

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-3587-NMP

Petition of Norwich Upper Loveland Solar, LLC for a certificate of public good, pursuant to 30 V.S.A. §§ 248 and 8010, authorizing the installation and operation of a 500 kW (AC) group net-metering solar electric generation system in Norwich, Vermont	
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Order entered: 03/17/2022

ORDER RE: INTERVENTION, HEARING REQUESTS, AND REOPENING THE COMMENT PERIOD

This case involves an application filed with the Vermont Public Utility Commission (“Commission”) by Norwich Upper Loveland Solar, LLC (“Applicant”) for a certificate of public good (“CPG”) to construct and operate a 500 kW solar electric generation project in Norwich, Vermont (the proposed “Project”). In this order, I address the notices of intervention, motions to intervene, and requests for a hearing filed in this case. I also reopen the comment period to allow adjoining landowners James and Kathleen McTaggart an opportunity to file comments, intervene, and request a hearing.

I. PROCEDURAL HISTORY

On January 10, 2022, I issued an order granting party status to adjoining landowners Dan and Jenn Goulet, and Samin Kim and Jayoung Joo, who filed timely notices of intervention in this case. I also requested responses to the remainder of the filings, which included: motions to intervene filed by Stephen Gorman, John and Heather Benson, and Laurence and Shelley Ufford; hearing requests filed by Stephen Gorman, John and Heather Benson, and Dan and Jenn Goulet; a notice of intervention and hearing request from adjoining landowner Adam Lamperti filed after the January 3, 2022, deadline for filing; and a motion to intervene and hearing request from the managing member of 38 Acres LLC, which is the host landowner, that was also filed after the January 3 deadline.

On February 1, 2022, the Applicant and the Vermont Department of Public Service (“Department”) filed responses the notices and motions to intervene and the requests for a hearing.

On February 10, 2022, adjoining landowner Joy Kenseth filed a notice of intervention and a request for a hearing. Adjoining landowner Kenseth explained that the filings were late due to being ill with COVID-19.

On February 15, 2022, the Department filed a response to the notice of intervention and hearing request filed by Joy Kenseth.

On February 23, 2022, the Applicant filed a response to the notice of intervention and hearing request filed by Joy Kenseth. The Applicant also filed a supplemental response to the intervention and hearing requests filed by the landowners.

On February 25, 2022, the Applicant filed a notice that James and Kathleen McTaggart, who own a property that adjoins the host property, did not receive the 45-day advance notice of the Project or the notice of the complete petition that was provided to the other adjoining landowners in the case. The Applicant stated that the application materials were hand-delivered to the McTaggarts on February 24, 2022.

II. DISCUSSION

A. Late-Filed Notices of Intervention

Aaron Lamperti

Aaron Lamperti is an adjoining landowner that filed a notice of intervention after the deadline for doing so. Neither the Applicant nor the Department object to Adjoining Landowner Lamperti's notice on timeliness grounds. Absent any objection, Adjoining Landowner Lamperti is granted party status pursuant to Commission Rule 5.117(B)(3).

Joy Kenseth

Joy Kenseth is an adjoining landowner that filed a notice of intervention after the deadline for doing so. Neither the Applicant nor the Department object to Adjoining Landowner Kenseth's notice on timeliness grounds. Absent any objection, Adjoining Landowner Kenseth is granted party status pursuant to Commission Rule 5.117(B)(3).

B. Motions to Intervene

Rule 2.209 governs intervention in proceedings before the Commission. Rule 2.209(A) provides that upon timely application a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Commission the discretion to grant intervenor status on a permissive basis when an applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." In exercising its discretionary authority under this provision, the Commission considers three factors:

- (1) whether the applicant's interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant's interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Pursuant to Commission Rule 2.209, I resolve the motions to intervene filed in this case as follows.

