Findings of Fact, Conclusions of Law and Order (July 10, 1997).

Here, the Board concludes that WEC's actions of staking to mark potential sites for poles for an electric line does not constitute "commencement of construction" under EBR 2(C). Because these pole locations are subject to change, there is not "such finality of design that construction can be said to be ready to commence." Rather staking for electric line installation is very preliminary; the electric company only knows if the stakes are accurate when the plan is finalized, after the land has been staked and re-staked.

For policy reasons, the Board also concludes that it would be inefficient use of time were the District Environmental Commissions required to issue a permit each time the staking changed for *apotential* pole sites.

By contrast, when cutting occurs in connection with the installation of an electric line, construction has commenced. Stakes can easily be moved and changed, whereas the cutting of trees cannot be reversed.

Therefore, for the purposes of the installation of power lines alone, the Board concludes that staking *ofpotential* pole sites in and of itself does not designate the start of a final plan, and does not constitute the "commencement of construction" for purposes of determining Act 250 jurisdiction. This decision should in no way be read to affect other Board decisions relating to commencement of construction or development. Electrical line plans are different from logging plans or the creation of subdivisions, and EBR 2(C) remains intact and in force for those land uses.

2. *Cutting*

Tree cutting occurred at the Project site at two times; first, in November 1998 when Ratico cleared his claimed right-of way between the site of proposed Pole R16 and his home; second, on December 3 1, 1998 when WEC itself cut around Pole R13, the site for a relocated Pole R14 and near proposed Pole 16. Since all of WEC's cutting occurred after it had adopted WO-3, no cutting by WEC would have triggered a determination of jurisdiction under WO-2. The question then remains as to whether Ratico's activities can somehow be attributable to WEC, such that his cutting triggers review under WO-2.

The cutting and removing of trees between the site of proposed Poles R16 and R18 which Ratico did in late 1998 is not attributable to WEC. Although WEC knew of this clearing activity, WEC inspected it, and WEC would have had to cut had Ratico not done so, and WEC will make use of all the cutting that Ratico did, there is no indication that the clearing was directed, supervised or authorized by WEC. There is no evidence that Ratico was acting as WEC's agent or employee as regards this clearing such that his actions can be attributed to WEC

Westinghouse Electrical Supply Co. v. B.L. Allen, Inc., 138 Vt. ***84*** (1980) (burden of proving agency lies with the party asserting it); ***Scott v. Bradford National Bank, 107*** Vt. 226 (1935) (that one person assumes to act for another is not admissible as evidence of agency).

B. Jurisdiction under Work Order 3

Because the Board concludes that construction on the Project did not commence until WEC began cutting on December 3 1, 1998, the question then is whether the Project, as defined in the Work Order then in effect, WO-3, triggers Act 250 jurisdiction. To answer this question, it is necessary to analyze each discrete segment of the line individually.

1. *Poles R13 to R14*

Petitioners concede that "that portion of the line from Pole ***R13*** to Pole ***R14*** is exempt under Rule A-3(c)(iv)." *Petitioners'* ***Proposed Findings of Fact, Conclusions of Law, and Order,*** (July 14, 1999) at 8. The Board agrees.

EBR Appendix A-3(c)(iv) states that transmission facilities shall be exempt from permit requirements if there is "an above-ground transmission facility in a right-of-way existing, cleared, and in use, as of the effective date of theses rules.. ." Appendix A was in effect as of June 16, 1971.

The power line between Poles R13 and R14 has been in existence for forty years. Thus, because the line service has been in use before Act 250 was created, this element of the Rule A-3(c)(iv) exemption is satisfied.

Rule A-3(c)(iv) might arguably not apply to the Pole R13 – R14 segment because of the new clearing and cutting which was required for the relocation of Pole R14 to the north; the right-of-way would not have been "cleared, and in use, as of the effective date of theses rules.. ." In this case, however, the Board finds that the clearing activities that were conducted for the purpose of relocating Pole R14 do not cause the R13-R14 segment to lose its exemption.

