

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6601

Petition of Vermont Yankee Nuclear Power)
Corporation for a Certificate of Public Good)
pursuant to 30 V.S.A. § 248 for the Construction)
of a Temporary Receiving Building to be Located)
at the Vermont Yankee Nuclear Power Plant in)
the Town of Vernon, Vermont)
)

Order entered: 3/11/2002

I. INTRODUCTION

This case involves a petition filed by Vermont Yankee Nuclear Power Corporation ("Vermont Yankee") on December 4, 2001, requesting a certificate of public good ("CPG") under 30 V.S.A. Sec. 248(j) to construct a 1,500-square-foot, temporary receiving building (the "Project") on the site of its electric generation station in Vernon, Vermont.

Vermont Yankee served the petition, prefiled testimony, proposed findings, and a proposed order (along with a proposed CPG) on the Public Service Board ("Board"), the Vermont Department of Public Service ("DPS") and the Vermont Agency of Natural Resources ("ANR"). On February 11, 2002, Vermont Yankee filed supplemental prefiled testimony in response to concerns raised by the DPS.

Notice of the filing in this docket was sent on January 11, 2002, to all parties specified in 30 V.S.A. § 248(a)(4)(C) and all other interested parties. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before February 11, 2002. Notice of the filing, with a request for comments on or before February 11, 2002, was also published in the *Brattleboro Reformer* on January 15 and 22, 2002.

A Notice of Appearance was filed by the Windham Regional Commission on January 18, 2002. ANR filed a letter on January 22, 2002, that stated that the project does not raise a significant issue with respect to 30 V.S.A. § 248 (b)(5). The DPS filed comments with the Board

on February 11, 2002. In its filing, the DPS did not request a hearing or oppose issuance of a certificate of public good, pursuant to 30 V.S.A. § 248, but it suggested that Vermont Yankee change the heat source for the proposed building. No comments were received by any other parties or interested persons.

The Board has reviewed the petition and accompanying documents and agrees that, pursuant to 30 V.S.A. § 248(j), a CPG should be issued without the notice and hearings otherwise required by 30 V.S.A. § 248.

II. FINDINGS

Based upon the petition and its accompanying documents, the Board hereby makes the following findings in this matter.

1. Vermont Yankee owns and operates a nuclear-power station (the "Station") in Vernon, Vermont, which is an electric generation facility. Murphy pf. at 1.

2. Vermont Yankee proposes to construct the Project -- a 1,500-square-foot, one-story, temporary receiving building -- on land owned by Vermont Yankee within the Station's "Owner controlled Area" or "OCA." *Id.* at 2.

3. The Project will facilitate the receipt, inspection and temporary storage of materials, supplies, mail and equipment delivered to the Station ("Delivered Material"). *Id.*

4. The Project is one of a number of heightened security measures that Vermont Yankee is implementing to enhance the Station's security against sabotage or terrorist attack. *Id.*

5. The Project's purpose is to provide Vermont Yankee with a secure facility at which Delivered Material from outside vendors can be inspected, unloaded and temporarily stored just inside the Station's main gate, at a sufficient distance from the Station's other buildings and facilities to provide additional security. *Id.*

6. Once inspected, the Delivered Material would be ready for delivery by Vermont Yankee vehicles to other locations at the Station, usually to a warehouse located in the "Owner Protected Area," or "OPA." *Id.* at 3.

7. The Project would replace an interim facility recently leased from a sub-contractor, located approximately four miles from the Station on Route 142 in Vernon. *Id.*

8. The interim facility is not well suited for Vermont Yankee's use as it is located in a mixed commercial-residential area over which Vermont Yankee has limited supervision and control. Additionally, the interim facility is not owned by the sub-contractor and long-term use may not be available. *Id.*

Orderly development of the Region

[30 V.S.A. § 248(b)(1)]

9. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 10 through 20, below.

10. By letter dated November 6, 2001, Vermont Yankee provided the Town of Vernon Planning Commission with plans for the construction of the Project as required by subsection 248(f). Murphy pf. at 4; *see* 30 V.S.A. § 248(f) (Supp. 2001).

11. By letter dated November 19, 2001, the Vernon Planning Commission stated that it had agreed to waive the 45-day notice pursuant to § 248(f) and had determined that the Project will not unduly interfere with the orderly development of the region, nor will it overburden municipal and governmental services in the Town of Vernon. Murphy pf. at 4; exh. TM-2.

