REVIEW OF ELECTRIC DISTRIBUTION LINES UNDER SECTION 248

Another example of a regulatory roadblock making it increasingly difficult to develop renewable generation projects in Vermont is the practice under Section 248 of requiring renewable developers to include, as part of their own projects, related upgrades to the electrical distribution system.

Connecting new generation sources directly to the distribution grid can require modifications to the lines. The most common is conversion of line segments from single-phase to 3-phase. It could also involve installing different conductors. Depending on the age and condition of the existing line, some number of poles will probably need to be replaced.

Construction and maintenance of distribution lines are NOT regulated under Section 248. As far as linework is concerned, Section 248 only applies to transmission lines. Instead, distribution lines are subject to review under Act 250, which does not apply to transmission lines. And of course distribution lines are also subject to any number of other laws and regulations, including highway permitting, state and federal wetland regulations, endangered species regulations, river crossing regulations, etc. But again, Section 248 does not apply. However, the PUC has been asserting jurisdiction over the potential impacts of distribution line construction where it is done to facilitate connection of new generation projects. It can't issue a CPG to the utility for the distribution lines, but the PUC effectively regulates that non-jurisdictional construction by making its review and approval a condition of approving a CPG for the generation project that does require Section 248 approval.

This practice has been an issue since it was first used more than ten years ago. But it's become much more problematic over the course of the past year or two. The first time this policy was applied, the Public Service Board said it needed to understand if there were significant environmental and aesthetic issues associated with distribution upgrades as a way to provide context and to inform its decision whether to approve the generation facility. More recently, the PUC has been including conditions in CPGs for solar arrays that apply to the detailed design and construction of the distribution line and making *the owner of the array responsible for those conditions being met*. This is not just for a line extension on the actual project site; it covers work that may be, and often is, miles from the site.

There are a number of reasons why this is a problem:

- It costs money and time, making it harder and more expensive to deploy renewables
- Timing of project designs don't align: utilities are not going to create their own designs, or secure their own permits and easements, unless the project is actually approved
- The renewable developer is forced to describe and take responsibility for as-yet hypothetical facilities that
    - They will not design
    - They will not own
    - They will not maintain
    - They will not operate
    - Are located on lands over which they have no control
- Utilities are then told that they have to follow CPG conditions:
    - Over lines that aren't subject to Section 248 jurisdiction

- That were written without regard to of all the other factors that go into line design/construction and have nothing to do with the generation project (permits, road projects, easements)

It's not at all clear how these conditions would be enforced or how they would be effective over the long term.

- What if design changes require that poles be moved? Is the CPG holder in violation? How will they know? Do they have to stop work and amend the CPG? What if the new pole locations aren't approved?
- Once the line is built, it goes back to being a normal distribution line and the ties to Section 248 evaporate.

There is also the issue of fairness and consistency. These requirements are being applied exclusively to a particular type of development: renewable energy. All distribution lines in Vermont are designed to safely, reliably, efficiently, and sustainably meet the needs of customers based on demand and supply parameters that change every day. When conditions change, the grid has to react. Anyone applying for approval under Act 250 or Section 248 has to show that the project won't have negative impacts on the proper function of the distribution system. But the construction and reconstruction of that system is regulated separately. If you build a house or a factory or a shopping mall, you don't have to account for related distribution construction, much less attempt to determine where and how construction will be accomplished or what environmental resources exist along the presumed route.

It's important to remember that this is purely a policy choice that could change tomorrow.

- It did not exist for the first 45 years of Section 248
- It was not required in the original statute, and nothing has been added to the statute requiring it
- The PUC could simply stop applying this practice tomorrow

The absence of Section 248 jurisdiction over distribution upgrades is not a hole or a gap in the law that needed to be filled. Act 250 came first and for a short time issued permits for transmission lines and substations. When Section 248 was enacted, the complete separation of regulatory frameworks between transmission and distribution lines was:

- Well understood
- Thoroughly and vigorously debated during the legislative process
- Purposefully and intentionally written into both Section 248 and Act 250, and integral to the intended application of both statutes.

So: distribution lines were always intended to be regulated on their own, in isolation from the regulation of facilities generating or using the power they deliver. In fact, this issue has already come up and been addressed in the context of Act 250. 20 years ago, a district commission attempted to regulate a distribution line not because it needed triggered jurisdiction on its own but based on the fact that it connected to a development that had its own permit. The Supreme Court overturned the decision, clarifying that distribution lines can only be regulated if they trigger jurisdiction on their own, without regard to what is happening on properties they cross and connect to (In re: CVPS/Verizon Act 250 Land Use Permit Numbers 7C1252 and 7C0677-2, 2009 VT 71). Around the same time, while reviewing an

application for a distribution line extension, another commission required analysis of the potential impacts of non-jurisdictional private residences simply because they were connected to the utility line, and attempted to control impacts of that non-jurisdictional work by placing conditions on the utility's permit. As with the current situation, this practice was not in the Act 250 rules and had never been done before. The legislature quickly stepped in and amended the law to reinforce its intent and clarify that this is not allowed (10 V.S.A. §6081(q)). If Act 250, which does apply to distribution lines, can't regulate them by virtue of their connection to other development, it's hard to understand why Section 248, which has no original jurisdiction, should.