First, the clearing that was done was minimal. Some trees around the location of Pole R13 and the proposed location of Pole R14 were cut, but the vast majority of the land beneath the wires remains untouched. Second, it is unclear that the relocation of Pole R14 would cause the line to go outside of its original right-of-way, as the precise location of that right-of-way is not defined. Third, the relocation of Pole R14 is not necessary for the completion of this Project -- the installation of power to Ratico's house; the line could run from the existing site of Pole R14 to Pole R15. Finally, the Petitioners requested the relocation of Pole R14 to the north of its present site, so as to move the line further from their homes. It would indeed be inequitable if

the Petitioners could, by requesting this relocation, trigger Act 250 jurisdiction over WEC's Project.

2. *Poles* R14 *to RI 7*

This segment of line is not exempt under any section of Appendix A of the EBRs. It constitutes 867' of line which is above ground and has not been in use before and therefore the entire length of this section must be counted in calculating whether the Project exceeds one acre and is therefore subject to Act 250 jurisdiction.

3. *Pole R1* 7 *to Ratico House*

EBR Appendix A-3(c)(ii) states that a transmission facility is exempt and requires no permit if the line is "an under or on ground facility below the elevation of 2500', reseeded and/or reforested provided it is not located in a natural area, scenic area, or scenic corridor, as defined in 10 V.S.A. $1309." The section of line from Pole R17 to Ratico's house will be installed underground. It is below 2500' of elevation and is not in a natural area, scenic area, or scenic corridor as defined under 10 V.S.A. $1309. WEC will require that the land be reseeded upon completion of the installation as a condition to installation.

Unlike EBR Appendix A-3(c)(iii) and (iv), A-3(c)(ii) does not require that the line be in an existing, cleared and right-of-way in use as of the effective date of Appendix A. Indeed, the fact that subsection (ii) requires the reseeding or reforestation of the site of the underground line implies that clearing may occur in order to install it.

Because the line will fall under the exemption in Appendix A-3(c)(ii), it does not trigger Act 250 jurisdiction.

4. *Calculations*

The only portion of the line that is relevant to the calculation of jurisdiction is the length from Pole R14 to Pole R17. The evidence from WO-3 is that this length is 867'. Multiplying this length by the full width of the right-of-way[3] results in a parcel size which is less than one

[3] Although WEC reduced the footage of its easement from 50' to 30' in an attempt to avoid Act 250 jurisdiction, the Board will not make any conclusions with regard to the width of WEC's present easement or the validity of WEC's quitclaim for three reasons. First, such conclusions are unnecessary since, even if the entire 50' width is included in the calculations, the Project is still less than one acre in size and therefore Act 250 jurisdiction is not triggered. Second, the Board does not decide issues that are not delineated in the Prehearing Conference Report and Order. The May 12, 1999 Order lists one issue for the Board to decide: "Whether or not Act 250 jurisdiction attached prior to the execution of the Quitclaim such that a land use permit is and was required." Third, the conflict over the terms of the easement and the validity of the quitclaim must be decided in the Vermont courts, as this question is not

acre: 867' (proposed length) x 50' (right-of-way) = 43,350 square feet. One acre is equal to 43,560 square feet.

C. ***Conclusion***

The line from pole R13-R14 is exempt from Act 250 jurisdiction under Appendix A-3(c)(iv). The underground installation from pole R17 to the Ratico home is exempt from Act 250 jurisdiction under Appendix A-3(c)(ii). The only section of line that is relevant to a calculation for purposes of determining Act 250 jurisdiction – that portion between Poles R14 and R17 – is on less than one acre.

V. ORDER

The Project does not require an Act 250 Permit.

Dated at Montpelier, Vermont, this 19th day of August 1999.

ENVIRONMENTAL BOARD

Marcy Harding

Marcy Harding, Chair
John Drake
George Holland
Samuel Lloyd
W. William Martinez
Rebecca Nawrath
Alice Olenick
Greg Rainville
Donald Sargent

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within the Board's power to decide. *Okemo **Mountain** Inc.*, Land Use Permit #2S0351-7A-EB (January 9, 1992).