12. At its meeting held on November 29, 2001, the Vernon Selectboard passed a resolution finding that the Project will not interfere with the orderly development of the region and will not overburden municipal services. Murphy pf. at 4, 5; Greenbaum pf. at 9, 10; exh. TM-3.

13. The Vernon Town Plan, which was adopted on April 20, 1995, was intended to be a policy document that provides guidelines to ensure that decisions made at the local, regional and state levels are in concert with the values and goals expressed in the plan. Murphy pf. at 5; exh. TM-4 at 3.

14. The plan specifically cites Vermont Yankee's Station, its contribution to the community's tax base, and its provision of varied employment opportunities as being largely responsible for Vernon's rural independence and self-sufficiency. Murphy pf. at 5; exh. TM-4 at 17.

15. On November 6, 2001, Vermont Yankee provided the Windham Regional Commission with plans for the Project as required by Subsection 248(f). Murphy pf. at 6; *see* 30 V.S.A. § 248(f).

16. By letter dated November 13, 2001, James P. Matteau, Executive Director of the Windham Regional Commission, responded that the Project would have no effect on planning and development in the region, and the Commission waived the 45-day pre-application review allowed under subsection 248(f). Murphy pf. at 6, 7; exh. TM-5.

17. The Windham Regional Plan, which was adopted on December 10, 1996, is intended to provide continuing guidance for change in the Windham region. Murphy pf. at 7; exh. TM-6 at 4.

18. The Windham Regional Plan was designed to have its primary relevance in its application to evaluation of major projects of regional importance when applied in conjunction with applicable town plans. Murphy pf. at 7; exh. TM-6 at 5.

19. The Windham Regional Plan acknowledges the significant role of Vermont Yankee Station in providing 33% of Vermont's annual electrical requirements at the time the Plan was drafted. Murphy pf. at 7; exh. TM-6 at 11.

20. The Project is consistent with the policies of the Windham Regional Plan. Murphy pf. at 7.

Need For Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

21. The Project will not affect Vermont Yankee's ability to supply its customers' electricity needs. Consequently, this criterion -- whether the Project is required to meet a need for present

and future demand for service that could not otherwise be provided in a more cost-effective manner through demand-side management (or "DSM") measures or projects -- is not applicable. *Id.* at 8; *see* 30 V.S.A. § 248(b)(2) (Supp. 2001).

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

22. The Station, and the transmission lines that serve it, will not change if the Project is constructed, so this criterion -- effects on system stability and reliability -- is satisfied. Murphy pf. at 8; *see* 30 V.S.A. § 248(b)(3) (Supp. 2001).

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

23. The Project will result in an economic benefit to the state and its residents. This finding is supported by findings 24 through 26 below.

24. The Project represents a capital investment of approximately \$325,000. Murphy pf. at 9.

25. The Project expenditure represents 0.1625% of Vermont Yankee's annual operating budget. *Id.*

26. Recognizing the benefits of increased security, the Project will have an economic benefit to the state and its residents. *Id.*

**Aesthetics, Historic Sites, Air and
Water Purity, the Natural Environment and Public
Health and Safety**

[30 V.S.A. § 248(b)(5)]

27. The Project as proposed will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by findings 28 through 95, below, which are based on the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8), 8(A) and (9)(K).

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)]

28. The proposed Project will not affect any Outstanding Resource Waters of the state as identified by the Water Resources Board. *See* finding 29, below.

29. The Project will not be located on or anywhere near any segment of any outstanding resource waters, as defined by the Vermont Water Resources Board, so this criterion is satisfied. Greenbaum pf. at 3; *see* 30 V.S.A. § 248(b)(8) (Supp. 2001).

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

30. The Project as proposed will not result in undue water or air pollution. This finding is supported by findings 31 through 49, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

31. The Project is not in a headwaters area. *Id.* at 4.

32. Specifically, the Project area is not the headwaters of applicable waters as characterized by steep slopes and shallow soils with a drainage area greater than 20 square miles. *Id.*

33. The Project area is not over 1,500 feet in elevation -- the elevation is approximately 260 feet -- and is not the watershed of a public water supply designated by the Vermont Department of Health. *Id.*

34. The Project area is not a significant aquifer-recharge area. *Id.*

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

35. The Project as designed will meet any applicable health and environmental-conservation regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful toxic substances into ground water or wells. *Id.* at 4, 5.