Stephen Gorman

Stephen Gorman is a nearby landowner that has requested permissive intervention pursuant to Commission Rule 2.209(B). Landowner Gorman states that the Project will adversely affect his family, property, and the quality of life of the community, and will destroy an irreplaceable natural environment that benefits Norwich and the entire region. Landowner Gorman explains that the Project parcel hosts a network of trails that traverse the adjacent parcels and town forest land, which Landowner Gorman and much of the community use on a daily basis throughout the year. Landowner Gorman notes the presence of mixed hardwood forest, wetlands, streams, vernal pools, headwaters, and rare, threatened, or endangered plant species in the project area, and states that his interests will be affected if the Project damages

these natural resources. Landowner Gorman is also concerned by the loss of forest that will result from the tree clearing required for the Project. Lastly, Landowner Gorman states that he has a strong interest in the Project's impact on his electricity rates as a ratepayer of Green Mountain Power Corporation.

Mr. Gorman asks to intervene on the following issues:

- 30 V.S.A. § 248(b)(4) (economic benefit);
- 30 V.S.A. § 248(b)(1) (orderly development);
- 30 V.S.A. § 248(b)(5) (aesthetics, historic sites, air & water purity, the natural environment, the use of natural resources, and public health and safety);
- 30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1) (noise, air & water purity and greenhouse gas impacts);
- 10 V.S.A. § 6086(a)(1)(A) (headwaters);
- 10 V.S.A. § 6086(a)(1)(E) (streams);
- 10 V.S.A. § 6086(a)(1)(G) (wetlands);
- 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, and rare and irreplaceable natural areas); and
- 10 V.S.A. § 6086(a)(8)(A) (necessary wildlife habitat and endangered species).

The Applicant opposes Landowner Gorman's intervention. The Applicant argues that Landowner Gorman's motion to intervene does not satisfy the requirements for permissive intervention because it does not identify a particularized, substantial interest that may be affected by the outcome of the proceeding and because Landowner Gorman does not explain why his interests will not be protected by others in the proceeding.

The Department does not object to Landowner Gorman's motion to intervene with respect to the issues of orderly development, aesthetics, and public health and safety, but notes that it is not able to identify with specificity the issues that would be addressed at an evidentiary hearing and recommends that the Commission seek further detail from Landowner Gorman. The Department submits that Landowner Gorman has not raised a significant issue that would warrant rescinding the Commission's waiver of the economic benefit criterion of 30 V.S.A. § 248(b)(4).

In applying Rule 2.209, the Commission has consistently required individuals seeking intervention to demonstrate a particularized interest that is distinct from the interests of the general public.¹ Landowner Gorman explains that he personally uses the trail network that crosses the host property on a daily basis throughout the year and that part of that trail network passes through the Project site. As a daily user of the host property, Landowner Gorman has demonstrated a particularized interest that may be affected by the outcome of this proceeding that relates to the issues of orderly development, aesthetics, and public health and safety.

Landowner Gorman's interest, however, does not extend to every Section 248 criterion identified in his motion to intervene. The issues raised by Landowner Gorman related to natural resources on or in the vicinity of the Project site encompass broad, public concerns that are not unique to Landowner Gorman. Landowner Gorman has not explained why these interests will not be adequately represented by other parties such as the Vermont Agency of Natural Resources ("ANR"), which has already filed its comments in the proceeding.

Landowner Gorman has also identified interests related to the impact that the Project will have on his electricity rates as a Green Mountain Power Corporation ("GMP") ratepayer. The Commission has consistently found that an individual's general interests as a ratepayer do not raise a particularized interest sufficient to support intervention under Rule 2.209.² The Vermont Supreme Court has agreed with the Commission, explaining that ratepayer interests alone do not constitute a substantial, particularized interest because they are not distinct from the interests of any other individual ratepayer.³ Absent some particularized economic interest, Landowner Gorman has also not demonstrated a basis for rescinding the Commission's waiver of the economic benefit criterion of 30 V.S.A. § 248(b)(4).

Because Landowner Gorman has demonstrated a substantial interest in issues related to orderly development, aesthetics, and public health and safety, I grant Landowner Gorman's motion to intervene on these issues. I deny Landowner Gorman's motion to intervene on the remainder of the issues identified in his motion to intervene.

¹ *In re Apple Hill Solar LLC*, 2019 VT 64, ¶ 19.

² *Petition of Green Mountain Power Corp.*, Case No. 18-1633-PET, Order of 9/24/18 at 3.

³ *In re Green Mountain Power Corp.*, 2018 VT 97, ¶ 16.

