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Otter Creek Solar LLC v. Vermont Agency of Natural Resources

Supreme Court of Vermont - December 2, 2022 - A.3d - 2022 WL 17366190 - 2022 VT 60

Developer of solar electric generation facility and the owner of the project site filed complaint for declaratory and injunctive relief against the Vermont Agency of Natural Resources (ANR), seeking ruling that two guidance documents and a plant-classification system created by ANR were unlawful and therefore could not be relied upon by ANR or the Public Utilities Commission (PUC) in determining whether to issue a certificate of public good for a proposed electric generation facility.

The Superior Court granted ANR's motion to dismiss for failure to state a claim. Developer and owner appealed.

The Supreme Court held that:

- One-year statute of limitations under Vermont Administrative Procedure Act (VAPA) applied to the action, even if plaintiffs were also challenging ANR's entire "rare" plant regulatory scheme outside of endangered-species law, and
- Specific and limited procedure provided in VAPA for challenging agency rules through declaratory-judgment action applied notwithstanding plaintiffs' assertion of a general common-law right to enjoin unlawful state action that adversely impacted them.

One-year statute of limitations under Vermont Administrative Procedure Act (VAPA) for declaratory-judgment actions challenging agency rules applied to declaratory-judgment action brought by developer of solar electric generation facility and owner of project site against Agency of Natural Resources (ANR), challenging validity of ANR's alleged de facto rules consisting of two guidance documents and a plant-classification system that were used in determining whether to issue certificate of public good for proposed facility, even if developer and owner were also challenging ANR's entire "rare" plant regulatory scheme outside of endangered-species law; VAPA provision allowing court to "fashion appropriate relief" did not allow a challenge to agency policy more than a year after it was issued.

Specific and limited procedure provided in Vermont Administrative Procedure Act (VAPA) for challenging agency rules through declaratory-judgment action, including VAPA's one-year limitation period for such actions, governed declaratory-judgment action brought by developer of solar electric generation facility and owner of project site against Agency of Natural Resources (ANR) challenging validity of alleged de facto rules created by ANR, notwithstanding developer and owner's contention that they had general common-law right to enjoin unlawful state action that adversely impacted them; declaratory-judgment vehicle could not be used to frustrate specific procedure provided by legislative for challenging administrative rule.