36. The Project does not involve the disposal of waste. *Id.* at 5.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

37. This criterion is not applicable to the Project. The Project will not have water-supply or wastewater connections, and therefore no additional water will be used as a result of the Project. *Id.*

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

38. The Project site is well outside of the 100-year floodway and outside of the floodway fringe. *Id.*; exh. AG-3.

Streams And Shorelines

[10 V.S.A. § 6086(a)(1)(E)] and [10 V.S.A. § 6086(a)(1)(F)]

39. The Project as proposed will have no impact on the natural condition of the Connecticut River or its shoreline. This finding is supported by findings 40 through 45, below.

40. The closest stream or river shoreline is the Connecticut River, which is located more than 350 feet from the Project. Greenbaum pf. at 6.

41. The Project will have no impact on the natural condition of the Connecticut River or its shoreline. *Id.*

42. No construction will occur within 350 feet of, or within, the Connecticut River. *Id.*

43. The Project will not have any effect on the public's access to the river. *Id.*

44. The Project will not be visible from the Connecticut River because it is some distance away and will be screened from view by the existing vegetation along the riverbank. *Id.*

45. The visual character of the Project site will be in keeping with the industrial nature of the site. *Id.*

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

46. Based on a review of the National Wetlands Mapping, there are no significant wetlands in the area of the Project. *Id.* at 6, 7; exh. AG-4.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

47. The Project as proposed will not result in undue water or air pollution. This finding is supported by findings 48 and 49, below.

48. The Project will not cause air-pollution levels that create a threat to public health or a nuisance for nearby neighbors. During construction, there will be no sources of emissions other than minimal dust. Greenbaum pf. at 3.

49. The Project will be heated with a fuel oil burner that meets applicable federal and state emission standards and does not require approval under Vermont's Air Pollution Control Regulations. Greenbaum supp. pf. at 2.

**Sufficiency of Water And Burden on
Existing Water Supply**

[10 V.S.A. § 6086(a)(2)(3)]

50. As the Project will not have water-supply or wastewater connections, this criterion is not applicable to the Project. *Id.*

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

51. The Project as designed will not result in unreasonable soil erosion or reduce the ability of the land to hold water. This finding is supported by findings 52 through 55, below.

52. The Project site is relatively flat, and there are no drainage ways (other than a natural swale into a settling area) or streams around the construction site. Greenbaum pf. at 7.

53. Erosion control will be accomplished through the use of existing silt fencing and hay-bale check dams. *Id.* at 7, 8.

54. Stormwater from the Project has been evaluated and determined to be consistent with the State's design practices and standards; new impervious surface will be limited to the 1,500-square-foot roof area of the new building and the 9,072-square-feet of new pavement for the vehicle "turn-around". *Id.* at 8.

55. A Stormwater Permit is not required for the Project because total impervious area created is approximately 10,572 square feet (0.24 acres), which is below the minimum jurisdictional requirement of one acre for a Stormwater Discharge Permit from the Vermont Agency of Natural Resources ("VANR"). *Id.*

Traffic

[10 V.S.A. § 6086(a)(5)]

56. The Project will not cause unreasonable congestion or unsafe conditions with respect to the only applicable transportation facilities: local highways. This finding is supported by findings 57 through 59, below.

57. The Project will actually reduce the amount of traffic on local highways as vehicles owned by Vermont Yankee will remain inside the Station instead of making trips back and forth to the interim receiving facility located approximately four miles away. Greenbaum pf. at 8.

58. The Project will also increase the security of the Station by keeping vehicles owned by Vermont Yankee inside the Station. *Id.*

59. The general levels of traffic service are acceptable for build and no-build scenarios. *Id.*

Educational Services

[10 V.S.A. § 6086(a)(6)]

60. The Project will have no impact on educational services. It will not change employment at Vermont Yankee, nor, therefore, will it change the number of children to be educated in the area. *Id.* at 9.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

61. The Project will have no impact on the ability of the Town of Vernon to provide municipal services. This finding is supported by findings 62 through 67, below.

62. The Project has been reviewed with the Vernon Fire Chief, the Vernon Police Chief and the Vernon Selectboard. Greenbaum pf. at 9.

63. The Vernon Fire and Police Departments have found that (i) they can provide adequate fire and police protection to the Project without overburdening the Departments, and (ii) the Project will not have an undue, adverse effect on the public health and safety. *Id.*; exhs. AG-5, 6.

64. At its November 29, 2001, meeting, the Vernon Selectboard passed a resolution finding that the Project will not interfere with the orderly development of the region and will not overburden municipal services. Murphy pf. at 4; Greenbaum pf. at 9, 10; exh. TM-3.

