

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-3236-PET

Petition of Otter Creek Solar LLC, pursuant to 30 V.S.A. § 248, for a certificate of public good authorizing the installation and operation of the “Stark Solar Project,” a 2.2 MW solar electric generation facility in Bennington, Vermont	
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Order entered: 02/11/2022

ORDER RE: NOTICE TO ADJOINING PROPERTY OWNERS

I. INTRODUCTION

This case involves a petition filed with the Vermont Public Utility Commission (“Commission”) by Otter Creek Solar LLC (“Petitioner”) seeking a certificate of public good for a 2.2 MW solar electric generation facility in Bennington, Vermont (the “Project”).

In today’s order, I determine that the Petitioner has not met its obligations under Commission Rule 5.407 by failing to provide notice of its proposed relocation of the Project’s interconnection line to all affected adjoining landowners.

II. PROCEDURAL HISTORY

On June 23, 2021, the Petitioner filed supplemental prefiled testimony and exhibits that proposed a change to the interconnection route for the Project.

On June 30, 2021, I issued an order requesting additional information related to the proposed modifications to the interconnection route.

On September 8, 2021, the Petitioner filed a document seeking in part a determination that the proposed modifications to the Project’s interconnection route do not constitute a substantial change within the meaning of Commission Rule 5.407.¹

¹ Response To Hearing Officer’s Questions and Request For Non-Substantial Change Determination at 3-4 (“OCS filing”). Petitioner’s filing sought a determination of non-substantial change under Commission Rule 5.408. See OCS filing at 3. However, that rule applies only to project changes proposed after a CPG has been issued. Because a CPG has not yet been issued for the Project, the applicable Rule is Commission Rule 5.407.

On January 4, 2022, I issued an Order determining that the proposed rerouting of the interconnection line was a substantial change and required additional notice to adjoining landowners, statutory parties, and any other parties to this proceeding.

On January 7, 2022, the Petitioner filed its Notice of Substantial Change and Certificate of Service.

On January 24, 2022, Jeanine Hemstead filed a Petition to Intervene. On the same date, Tony Bolio and Linda Wichlac, Executive Director of Bennington Project Independence Adult Day Service (“Project Independence”), filed public comments alleging, *inter alia*, that they had not received notice of the Petitioner’s proposed Project change.

On January 28, 2022, I issued a Procedural Order directing the Petitioner to respond to the portion of the public comments that alleged a failure to provide notice.

On February 7, 2022, the Petitioner responded to the January 28 order, providing tax maps identifying the location of the properties owned by Mr. Bolio and Project Independence. The Petitioner argued that notice was not required to be given to either Mr. Bolio or Project Independence because they are not “adjoining landowners” to the Petitioner’s proposed 2.2 MW facility as that phrase is defined in Commission rules.

III. DISCUSSION

Commission Rule 5.407 requires a Section 248 petitioner to provide notice of a substantial change proposed for a project that has not yet been issued a CPG to “all parties and entities entitled to notice under this Rule and Section 248, including any newly affected adjoining property owners, as defined by this rule.” Commission Rule 5.402(B)(2)(b) defines an adjoining landowner as:

a person who owns land in fee simple, if that land . . . [w]ith respect to a generation facility, substation, or other transmission facility not part of a transmission line, shares a property boundary with the tract of land on which that facility or substation is located or is adjacent to that tract of land and the two properties are separated only by a river, stream, railroad line or public highway.

There is no dispute in this case that the 2.2 MW solar project proposed by the Petitioner is a “generation facility” that is required to obtain a CPG under Section 248. The question is whether the proposed relocated line that will connect the Project to the distribution grid of Green

Mountain Power Corporation (“GMP”) is part of the Project for notice purposes under Commission Rules 5.407 and 5.402(B)(2)(b).

The Petitioner contends that notice to Mr. Bolio and Project Independence was not required under: (1) Commission Rule 5.402(B)(2)(b) because their properties are separated from the parcel on which the Petitioner proposes to place the Project’s generation equipment by an intervening parcel of land, or (2) Commission Rule 5.402(B)(2)(a) because the interconnection line in question is not a transmission line.

The Petitioner’s arguments mischaracterize the notice requirements under the rules by attempting to treat the interconnection line that will serve the Project’s generation components as infrastructure that is separate and apart from the Project itself. For the reasons discussed below I disagree and conclude that for the notice requirements of Commission Rules 5.407 and 5.402(B)(2)(B) the relocated interconnection line is part of the proposed Project. Therefore, notice is required to be given to all persons who own property that directly abuts the line or that is separated from the line only by a “river, stream, railroad line or public highway.”

