

SUPREME COURT OF VERMONT

In re Application of Beach Properties, Inc. d/b/a Basin Harbor Club,
for a Certificate of Public Good for an Interconnected Group Net-
Metered Photovoltaic Electric Power System

2015 VT 130 · No. 2015-083 · Decided October 16, 2015

SUMMARY

The Vermont Supreme Court reviewed appeals concerning a Public Service Board certificate of public good for Basin Harbor Club’s photovoltaic net-metering system. The court held that adjoining landowner Mary McGuire qualified as a de facto party because she actively participated in the proceeding, had a personal stake, and was treated by the Board as a participant despite not formally moving to intervene. The court dismissed Douglas Grover’s appeal as untimely, reversed the Board’s denial of McGuire’s motion for reconsideration, and remanded for consideration on the merits.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Morse, J. (Ret.), Specially Assigned; Reiber, C.J.; Dooley, J.; Skoglund, J.; Robinson, J.
JURISDICTION	Vermont
DECIDED	October 16, 2015
DOCKET	2015-083
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeals from Public Service Board orders granting Basin Harbor Club a certificate of public good for a photovoltaic net-metering system and denying Mary McGuire's motion for reconsideration. The Supreme Court also considered whether McGuire lacked party status and whether Douglas Grover's appeal was timely.
STANDARD OF REVIEW	The court reviewed the Board's procedural determination concerning party status and appellate jurisdiction. Timely filing of a notice of appeal is jurisdictional, but whether a participant qualified as a de facto party was evaluated under equitable factors including actual participation, the equities, and a personal stake in the outcome.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.

PARTIES

Mary McGuire, Douglas Grover v. Beach Properties, Inc. d/b/a Basin Harbor Club

TOPICS

appellate jurisdiction intervention agency adjudication administrative law
judicial review of agency action

PRACTICE AREAS

administrative law appellate procedure agency adjudication intervention

QUESTIONS PRESENTED

1. Whether Douglas Grover's appeal was timely when his motion for reconsideration was filed after the applicable deadline and therefore did not toll the appeal period.
2. Whether Mary McGuire could appeal and seek reconsideration despite not formally moving to intervene or obtaining express party status before the Public Service Board.
3. Whether the Board erred by denying McGuire's motion for reconsideration solely because she lacked formal party status.

HOLDINGS

1. Grover's untimely motion for reconsideration did not toll the thirty-day appeal period, making his appeal untimely and depriving the Supreme Court of jurisdiction to consider it.
2. A nonparty may be treated as a de facto party without a formal intervention motion when the participant actively participated in the proceeding, the equities favor appellate review, and the participant has a personal stake in the outcome, particularly where the agency treated the participant as a party and failed to explain the need to intervene.
3. The Board erred by denying McGuire's motion for reconsideration solely because she lacked formal party status; as a de facto party, she was entitled to have the motion considered on its merits.

KEY QUOTATIONS

"Appeals by those who participated as if parties are frequently entertained despite a failure to achieve formal status as a party." (§ 14)

"Accordingly, we find that the requisites for according de facto-party status were met." (§ 22)

"Having determined that McGuire was a de facto party in the proceeding before the Board, it follows that the Board erred in dismissing her motion for reconsideration on the sole basis that she lacked party status." (§ 24)

FACTUAL BACKGROUND

Basin Harbor Club proposed a twenty-five-panel, pole-mounted photovoltaic net-metering system on approximately one and one-half acres of a twenty-acre field in Ferrisburgh, Vermont. Adjoining landowners Mary McGuire and Douglas Grover submitted extensive objections concerning statutory review criteria, aesthetics, environmental and historic impacts, property values, public health, electromagnetic fields, and glare affecting a nearby private airport. The Board required Basin Harbor Club to respond to the neighbors' concerns and ultimately granted the certificate, finding that the project's adverse aesthetic effect was not undue.

PROCEDURAL HISTORY

Basin Harbor Club applied to the Public Service Board for a certificate of public good under 30 V.S.A. § 248(j) (2). McGuire and Grover, adjoining landowners, submitted extensive comments and requested a hearing; the Board granted the certificate. McGuire timely moved for reconsideration, but the Board denied the motion because she had not formally intervened, while Grover filed an untimely motion for reconsideration. Both appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter is remanded to the Public Service Board to consider McGuire's motion for reconsideration on its merits. The court did not reach McGuire's challenges to the certificate of public good because review of that decision was premature.

CASES CITED

- Fagnant v. Foss, 2013 VT 16A, ¶ 10, 194 Vt. 405, 82 A.3d 570
- Casella Constr., Inc. v. Dep't of Taxes, 2005 VT 18, ¶ 3, 178 Vt. 61, 869 A.2d 157
- Marino v. Ortiz, 484 U.S. 301, 304 (1988)
- SEC v. Forex Asset Management, LLC, 242 F.3d 325, 329-30 (5th Cir. 2001)
- In re Oshansky, 804 A.2d 1077, 1090 (D.C. 2002)
- Carhart v. Carhart-Halaska Int'l, LLC, 788 F.3d 687, 690 (7th Cir. 2015)
- In re Siler, 571 F.3d 604, 608 (6th Cir. 2009)
- Curtis v. City of Des Moines, 995 F.2d 125, 128 (8th Cir. 1993)
- Corbett v. Related Cos. Ne., Inc., 677 N.E.2d 1153, 1155-56 (Mass. 1997)
- Federated Mut. Ins. Co. v. McNeal, 943 So. 2d 658, 662-63 (Miss. 2006)
- In re New Cingular Wireless PCS, LLC, 2012 VT 46, ¶ 4, 192 Vt. 20, 54 A.3d 141
- Osborn v. Osborn, 147 Vt. 432, 433, 519 A.2d 1161, 1163 (1986)
- Bucklin v. Beals, 38 Vt. 653, 662 (1866)

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