



Vermonters for a Clean Environment

Public Comment, Case No. 17-5024

*Some of this material was originally filed on
January 30, 2019*

as

**PUBLIC COMMENT ALLEGING VIOLATION OF CPG
Re: Case No. 8798, Otter Creek Solar 2
2.2 MW Standard-Offer Project**

and is

Amended on April 2, 2019

to

Delete irrelevant information and add relevant information

Vermonters for a Clean Environment, Inc. submits this public comment in Case No. 17-5024 to bring the issues of the truthfulness of Petitioner's representations of site control and site access in Allco Renewable Energy, Ecos Energy, Otter Creek Solar's projects in Rutland Town to the attention of the Public Utility Commission. The two cases (in Rutland Town and Bennington) of two contiguous solar projects on the same parcel of land owned by the same developer raise similar issues that warrant the PUC's attention.

VCE is aware that in Case No. 17-5024, Petitioners presented site plans for road access via Russet Drive and nearby interconnection in the standard-offer case of 2013 as part of the Motion for Reconsideration which was then included in the Printed Case submitted to the Vermont Supreme Court.

In Case No. 17-5024 (Bennington), Petitioner apparently did not have legal control or rights to the road access shown as extending from Russet Drive to the project site.

In Cases No. 8797/8798, VCE has noticed the same issue, where Petitioner presented one access road as part of its project plans for clearing and construction of both projects, but in reality it seems that Petitioner did not have legal control or rights to develop the projects according to the plans and sworn prefiled testimony.

The following is excerpted from VCE's January 30 public comment in Case No. 8798:

Otter Creek Solar 2 recently began site clearing. VCE has reviewed the relevant prefiled testimony, exhibits, evidentiary hearing transcript, Final Order and Certificate of Public Good. Specifically, we refer to the following documents in the record:

1. Prefiled Direct Testimony of Ian Jewkes, Aug. 22, 2016
2. Prefiled Direct Testimony of Brad Wilson, Aug. 22, 2016
3. Supplemental Prefiled Direct Testimony of Brad Wilson, Aug. 18, 2017

4. Second Supplemental Prefiled Direct Testimony of Brad Wilson, Sept. 11, 2017
5. Third Supplemental Prefiled Direct Testimony of Brad Wilson, Sept. 27, 2017
6. Exhibit OC2-BW-13
7. Exhibit OC1-BW-14
8. Joint Evidentiary Hearing Transcript, Oct. 31, 2017
9. Final Order, Feb. 27, 2018
10. Certificate of Public Good, Feb. 27, 2018

