

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-867

Application of Martin Bowen for a certificate of)
public good for an interconnected net metered)
photovoltaic system)

Order entered: 4/15/2010

I. INTRODUCTION

This case involves an application filed by Martin Bowen ("Applicant") on January 4, 2010, requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. §§ 219a and 248 and Vermont Public Service Board ("Board") Rule 5.100 for a net metering system. The net metering system consists of a ground-mounted photovoltaic array to be located on property owned by the Applicant in Clarendon, Vermont.

A copy of the application was sent, by the Applicant, to all parties as specified in the Board's Rule 5.100. The application stated that any party wishing to submit comments or request a hearing in this matter needed to file comments with the Board within thirty days of the date that the application was sent.

On January 12, 2010, the Board received a letter from Stephen Elias, a neighboring landowner, expressing concerns with regard to the project's compliance with various deed covenants and stating that the project "would be very unsity [*sic*], as my deck looks right at it."

On February 12, 2010, the Applicant filed a letter with the Board addressing the concerns expressed by Mr. Elias. The Applicant argues that the "Board is not the venue to review neighborhood covenants." The Applicant also states that the project will be located approximately 225 feet from the Elias property and the view of the project from that property will be blocked by the Applicant's house.

II. FINDINGS

Based upon the information in the record, including the application and its accompanying documents, the Board makes the following findings in this matter.

1. The proposed net metering project is located on property owned by the Applicant at 529 Knipes Drive in Clarendon, Vermont. Application at Section 1.

2. The proposed photovoltaic system consists of a 10-module ground-mounted photovoltaic array approximately eight feet in height and fifteen feet in width. Application at Section 4 and attachments; Applicant's letter dated February 5, 2010, at 3.

3. The proposed project has a total system-rated power output of 2.23 kW AC. The facility will be interconnected with the Central Vermont Public Service Corporation electrical distribution system. Application at Section 4 and attachments.

4. The Applicant has certified that the project is in compliance with all of the provisions of Sections 3 and 8 of the application. Based on these submissions, we conclude that the project does not raise a significant issue with respect to the environmental criteria of 30 V.S.A. § 248. Application at Sections 3 and 8.

5. The Applicant has certified compliance with the insurance requirements as set forth in Section 3 of the application. Application at Section 3.

III. DISCUSSION & CONCLUSION

The Board has received comments from Mr. Elias regarding the visual aesthetic impact of this proposed project. Board Rule 5.109(A) provides that the Board may hold a hearing for a net metering system when it determines that the system raises a substantive issue with respect to one or more of the criteria of 30 V.S.A. § 248.¹ Pursuant to the Board's Order of April 19, 1999, in PSB Docket No. 6181, *"Investigation into the Use of a Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric*

1. Mr. Elias also expressed concerns regarding the project's compliance with certain deed covenants that apply to the Applicant's parcel. However, deed covenants and restrictions are not criteria, pursuant to 30 V.S.A. § 248 and Board Rule 5.100, under which these projects are reviewed by the Board, and the Board does not have jurisdiction to adjudicate property disputes. Such property disputes, instead, should be brought before a court of competent jurisdiction.

Companies," parties with objections or concerns must make a showing that the application raises a significant issue with respect to one or more substantive criteria applicable to the proposed net metering system. Accordingly, the Net Metering Application Form states that persons requesting a hearing regarding a net metering project "must make a showing that the application raises a significant issue regarding one or more of the substantive criteria applicable to the proposed net metering system."²

Pursuant to 3 V.S.A. § 811, the Board has read the record, including correspondence from the parties, and we conclude that Mr. Elias has not shown that the project raises a significant issue with respect to the project's aesthetic impact. The Board's net-metering rule sets forth the following analytical process for determining whether a project will have an undue adverse impact on aesthetics and scenic or natural beauty:

5.108 Aesthetic Evaluation of Net Metered Projects

(A) The Board has adopted the Vermont Environmental Board's Quechee analysis for guidance in assessing the aesthetic impacts of net metered projects, including wind turbines. In determining whether a project raises a significant issue with respect to aesthetic criteria contained in 30 V.S.A. 248(b)(5), the Board is guided by the two-part test outlined below:

1. First a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty. In order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.
2. The next step in the two-part test, once a conclusion as to the adverse effect of the project has been reached, is to determine whether the adverse effect of the project is "undue." The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:
 - a. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
 - b. Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?

2. State of Vermont Public Service Board Application for a Certificate of Public Good for Interconnected Net Metered Power Systems, at 1. As noted above, the adjoining landowners and other entities specified in Board Rule 5.100 received a copy of the application form for the project before us.

- c. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
3. Analysis of whether a particular project will have an "undue" adverse effect on aesthetics and scenic or natural beauty is also significantly informed by the overall societal benefits of the project.

The proposed project at approximately 8 feet in height is relatively small in comparison to the Applicant's house and other homes in the vicinity. In addition, the project will be located over 200 feet from Mr. Elias' home and views of the project from the Elias property will be blocked by the Applicant's house. Thus, we conclude that Mr. Elias has not shown that the project is out of character with its surroundings and, consequently, has not shown that the project raises a significant issue with respect to adverse aesthetic impacts.

Even if we were to conclude that Mr. Elias had shown that the project raises a significant issue with respect to adverse aesthetic impacts, he has not shown that there is a significant issue with respect to whether those impacts might be considered unduly adverse. Mr. Elias has not identified any community standards that the project might violate. Mr. Elias' comments do not raise a significant issue with respect to whether the project will be shocking or offensive to the average person. Nor has he identified any generally available mitigation measures that the Applicant has failed to take.

Consequently, because we find that the project does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248, further proceedings in this matter are unnecessary.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the photovoltaic net metering system proposed by the Applicant, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 219a, and a certificate of public good to that effect shall be issued in this matter, pursuant to 30 V.S.A. §§ 219a and 248.

DATED at Montpelier, Vermont, this 15th day of April, 2010.

s/James Volz)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

) OF VERMONT

OFFICE OF THE CLERK

Filed: April 15, 2010

Attest: s/Judith C. Whitney
Deputy 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@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.