

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

Re: *Central Vermont Public Service Corp.*

Declaratory Ruling #420

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This is a petition for a declaratory ruling filed by the Central Vermont Public Service Corporation (CVPS) concerning proposed extensions to the utility line governed by Land Use Permit #2S0301, in Cavendish, Vermont (the Project).

I. PROCEDURAL SUMMARY

On January 7, 2003, the District #2 Environmental Commission Coordinator (Coordinator) issued Jurisdictional Opinion #2-172 (JO) in which she determined that any extension to the utility line in Cavendish subject to Land Use Permit #2S0301(Project) would require a permit amendment pursuant to 10 V.S.A. §§ 6001-6092 (Act 250).

On January 16, 2003, CVPS filed a Petition for Declaratory Ruling with the Environmental Board (Board), appealing the JO, pursuant to 10 V.S.A. § 6007(c) and Environmental Board Rule (EBR) 3. CVPS contends that the Project does not require an Act 250 permit amendment.

On February 20, 2003, Board Chair Patricia Moulton Powden convened a Prehearing Conference. The only party present was CVPS, by Tim Upton. A Prehearing Conference Report and Order (PCRO) was issued on February 21, 2003. Among other things, the PCRO provided an opportunity for the parties to waive hearing and file a stipulation of facts.

A stipulation of facts and exhibits and waiver of hearing was filed on March 10, 2003, by CVPS, the Southern Windsor County Regional Planning Commission and the Vermont Agency of Natural Resources. No further filings were made, and no party requested oral argument. The Board deliberated on this matter on April 16, 2003.

II. ISSUE

The issue is whether the Project requires a land use permit amendment pursuant to Act 250.

III. FINDINGS OF FACT

The following findings consist of the parties' stipulation of fact, with only minor changes made to conform to the Board's defined terms:

1. On November 19, 1975, the Commission issued Permit #2S0301 (Exhibit CVPS1) to CVPS for "a utility line extension of 3,518 feet along Town Road #7 [Newton Road] in Cavendish, Vermont."
2. Condition C of Permit #2S0301 says, "No further line extension shall be made within this project area in Cavendish, Vermont without all plans for all

such extensions being filed with and approved by District Environmental Commission II in their entirety."

3. In May 2002, CVPS received a request for electric service to a property on Newton Road. CVPS designed a line extension to serve the property. The proposed design results in a line extension of approximately 700 feet.
4. The proposed line extension would originate at a pole included in Permit #2S0301 and is therefore in the "project area" as referenced in that permit.
5. On August 28, 2002, CVPS submitted construction plans (Exhibit CVPS2) for the proposed extension to the Commission for approval. Such approval was not given.
6. On December 23, 2002, CVPS submitted a request (Exhibit CVPS3) to the Coordinator for a Jurisdictional Opinion as to whether Act 250 jurisdiction existed over the proposed line extension.
7. On January 7, 2003 the Coordinator issued Jurisdictional Opinion #2-172 (Exhibit CVPS4), which stated that "any extension to the power line approved in Land Use Permit #2S0301 requires an amendment."

IV. CONCLUSIONS OF LAW

This case concerns a proposed 700-foot extension of a utility line in Cavendish. The original line was permitted in 1975 by Permit #2S0301. Condition C of that permit states that:

No further line extension shall be made within this project area in Cavendish, Vermont without all plans for all such extensions being filed with and approved by the District Environmental Commission 2 in their entirety.

Permit #2S0301, Condition C (Nov. 19, 1975).

CVPS argues that it can extend the line permitted by Permit #2S0301 without a permit amendment. (CVPS's Memorandum in Support of a Request for a Declaratory Ruling (Jan. 16, 2003).) Specifically, CVPS argues that Condition C allows CVPS to extend the #2S0301 utility line as long as CVPS submits plans for any such extension with the Commission.

Condition C, however, requires that the plans be "filed with and approved by" the Commission. Permit #2S0301, Condition C (emphasis added). The plain language of Condition C requires Commission approval of any future line extension. As set forth below, the Board concludes that this can only be read to require a permit amendment.

District commissions are authorized to consider applications for Act 250 permits and permit amendments. See, 10 V.S.A. §§ 6083-6087; EBR 30; EBR 34; *see also, Re: Stratton Corp., #2W0519-17*(Revised)-EB, Dismissal Order at 5 (Jan. 10, 2001). Nothing in the statute or rules confers jurisdiction on district commissions to review and approve plans for new projects without an application for a permit or permit amendment. A district coordinator has the authority to review plans to determine whether an amendment application is required, 10 V.S.A. § 6007(c), but Condition C expressly requires that plans be reviewed by the Commission. This is not a case in which the Commission issued partial findings or retained jurisdiction over certain aspects of the original application, or other similar circumstances. Instead, the Commission approved the original line in 1975 and conditioned that permit, in relevant part, upon independent review and approval of any new line extension. Therefore, Condition C requires that CVPS file a permit amendment application for any future line extension.

In its argument CVPS concedes that, "[h]ad the Commission required by condition that the permit be amended prior to the line being extended further, and had that permit not been appealed or later amended to remove the condition, then CVPS would be bound to submit an application for such amendment." (CVPS Memo, at 2-3.) There is no dispute that the condition in question was not appealed.

The Board concludes the Project requires a permit amendment under Condition C of Permit #2S0301.

V. ORDER

The Project requires a land use permit amendment pursuant to Act 250.

DATED at Montpelier, Vermont this 25th day of April, 2003.

ENVIRONMENTAL BOARD

/s/ Patricia Moulton Powden
Patricia Moulton Powden, Chair
George Holland
Donald Marsh
Patricia Nowak
Alice Olenick
Richard C. Pembroke, Sr.
Jean Richardson