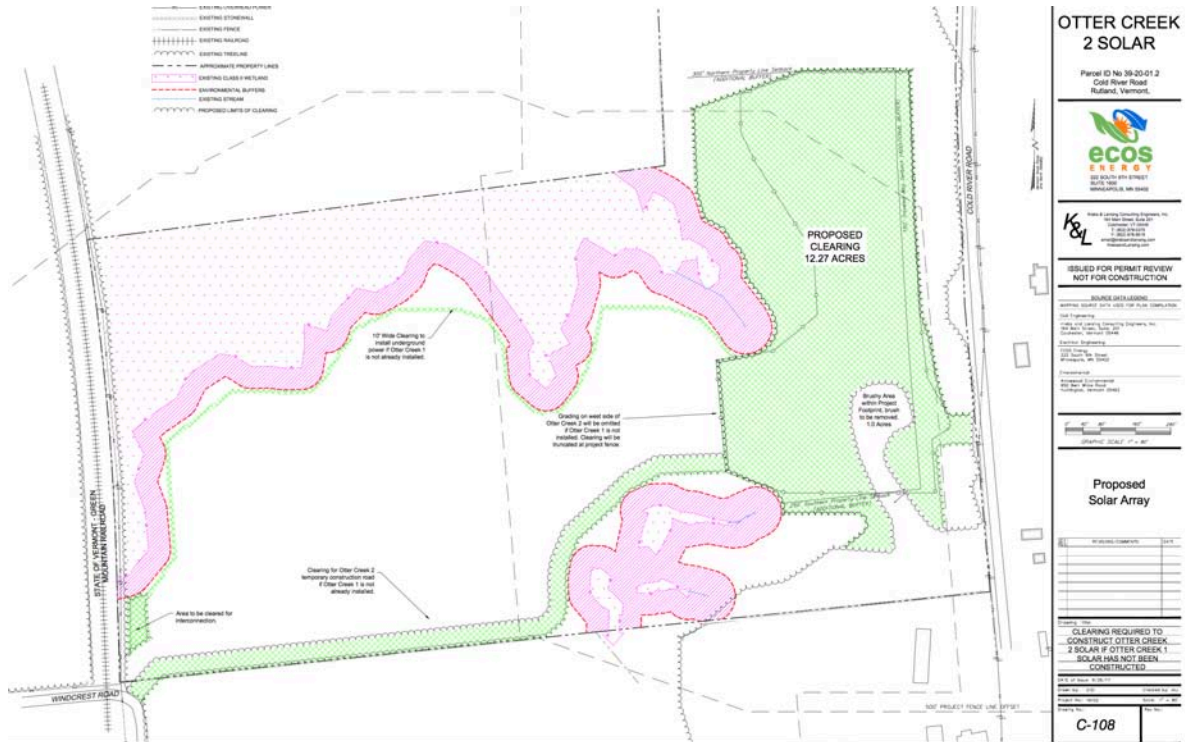
2. CPG-holder has installed a road off Cold River Road which is consistent with the CPG and is part of the plans. However, according to testimony, it was not to be used for clearing or construction. Brad Wilson testified: "Vehicles and equipment associated with **the clearing work will access the site via Windcrest Road; they will not use Cold River Road.**" VCE-2, p. 7, lines 15-16. The record contains three supplemental prefiled testimonies by Brad Wilson, none of which amend the description of the clearing work access road in the original testimony. Brad Wilson also testified, "Vehicles and equipment associated with the construction work **will access the site via Windcrest Road; they will not use Cold River Road.**" VCE-2, p. 8, lines 17-18.

The evidentiary hearing transcript contains no discussion about the change in access for clearing and construction. Because Cold River Road is a very heavily traveled road, the use of Cold River Road instead of Windcrest Road for clearing and construction introduces a public safety issue that has not been evaluated.

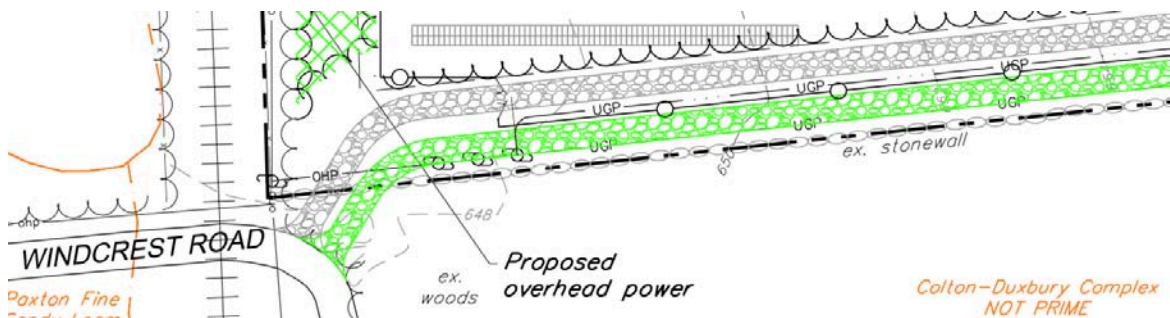


Access to project site off Cold River Road

4. The most recent site plan with clearing boundaries [VCE-6] was filed on Sept. 27, 2017 and is part of a filing that showed two versions, one if Otter Creek 1 (the larger one to the left which now has a standard-offer contract for a 2.2 MW project) is already constructed and the following view if Otter Creek 1 is not already constructed, which it is not. The site plan in the record shows that if Otter Creek 1 is not already constructed, a road (shown in green) **originating off Windcrest Road** on the image below will be used for clearing and construction.



The next image is an excerpt from VCE-7 and shows the Windcrest Road access, with the green road coming off Windcrest Road to serve Otter Creek 2 during clearing and construction.