The Bensons

The Bensons are also nearby landowners that have requested permissive intervention pursuant to Commission Rule 2.209(B). The Bensons state that the development of the Project will directly affect their family and property. The Bensons explain that they regularly walk on the trails on the host property where the Project is proposed and frequently see other people on the trails participating in various outdoor activities. They also note the presence of vernal pools and wetlands on the property and in the vicinity of the proposed site, and state that their interests would be affected if the Project damages the wetlands, headwater streams, wildlife, and natural environment. The Bensons also state that they have an interest in the Project's impact on their electricity rates as GMP ratepayers.

The Applicant opposes the Bensons' intervention for the same reasons that it opposed Landowner Gorman's motion to intervene: that the Bensons have not identified a particularized, substantial interest that may be affected by the outcome of the proceeding and have not explained why their interests will not be protected by others in the proceeding.

The Department does not oppose intervention on the issues of orderly development, aesthetics, and public health and safety, but is not able to identify with specificity the issues that the Bensons would address at an evidentiary hearing and recommends that the Commission seek further detail. The Department also disagrees that the Bensons have raised a significant issue that would warrant rescinding the Commission's waiver of the economic benefit criterion.

The Bensons' motion to intervene identifies many of the same issues raised by Landowner Gorman. As discussed above in connection with Landowner Gorman's motion to intervene, the issues raised by the Bensons related to the natural resources on the host property are broad, public concerns, without any particularized interest unique to the Bensons. These broad concerns are adequately represented by other parties in this case. The economic concerns of the Bensons as ratepayers are also general in nature and do not provide a basis for intervention or for rescinding the Commission's waiver of the economic benefit criterion.

However, the Bensons also explain that they regularly walk the trails on the property, which involves the same particularized interest in the issues of orderly development, aesthetics, and public health and safety demonstrated by Landowner Gorman. Because the Bensons have a substantial interest in the impact of the property on the orderly development of the region,

aesthetics, and public health and safety, I grant the Bensons' motion to intervene to participate on these issues. I deny the Bensons' motion to intervene on the remainder of the issues identified.

The Uffords

The Uffords are nearby landowners who have requested permissive intervention pursuant to Commission Rule 2.209(B). The Uffords explain that they have a pond on their property that is fed by a stream that originates on the Project site. The Uffords state that they are concerned that any changes in the flow of the stream could affect the flow of water that supplies their pond.

The Applicant opposes the Uffords' intervention. The Applicant argues that the potential for Project-related impacts on the Uffords' pond is not a particularized, substantial interest and that the Uffords have not explained why their interests will not be protected by ANR in this proceeding.

The Department states that it does not oppose the Uffords' intervention, but notes that the Uffords' concerns are limited to the natural environment and natural resources criteria.

The Uffords have identified a substantial, particularized interest related to the Project's potential impacts to the water source that feeds the pond on their property. While ANR will represent natural resources interests related to the Project generally, the Uffords' interest in the pond on their property is a concern that may not be fully represented by ANR in this proceeding. The Uffords' participation in the case to represent their specific interest in potential impacts to their pond will not unduly delay the proceeding or prejudice the interests of any existing parties or the public. The Uffords' motion to intervene on issues related to the potential impacts to their pond is granted.

John Lewis

John Lewis is the managing member of a limited liability company, 38 Acres LLC, that owns the host property. Host Landowner Lewis filed a motion to intervene after the deadline set for this proceeding.

Neither the Applicant nor the Department object to Host Landowner Lewis's motion to intervene in this proceeding on timeliness or substantive grounds. The Applicant notes that Host Landowner Lewis raises issues related to orderly development, aesthetics, and greenhouse gas and climate effects.

Host Landowner Lewis's motion to intervene form is filed as an intervention of right under Rule 2.209(A). Host Landowner Lewis has not identified a statute that confers an unconditional or conditional right to intervene, but states that there is no other way to protect the LLC's interests as a landowner desiring to host a net-metering project and that no other party has a similar interest.

Host landowners are not recognized in Commission Rule 5.117(B)(3) as persons that "by definition have a substantial interest in net-metering cases."⁴ This may be because host landowner interests are usually aligned with and represented by the applicant in a net-metering case. Host Landowner Lewis has not explained why his interest in hosting a net-metering project on his property will not be adequately represented by the Applicant in this proceeding.

