

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7714

Petition of Central Vermont Public Service)
Corporation, for a certificate of public good,)
pursuant to 30 V.S.A. § 248a, for the installation of)
wireless telecommunications facilities in the)
Towns of Goshen and West Rutland, Vermont)

Order entered: 6/27/2011

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") approves the application originally filed on March 16, 2011, by Central Vermont Public Service Corporation ("CVPS" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Procedures Order ("Procedures Order")¹, and grants the Petitioner a certificate of public good ("CPG") authorizing the installation of communications facilities in the Towns of Goshen and West Rutland, Vermont (the "Project").

II. BACKGROUND

This case involves a petition and prefiled testimony originally filed by the Petitioner on March 16, 2011, requesting that the Board issue a CPG, pursuant to 30 V.S.A. § 248a, authorizing the construction of the Project. The Petition indicates that copies of the petition were provided to the necessary parties and adjoining landowners were notified that the petition had been filed with the Board. The notice also informed recipients of the 21-day comment period. However, the petition does not indicate that the Petitioner provided the required 45-day advance

1. *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Order issued August 14, 2009.

notice of the Project to the necessary parties pursuant to the Procedures Order², and provides no explanation as to why the advance notice was not provided.

On April 5, 2011, the Petitioner filed a letter with the Board stating that at the request of the Department of Public Service ("Department") it had provided supplemental notice to adjoining landowners to provide more detailed information regarding the Project. The Petitioner again does not request a waiver of the advance notice requirement or explain why the notice was not provided.

On April 6, 2011, the Department filed a letter with the Board noting that while the Petitioner had provided notice of the petition to all required statutory parties, the Petitioner had not provided the required 45-day advance notice of the petition and that adjoining landowners were provided with only an abbreviated project description. The Department states that following a conversation with the Petitioner, the Petitioner agreed to provide supplemental notice of the petition to adjoining landowners and allow for an additional comment period. The Department also recommends that the Board issue a CPG for the Project without further evidence or hearings.

On April 13, 2011, the Board issued a memorandum to the Petitioner notifying the Petitioner that it had failed to provide the required 45-day advance notice of the petition and that, consequently, the petition was incomplete and could not be further reviewed until the notice requirements were met.

On May 16, 2011, the Petitioner filed a letter with the Board stating that it had worked with the Department and provided supplemental notice of the Project to adjoining landowners on April 4, 2011. The Petitioner also requests that the Board waive the 45-day advance notice requirement or, in the alternative, accept the date of the subsequent notice as the date of notice of the filing and stay the review of the petition until 45 days have passed from that date.

On June 3, 2011, the Department filed a letter with the Board, via e-mail, stating that based upon the supplemental notice provided by the Petitioner to adjoining landowners, the

2. Procedures Order at 5-6

Petitioner has "in practical terms" provided 45-days advance notice of the Project and that the petition is now "ripe for review."³

While it remains unclear as to why the Petitioner failed to provide the required advance notice in the first place, the Board concurs with the Department that all required recipients have effectively been provided with over 45 days of notice and ample time in which to file comments on the Project. Therefore, we conclude that no further notice is required. In the case of future filings of this type, the Board strongly urges the Petitioner to review the Procedures Order and comply with the notice requirements therein.

No other comments or requests for hearing regarding the Project have been filed with the Board.

The Board has determined that the petition and prefiled testimony have effectively addressed the substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

III. FINDINGS

1. The Project will operate as part of the Petitioner's Silver Lake hydroelectric generation facility, which is operated under the terms of a license from the Federal Energy Regulatory Commission ("FERC"). The FERC license requires CVPS to continuously monitor water levels at various locations, including Goshen Dam and the Silver Lake diversion structure, and the Project is intended to meet that requirement. Greenan pf. at 4-5.

2. The two Goshen site modifications involve: (1) the replacement of an existing 40-foot wooden utility pole with one antenna at Goshen Dam with a 70-foot wooden utility pole with the same antenna mounted near the top of the pole; and (2) the replacement of a 35-foot wooden distribution pole with two antennas at 2029 Goshen-Ripton Road with a 70-foot wooden distribution pole with the same two antennas mounted near the top of the pole. The new distribution pole will continue to carry the existing electrical conductors and communications lines. Upton pf. at 3-5; exhs. TOU-6, 10.

3. E-mail from Jeanne Elias to the Board, dated June 3, 2011, at 1.

3. The West Rutland site modifications involve the addition of two antennas to an existing 60-foot steel-lattice communications tower at Hanley Mountain in West Rutland. The antennas include a panel antenna with dimensions of 94 inches by 12 inches by 9.8 inches, and a corner reflector antenna with dimensions of 46 inches by 18 inches by 16 inches. Both antennas will be mounted on the upper portion of the tower. Upton pf. at 3-5; exhs. TOU-13.

4. The modifications involve the installation of poles less than 135 feet in height, and the attachment of antennas to an existing tower that will not increase the overall height or width of that facility. Construction of the Project will involve only temporary earth disturbance, including utility pole replacement. Finding Nos. 2-3, above; Upton pf. at 5.

5. The Project will not have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 6 and 7, below.

6. The proposed installation of the facilities will not have an undue adverse effect on aesthetics when viewed in the overall context of the existing utility poles and telecommunications towers and equipment located at each site. Upton pf. at 3-4.

7. The proposed installation of the facilities will not have undue adverse impacts to rare or irreplaceable natural areas or historic sites within the vicinity of the existing sites where the Project will be located, because there will be no ground disturbance and because the new facilities represent minor changes to existing infrastructure. Upton pf. at 5-6.

IV. DISCUSSION & CONCLUSION

Pursuant to 30 V.S.A. § 248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

Pursuant to § 248a(j)(1), the Procedures Order defines a project of "limited size and scope" as a facility that:

(a) consists of an attachment to an existing structure that does not increase the height or width of the existing structure by more than twenty feet; or (b) does not exceed 135 feet in height and does not include road building or other earth disturbance exceeding 100 square feet, other than a temporary road or earth disturbance associated with construction or installation activities.

Further, pursuant to Section (L) of the Procedures Order, regarding projects of "limited size and scope:"

Unless the Board determines that an application raises a substantial issue, it shall issue a final determination on an application within 45 days of its filing

The proposed Project will consist of the replacement of two wooden utility poles with poles under 135 feet in height, and antenna attachments to an existing structure that will not increase the overall height or width of that structure, nor will there be any earth disturbance other than temporary earth disturbance associated with Project installation at the existing sites. Therefore, all of the facilities qualify as facilities of "limited size and scope" as defined in the Board's Procedures Order governing the installation of wireless telecommunications facilities. The Procedures Order provides that the Board, in its review of facilities of "limited size and scope," conditionally waives all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas).

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of communications facilities at the locations specified in the above findings, by Central Vermont Public Service Corporation, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the

State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

Dated at Montpelier, Vermont, this 27th day June, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: June 27, 2011

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@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.