Rutland Town tax mapping shows the project parcel has no frontage on Windcrest Road.



This image from Google Earth shows Windcrest Road, the Railroad tracks, and the project parcel. VCE learned from Rutland Town officials that the Town was surprised to learn that the Town road (Windcrest Road) ends at the RR tracks. Windcrest Road is privately owned east of the RR tracks and as it continues south.



The view from ground level on Jan. 29, 2019



Petitioner did not disclose at the site visit with PUC Commissioners Cheney and Hofmann and interested members of the public that access to the project site required securing an easement from the adjoining landowner to the south. Local people report that the adjoining property's owner has said "no" to granting the necessary easement for the solar project to access the project parcel from Windcrest Road. CPG-holder has not updated the PUC about the change in plans to not use Windcrest Road for clearing and construction of Otter Creek Solar 2, but has proceeded with clearing using Cold River Road despite petitioner's testimony that "the clearing work will access the site via Windcrest Road; they will not use Cold River Road."

The access to Otter Creek Solar 2, as shown on the most recent plans, is heavily posted and leaves no question about the intention of the adjoining landowner.



In conclusion, VCE has identified several activities taking place at the Otter Creek Solar 2 project site that are inconsistent with the conditions of the CPG. CPG-holder has not disclosed the need for an easement from an adjoining landowner, and has not disclosed the inability to obtain said easement.

Condition 1 of the CPG [VCE-10] states:

1. Construction, operation, and maintenance of the Project shall be in accordance with the plans and evidence submitted in this proceeding. Any material deviation from these plans or substantial change to the Project must be approved by the Commission. Failure to obtain advance approval from the Commission for a material deviation from the approved plans or substantial change to the Project may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.

VCE believes that CPG-holder has made material deviations from the plans, and CPG-holder has made a substantial change regarding access to the project site for clearing and construction. CPG-holder has not obtained advance approval from the Commission for any changes to the approved plans, and therefore may be assessed a penalty. Given the nature of the changes, it would be appropriate for the PUC to Stay the current work on the project until the use of Cold River Road for clearing and construction and the related safety issues, and burning the trees and the related air pollution issues have been evaluated.

VCE is concerned about the compliance record the owner of Otter Creek 2 is developing. The first project completed by this developer is currently not screened according to the conditions of the CPG and the PUC has opened an investigation into that issue. This developer has two CPGs for forested sites in Bennington, one of which is in a residential area where burning of the type being experienced in Rutland Town would be detrimental to the health and welfare of the local residents. This developer also has one forested project in the Proposal for Decision phase with two more forested projects promised for filing soon, all in Bennington.

Can this absentee project developer be trusted to follow the conditions of the CPGs? What assurances can the PUC provide the public that conditions will be followed? Can the PUC order the CPG-holder to hire an on-site compliance officer to assure compliance with the conditions of the CPG?

Thank you for giving these comments your consideration.

End of January 30, 2019 comments.

Additional comments of April 2, 2019:

Otter Creek Solar 1 and 2 are currently being developed using Cold River Road, which was not part of the plans reviewed by the PUC that resulted in issuance of two CPGs. All plans and testimony by Petitioner showed that the projects would be developed off Windcrest Road. However, at no time did Petitioner have legal control or rights to access

the site via Windcrest Road.

This is the same circumstance as exists in the Bennington Willow Road case, with false representations that the applicant had the right to cross private property off Russet Drive via a road that does not exist. In the Rutland Town Otter Creek cases, Petitioner's misrepresentation is a serious problem because the projects are actually being developed, but not according to plans. Clearing and construction are being done via a road Petitioner specifically said would not be used, has not been evaluated for traffic safety, and has extremely poor visibility and line of sight for traffic.

The lack of legal control of access roads as presented to the PUC in both the Bennington and Rutland Town cases show a pattern of misrepresentation of facts. The facts and circumstances of Rutland Town Otter Creek Solar should be part of the information this Commission considers in determining whether the PUC can rely on the truthfulness of this developer's plans.

Respectfully submitted this 2nd day of April, 2019 by



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