Even though Host Landowner Lewis's interests are likely aligned with the Applicant on most issues, the interests may not be identical. However, I conclude that permissive intervention under Rule 2.209(b) is a more appropriate basis for Host Landowner Lewis's intervention in this proceeding. Permissive intervention is also consistent with the approach to landowner intervention that the Commission has followed in past proceedings.⁵ I grant Host Landowner Lewis's intervention on issues related to his particularized interests as an owner of the host property.

C. Intervention Conditions Under Commission Rule 2.209(C)

Commission Rule 2.209(C) states:

Where a party has been granted intervention, the Commission may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

To ensure that the proceeding is not unduly delayed and that the interests of the parties are not prejudiced, I will require intervening parties with similar or shared interests to join together for presenting evidence and submitting briefing pursuant to Commission Rule 2.209(C). Based on

⁴ *In re: Revised net-metering program pursuant to Act 99 of 2014*, 2016 WL 4582561, Order of 08/29/16, at 25, 26-27.

⁵ *See, e.g., Petition of SolarCity Corporation for a certificate of public good*, Docket 8634, Order of 3/18/16 at 2.

the overlapping issues identified in the intervention and hearing requests, the following intervening parties should plan on joint participation in this proceeding:

- Opposing Landowners: Stephen Gorman, John and Heather Benson, Joy Kenseth, Dan and Jenn Goulet; and
- Supporting Landowners: John Lewis and Aaron Lamperti.

If an evidentiary hearing is held, I will also require the joint cross-examination of witnesses.

These preliminary groups are based on the information that has been filed to date. I recognize that developments during the course of the proceeding may require modifying these groups. If issues arise that make joint participation difficult or unworkable, I ask that the parties notify me of the problem so that we can consider alternatives.

Adjoining landowners Samin Kim and Jayoung Joo did not identify any specific issue for their participation and did not request a hearing. If the issues that they wish to address in this proceeding overlap with one of the above groups, I will also require their joint participation.

Landowners Laurence and Shelley Ufford have intervened only on issues related to the potential impacts of the Project on the water source to their pond. This interest is unique to the Uffords and I do not require their joint participation with the groups listed above on issues related to their pond.

D. Requests for Hearing

The Commission received requests for a hearing from Stephen Gorman, the Bensons, the Goulets, Joy Kenseth, Aaron Lamperti, and John Lewis. Because these individuals have party status, I address their hearing requests below.

Commission Rule 5.119 explains that a hearing request by a party will be granted if the request raises:

- (1) one or more substantive issues under the applicable Section 248 criteria; or
- (2) a substantive issue that is within the Commission's jurisdiction to resolve.

Rule 5.119(B) explains that:

[r]equests must be supported by more than general or speculative statements. For example, it is not sufficient to state that an application "violates Section 248(b)(5)." Instead, a party should state with specificity why the project raises a substantive issue under the Section 248 criteria. For example: "The application raises an issue under the aesthetics criterion under Section 248(b)(5) because the applicant has not

proposed adequate mitigation to screen the western portion of the project from Maple Street.”

The Commission’s hearing request form similarly advises those requesting a hearing to “be as specific as possible in describing the issue” and provides the following example statement: “I would like to present evidence concerning the presence of necessary wildlife habitat at the project site.”

Stephen Gorman, the Bensons, and the Goulets

The hearing request form submitted by Stephen Gorman, the Bensons, and the Goulets are all identical and identify the following issues for a hearing:

- 30 V.S.A. § 248(b)(4) (economic benefit);
- 30 V.S.A. § 248(b)(1) (orderly development);
- 30 V.S.A. § 248(b)(5) (aesthetics, historic sites, air & water purity, the natural environment, the use of natural resources, and public health and safety);
- 30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(1) (noise, air & water purity and greenhouse gas impacts);
- 10 V.S.A. § 6086(a)(1)(A) (headwaters);
- 10 V.S.A. § 6086(a)(1)(E) (streams);
- 10 V.S.A. § 6086(a)(1)(G) (wetlands);
- 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, and rare and irreplaceable natural areas); and
- 10 V.S.A. § 6086(a)(8)(A) (necessary wildlife habitat and endangered species).

