

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NMP-5978

Petition of SSE New Haven Solar II LLC for a)
certificate of public good, pursuant to 30 V.S.A.)
§§ 219a and 248, to install and operate a)
350 kW group net-metered solar electric)
generation facility in New Haven, Vermont)

Order entered: 12/15/2015

ORDER DENYING REQUEST FOR RECONSIDERATION

This case involves a petition filed by SSE New Haven Solar II, LLC (the "Petitioner") for a certificate of public good ("CPG"), under 30 V.S.A. §§ 219a and 248, authorizing the installation and operation of a 350 kW group net-metered solar electric generation facility in New Haven, Vermont (the proposed "Project"). On September 3, 2015, the Vermont Public Service Board (the "Board") determined that the petition raises a significant issue with respect to the orderly development of the region and referred the case to a Hearing Officer for further proceedings.¹ In that Order, the Board also permitted the Town of New Haven ("New Haven" or the "Town") to intervene as a party in this proceeding. On September 16, 2015, New Haven asked that we reconsider our decision recognizing the Town's right to intervene in this case.² Instead, based on a recent change of law, the Town has concluded that New Haven must be accorded the status of a "statutory party" in this case.

The distinction between an intervening party and a statutory party is that an intervening party becomes a party to a case by choice, while a statutory party is required by law to participate

1. CPG #NMP 5978, Order of 9/3/15 at 2 (the "September 3rd Order"). The Board subsequently found that the petition also raised a significant issue with respect to system stability and reliability. CPG #NMP 5978, Order of 10/23/15 at 1 (the "October 23rd Order"). The Petitioner has requested reconsideration of the October 23rd Order and the Board will address that request separately.

2. New Haven Motion for Reconsideration dated September 16, 2015, at 1.

in a case.³ Additionally, there are two types of intervenors in Board proceedings: those who seek to intervene "as of right," and those who seek to intervene with permission from the Board.⁴ Both types of intervention require first that a request be filed with the Board for intervenor status.⁵ In turn, this filing requirement serves two purposes: (1) it provides due notice to existing parties in the proceeding (such as statutory parties) that there is an additional person who claims a right to participate in the case; and (2) it provides an opportunity for the existing parties to challenge whether lawful grounds exist for granting the intervention request, and otherwise to advocate for such limits on the intervention as the Board may find necessary to properly conduct the proceeding.

Pointing to the following recent amendment to 30 V.S.A. § 248, New Haven maintains that the Town is not asking to intervene in this case, but instead is exercising its right to participate as a "statutory party" to this proceeding:

The legislative body and the planning commission for the municipality in which a facility is located *shall have the right to appear as a party* in any proceedings held under this subsection.⁶

We read the phrase "shall have the right to appear as a party" to mean that Section 248(a)(4)(F) gives a municipality such as New Haven an absolute right to participate in a Section 248 case, if the municipality so chooses. Significantly, there is no language in the statute that forces the participation of a legislative body, planning commission, or a municipality. Therefore, it seems the intent of the statute is to allow these governmental entities to choose whether, when, and how to invest their time and resources in participating in Section 248 proceedings.⁷

3. Examples of statutory parties in Section 248 proceedings are the Vermont Department of Public Service and the Agency of Natural Resources. *See* 30 V.S.A. § 2(a)(7) (requiring the Department to "supervise and direct the execution of all laws relating to . . . siting of electric generation and transmission facilities under Section 248" and mandating the participation of the Department in cases requiring a hearing). *See also*, 30 V.S.A. § 248(a)(4)(E) (stating that the Agency of Natural Resources "shall appear as a party" in Section 248 proceedings).

4. *See* Board Rule 2.209.

5. By comparison, a statutory party does not file a request to intervene. Instead, a statutory party only files a notice of appearance at the outset of the case to inform the Board of the identity of the individual representing the statutory party.

6. 30 V.S.A. § 248(a)(4)(F) (*emphasis added*).

7. When exercising this right to intervene a municipality also assumes the obligations and responsibilities of a party participating in a Board proceeding, including complying with the Board's rules of practice and Board orders.

We agree with the Town that the statutory phrase "shall have the right to appear as a party" means that, as a municipality, New Haven has a right to participate in this case. However, a right to participate is not the same as an obligation to participate, which is why we cannot agree that a municipality qualifies as a "statutory party" under Section 248(a)(4)(F). We would agree with New Haven's position if Section 248(a)(4)(F) contained the words "shall appear as a party." However, the statutory sentence also includes the words "have the right to," and we are required to give effect to these words as well.

While we are not able to accept New Haven's position that it should be a "statutory party" in this case, we do agree that New Haven has a right under Section 248(a)(4)(F) to "appear as a party" in this proceeding and therefore has grounds to intervene "as of right." In our view, New Haven effectively filed an intervention request on April 24, 2015, which we granted in the September 3rd Order. Though it does not say so expressly, the intent of our ruling was to accord New Haven the status of a party who has intervened "as of right," limited to the interests identified by the Town in its April 24th filing. In light of these facts, and in the absence of any reason to change the intervention ruling in the September 3rd Order, we have decided not to grant New Haven's request for reconsideration.

SO ORDERED.

Dated at Montpelier, Vermont, this 15th day of December, 2015.

s/James Volz)

) PUBLIC SERVICE

s/Margaret Cheney)

) BOARD

s/Sarah Hofmann)

) OF VERMONT

OFFICE OF THE CLERK

FILED: December 15, 2015

ATTEST: s/Susan M. Hudson
Clerk of the Board

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