The Commission has long held that impacts from electric distribution lines that are constructed for the purpose of serving a facility that is subject to Section 248 jurisdiction are subject to review under that Section even when built and owned by the serving utility and not the Section 248 petitioner.

In *Petition of Vermont Electric Cooperative*, the Commission concluded that an upgraded distribution line that would be constructed and owned by Vermont Electric Cooperative, Inc. (“VEC”), but used to serve a generation project proposed by a third party, did not require a Section 248 CPG. However, because the line was only being constructed to serve the proposed generation facility, the potential impacts from the line were attributable to the proposed generation facility and therefore must be evaluated under the applicable Section 248 criteria in determining whether to approve the proposed project:

However, because the distribution upgrade would be built *only because of the proposed* Berkshire project, the Board has a responsibility under Section 248(b) to ensure that the proposed Berkshire project, including the necessary distribution upgrade, would not have any undue adverse impacts. Consequently, the Board must receive testimony from VEC describing the upgrade and addressing any criteria under Section 248(b) on which the upgrade has the potential for significant impact.

This does not mean, however, that the distribution upgrade itself is brought under Section 248 jurisdiction.²

Similarly, in this case, the proposed relocated interconnection line is being built solely because it is needed to interconnect the proposed solar project to the GMP distribution system. But for the proposed Project, the interconnection line would not be built. And, as in the *VEC* case, the potential impacts of the proposed relocated interconnection line are subject to review under Section 248(b). It would be irrational to review these potential impacts under Section 248 while at the same time interpreting Commission Rules 5.407 and 5.402(B)(2)(b) to not require notice to landowners adjoining the newly proposed interconnection route when they are the members of the public most likely to be subject to those potential impacts.³

Based on the property map provided by the Petitioner as Exhibit A to its February 7, 2022, Response to Procedural Order, I conclude that Ms. Wichlac, on behalf of Project Independence, was entitled to receive notice of the proposed change to the Project's interconnection route because Project Independence's property abuts the new route. Additionally, Mr. Bolio would have been entitled to notice if he owns the access route to his property in fee simple.⁴ Lastly, the property maps indicate that there are many other similarly situated properties that either abut the new interconnection route or are separated from it only by Harwood Hill Road or Rice Lane that have not received notice of the new interconnection route. Until the Petitioner has provided notice of the new interconnection route proposal to all persons and entities entitled to notice under Commission Rule 5.407 and 5.402(B)(2)(b), I cannot proceed with review of the proposed change.

²*Petition of Vermont Electric Cooperative, Inc., for a Declaratory Ruling that VEC's Distribution Line Upgrade required by the Berkshire Cow Power project in Berkshire, Vermont, is not subject to 30 V.S.A. Section 248*, Docket 7201 (September 15, 2006) 2006 WL 2668809 (Vt.P.S.B.) (emphasis added).

³ I have already ruled that the proposed interconnection route change to the project constitutes a "substantial change" because it has "the potential for significant impact with respect to any of the criteria of Section 248(b)". Order Re: Substantial Change Determination, January 4, 2022.

⁴ It is not clear from the materials provided whether Mr. Bolio owns the access point to his property or whether he is the holder of an easement across the property of another.

IV. ORDER

The proposed relocated interconnection line is to be built along a portion of Rice Lane and Harwood Hill Road where numerous properties either directly abut the proposed line or are separated from it only by these town roads. All persons who have a fee simple interest in those properties are entitled to notice of the newly proposed interconnection route. Therefore, it is ordered as follows:

1. On or before February 21, 2022, the Petitioner must file a list identifying all persons who own property in fee simple that abut the newly proposed interconnection route or are separated from it only by a river, stream, public highway, or railroad line.
2. On or before February 21, 2022, the Petitioner must file a certified copy of the current Town of Bennington tax map that corroborates the list of property owners required by paragraph 1, above.
3. On or before February 21, 2022, the Petitioner must file a certification that all persons identified in the list required by paragraph 1, above, have received notice of the newly proposed interconnection route as required by Commission Rules 5.407 and 5.402(B)(2)(b). The notice shall include a description of the proposed changes in enough detail so that a reader can understand the nature of the changes and must include the following statement: "If you have any comments or concerns over these proposed changes, you must file them with the Vermont Public Utility Commission no later than the close of business on March 7, 2022."
4. Any party or other notice recipient may file a response to the proposed change no later than close of business on March 7, 2022.
5. The Petitioner may file a reply to any responses no later than close of business of March 14, 2022.

SO ORDERED.

Dated at Montpelier, Vermont, this 11th day of February, 2022.



Anthony Z. Roisman, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: February 11, 2022

Attest:  _____
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 19-3236-PET - SERVICE LIST

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