The Applicant opposes the hearing requests, arguing that the requests do not meet the requirements of Rule 5.119(B) because they only recite a list of section 248 criteria without explaining why there is an issue under any of those criteria.

The Department does not oppose a hearing on the criteria of orderly development, aesthetics, and public health and safety, but states that the hearing requests do not provide a sufficient description of the nature of the issues to be addressed. The Department asks the Commission to request additional clarification of the issues before determining the scope of any hearing.

I agree that the hearing request forms filed by Stephen Gorman, the Bensons, and the Goulets do not provide enough detail to identify a substantive issue requiring a hearing in this case that is within the scope of their intervention. Although the parties have identified many of the Section 248 criteria that the Commission will address in course of this proceeding, they have not provided any explanation of why an evidentiary hearing is required for any of those criteria or the nature of the evidence that they seek to present. As Commission Rule 5.119(B) explains, “a party should state with specificity why the project raises a substantive issue under the Section 248 criteria.” If Stephen Gorman, the Bensons, and the Goulets still seek to have a hearing, they may file a clarification that provides details on the issues to be addressed or the evidence that they wish to present.

Joy Kenseth

Adjoining Landowner Kenseth’s hearing request form identifies the issues of aesthetics, water, wildlife, forest clearing, orderly development/town plan as issues for an evidentiary hearing.

The Applicant does not oppose Adjoining Landowner Kenseth’s hearing request with respect to orderly development and aesthetics, but asks the Commission to request additional information on the specific issues to be addressed and to limit any hearing to those issues.

The Department also does not oppose Adjoining Landowner Kenseth’s hearing request with respect to orderly development and aesthetics and also asks the Commission to request additional details on the issues for the purpose of limiting the scope of any evidentiary hearing.

Although no party objects to a hearing on orderly development and aesthetics, the hearing request filed by Adjoining Landowner Kenseth provides a similar level of detail about the issues to be addressed at a hearing to the hearing request submitted by Stephen Gorman, the Bensons, and the Goulets. For the same reasons, Adjoining Landowner Kenseth’s hearing request does not raise a substantive issue that warrants a hearing. If Adjoining Landowner Kenseth still seeks to have a hearing, Adjoining Landowner Kenseth may file a clarification that provides details on the issues to be addressed or the evidence that will be presented at the hearing.

Aaron Lamperti

Adjoining Landowner Lamperti’s hearing request expresses support for the Project for several reasons. According to Adjoining Landowner Lamperti, the Project will have little impact

on the neighbors or town because it is not visible from surrounding areas and is located next to a cell tower, a transmission corridor, and highway, and will have a minimal impact on recreation or the trails in the area. Adjoining Landowner Lamperti also states that the Project will not have an adverse impact on wildlife or wetlands and will provide an economic reason for remainder of the host property to remain undeveloped. Finally, Adjoining Landowner Lamperti notes that the Project addresses climate concerns recognized by the Town of Norwich and the State of Vermont.

The Applicant states that it agrees with the issues identified by Adjoining Landowner Lamperti and supports an evidentiary hearing on those issues.

The Department states that it does not oppose the hearing request, but is unable to identify the issues on which Adjoining Landowner Lamperti wishes to present evidence and asks that the Commission seek additional detail on the scope of any evidentiary hearing.

The specific issues of support identified in Adjoining Landowner Lamperti's hearing request relate to the orderly development criterion considered under Section 248(b)(1) and the aesthetics, wetlands, and natural environment criteria considered under Section 248(b)(5). The hearing request form does not explain whether Adjoining Landowner Lamperti is seeking to submit further evidence on those issues or wishes only to express support.

Regarding wetlands and the natural environment, Adjoining Landowner Lamperti states only that the Project will not harm those natural resources. ANR, the agency that represents the State on environmental issues in Commission proceedings, is a party and has provided the Commission with its comments and proposed conditions to prevent undue adverse effects on the natural environment. Adjoining Landowner Lamperti has not challenged ANR's proposed conditions as inadequate. I conclude that Adjoining Landowner Lamperti has not raised a substantive issue regarding wetlands or the natural environment that requires a hearing.

Regarding orderly development and aesthetics, Adjoining Landowner Lamperti's support for the Project is consistent with Applicant's position that the Project will not interfere with the orderly development of the region and will not have an undue adverse impact on aesthetics. Commission Rule 5.118 explains that "[i]f a party wishes to offer contrary evidence or to challenge the accuracy of information contained in an application, then the party must request a hearing to present such evidence and argument." Here, Adjoining Landowner Lamperti seeks to

support the Project rather than offer contrary evidence or challenge the accuracy of any information contained in the application. Because there is no evidentiary dispute, the issues identified by Adjoining Landowner Lamperti do not raise a substantive issue that requires an evidentiary hearing. Therefore, I deny Adjoining Landowner Lamperti's hearing request.

As a party to the proceeding, however, Adjoining Landowner Lamperti is entitled to file written testimony. If other parties submit clarifications of their hearing requests that raise substantive issues and a hearing is scheduled, Adjoining Landowner Lamperti will be able to participate in that hearing on the issues identified in his hearing request.

John Lewis

Host Landowner Lewis filed a hearing request to express his interest in developing the Project consistent with the renewable energy goals in the Norwich Town Plan, and his general support for renewable energy projects that reduce greenhouse gases and climate effects. Host Landowner Lewis also states that the Project will result in no adverse aesthetic impact and that the site cannot be seen from any adjacent parcel.

The Applicant states that it does not oppose Host Landowner Lewis's request for a hearing.

The Department also does not object to Host Landowner Lewis's hearing request but asks that the Commission limit the scope of any hearing to substantive issues that are raised under the applicable 30 V.S.A. § 248 criteria or are otherwise within the Commission's jurisdiction to address.

The specific issues identified in Host Landowner Lewis's hearing request relate to the orderly development criterion considered under Section 248(b)(1) and the aesthetics, air pollution, and greenhouse gas impacts criteria considered under Section 248(b)(5). The hearing request form does not state whether Host Landowner Lewis is seeking to submit further evidence on those issues.

Host Landowner Lewis expresses general support for projects that reduce greenhouse gases and climate impacts, but does not identify any specific issues for resolution. ANR, the agency that represents the state on environmental issues in Commission proceedings, is a party and has provided the Commission with its comments and proposed conditions to prevent undue adverse effects on the natural environment. No party, including Host Landowner Lewis, has

challenged ANR's proposed conditions as inadequate. Accordingly, I conclude that Host Landowner Lewis has not raised a substantive issue regarding air pollution and greenhouse gas impacts that requires a hearing.

Regarding orderly development and aesthetics, Host Landowner Lewis's support for the Project is consistent with Applicant's position that the Project will not interfere with the orderly development of the region and will not have an undue adverse impact on aesthetics. As explained above in the discussion of Adjoining Landowner Lamperti's hearing request, evidentiary hearings are held to resolve evidentiary disputes. Because there is no dispute, however, the issues identified by Host Landowner Lewis do not raise a substantive issue that requires an evidentiary hearing to resolve. In the absence of a dispute, I deny Host Landowner Lewis's hearing request.

As a party to the proceeding, however, Host Landowner Lewis is entitled to file written testimony. If other parties submit clarifications of their hearing requests that raise substantive issues and a hearing is scheduled, Host Landowner Lewis will be able to participate in that hearing on the issues identified in his hearing request.

E. Failure of Notice to Adjoining Landowner

The Applicant has notified the Commission that it inadvertently failed to provide to adjoining landowners James and Kathleen McTaggart the required 45-day advance notice of the Project and notice of the complete petition. The Applicant explained that the application materials were hand-delivered to the McTaggarts on February 24, 2022. The Applicant does not object to reopening the comment period to provide the McTaggarts with an opportunity to comment or intervene in the proceeding.

To remedy the lack of notice provided to the McTaggarts, I reopen the comment period for a period of 30 days from the date of this order to provide the McTaggarts an opportunity to file comments, an intervention notice, and request a hearing. Because the McTaggarts did not receive either the 45-day advance notice or the notice of the complete petition, the McTaggarts may request additional time if the 30-day period is not enough to review the materials and prepare any filings that they wish to submit.

I direct the Applicant to notify the McTaggarts that they have 30 days to submit comments, intervene, and request a hearing, and that they may request additional time if needed.

F. Pro Se Appearances and Representation by Counsel

On February 23, 2022, the Applicant submitted a supplemental response to the landowner motions to intervene, notices of intervention, and hearing requests filed in this case asking that I clarify the appearance requirements in Commission proceedings. In light of the large number of landowner parties in this case, I agree that an explanation might be helpful.

The Commission's rules allow parties in a Commission proceeding to participate in two ways. The first is through an attorney representing them. So far, none of the landowners that have been granted party status in this proceeding have identified that they are represented by an attorney. There is no deadline for obtaining representation.

The second is by directly participating in the proceeding to represent their own interests, which is referred to as "pro se." The Commission's rules explain that an individual can always be a pro se representative in their own cause.⁶ The intervening landowner parties should be aware that participating without an attorney representative does not "relieve any person or party from the necessity of compliance with any applicable rule, law, practice, procedure, or requirement."⁷

Commission Rule 2.201(A) requires attorneys and pro se representatives to file notices of appearance in matters where they are representing a party in a case. If no notice of appearance is filed, party representatives are not entitled to notice or service of documents in the case. The Commission's forms for intervention, however, explain that successful intervening parties "will be added to the list of parties in the case (also known as the 'service list')" once intervention is granted or the notice is filed. In these circumstances, the intervention forms serve as the notice of appearance for purposes of Commission Rule 2.201. If an intervening party is participating pro se, no notice of appearance is required to receive notices when documents are filed in the case.

⁶ Commission Rule 2.201(B).

⁷ *Id.*

The Applicant notes that some of the landowner parties may be working with an attorney. If those parties wish to be represented by an attorney in this proceeding, the attorney will need to file a notice of appearance to receive notices or service of documents in the case.

Given the large number of landowner parties in this proceeding, I encourage those parties with similar interests to obtain attorney representation in this proceeding. However, nothing prevents the landowner parties from consulting with an attorney about this proceeding without that attorney formally representing them before the Commission. In that situation, no notice of appearance by the attorney is required and the attorney would not receive notices or filings from the Commission. Based on the current submissions, no landowner party is represented by counsel in this proceeding, whether fully or for a limited purpose permitted by Rule 79.1(h)(1) of the Vermont Rules of Civil Procedure. Unless the landowner parties have decided to have attorney representation in this proceeding, no additional notices of appearance are required at this time.

III. SUMMARY AND CONCLUSION

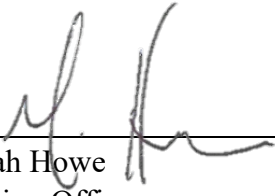
The following summarizes my rulings in this order:

- Adjoining landowners Aaron Lamperti and Joy Kenseth have party status pursuant to their notices of intervention.
- I grant the motions to intervene filed by Stephen Gorman, John and Heather Benson, Laurence and Shelley Ufford, and John Lewis subject to the conditions on the scope of their participation as discussed above.
- I defer resolution of the requests for a hearing filed by Stephen Gorman, John and Heather Benson, Dan and Jenn Goulet, and Joy Kenseth pending clarification of the substantive issues on which they are requesting a hearing.
- I deny the hearing requests filed by Aaron Lamperti and John Lewis because they have not raised any substantive issues that require a hearing to resolve, but they may participate in any hearing that is scheduled.
- I reopen the comment period to allow James and Kathleen McTaggart an opportunity to submit comments, intervene, and request a hearing. The McTaggarts may request additional time if necessary.
- I direct the Applicant to provide notice to the McTaggarts of the reopened comment period and the option to request additional time.

Stephen Gorman, the Bensons, the Goulets, and Joy Kenseth should file their clarifications of hearing issues on or before April 18, 2022. Absent a request for additional time, the McTaggarts should file their comments, notice of intervention, and request for a hearing on or before April 18, 2022. I will set a date for a scheduling conference in this case after I have received the above materials.

SO ORDERED.

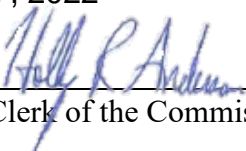
Dated at Montpelier, Vermont, this 17th day of March, 2022.



Micah Howe
Hearing Officer

OFFICE OF THE CLERK

Filed: March 17, 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. 21-3587-NMP - SERVICE LIST

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