65. The Project will not require municipal sewer or water-supply services. Greenbaum pf. at 10.

66. Vermont Yankee proposes no new road construction for the Project, other than the vehicle "turn around." *Id.*

67. The Town of Vernon will not be required to provide any additional road maintenance services as a result of the Project. *Id.*

**Aesthetics, Historic Sites or Rare
And Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

68. The Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 69 through 89, below.

69. The Project site is a flat, grassy lawn. Greenbaum pf. at 10.

70. Only a few of the existing white pines will be trimmed to accommodate the Project. *Id.*

71. No new landscaping is planned except minor regrading and repair of lawns. *Id.*

72. The Project will be one story and approximately 1,500 square feet with a total height to the peak of the roof approximately 18 feet above grade. *Id.*

73. There is a buffer of existing large coniferous and deciduous trees between the village of Vernon and the Station. *Id.*

74. These existing large trees will be trimmed and retained, except one decaying tree will be removed to allow powerline access. *Id.*

75. The building will be marginally visible from Governor Hunt Road. *Id.*

76. The Project will be protected from view from the Connecticut River and the east by the existing vegetated buffer along the river bank. *Id.* at 10, 11.

77. The adjacent and visually dominant nuclear-power Station is industrial in character and contains concrete and metal siding with transmission lines, towers and transformers. *Id.* at 11.

78. The proposed Project will be metal-sided. *Id.*

79. The color of the metal siding will be compatible with that of the generating station. *Id.*

80. No new exterior lighting is planned for the Project except for four shielded metal-halide lights that will direct light downward, one on each side of the building; the lighting is required for maintenance, operations and security purposes. *Id.*

81. The new electrical power supply will be buried underground from the Governor Hunt Road to the Project site with a transformer just inside the "Owner Controlled Area Fence" on Vermont Yankee's lands; telephone cables originating from the Gate/existing telephone connection will be routed in a conduit to the Project site. *Id.*

82. In general, the Project is consistent with the context of the area, taking into account the existence of the Station, the nature of the Project surroundings, the Project's design, the colors and materials selected for the Project, visibility, and the Project's impact on open space in the area. *Id.* at 12.

83. The Project does not violate a clear, written community standard intended to preserve the aesthetic and scenic or natural beauty of the area, as it complies with the scenic resources policies of the Vernon Town Plan and the Windham Regional Plan. *Id.* at 12; Murphy pf. at 5-7.

84. Taking into account the visual dominance of Vermont Yankee's Station and the developed character of the nearby area, the Project will not offend the sensibilities of the average person. Greenbaum pf. at 13.

85. Vermont Yankee has taken generally available mitigating steps to improve the harmony of the proposed Project with its surroundings, including the maintaining of the existing landscaping, the preserving of essentially all of the buffer of existing large trees surrounding the Project site, and limiting the lighting to four shielded metal-halide lights that will direct light downward. *Id.*

86. The proposed building will visually appear to be part of the existing power-plant facility and will not significantly change the character of the area. Greenbaum pf. at 14.

87. The site of the Project was significantly disturbed during the construction of the Station in the early 1970s. *Id.*

88. Because the Station's construction in the early 1970s substantially disturbed the site, no archeological review of the Project site is needed. *Id.*

Discussion

Based on the above findings, the Board finds that this proposed project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. Quechee Lakes Corporation, #3W0411-EB and 3W0439-EB, dated January 13, 1986.

As required by this decision, it is first appropriate to determine if the impact of the proposed project will be adverse. A proposed project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is

located. If it is found that the impact would be adverse, it is then necessary to determine whether such an impact would be "undue." Such a finding would be required if the proposed project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if it would offend the sensibilities of the average person, or if the proposed project does not include generally available mitigating steps that would improve the harmony of the project with its surroundings.

Given the facts of this case, we find that this proposed Project would not have an adverse effect on the aesthetics of the area because the Project is consistent with, and therefore is in context with, the adjacent Vermont Yankee Nuclear facility. Consequently, it is not necessary for us to consider the elements of the second part of the Quechee Lakes test for the Project.

**Necessary Wildlife Habitat and
Endangered Species**

[10 V.S.A. § 6086(a)(8)(A)]

89. Based on review of the VANR Significant Habitat Map, dated April 13, 1997, there are no state-designated or determined natural or fragile areas in the vicinity of the Project. *Id.* at 14; exh. AG-7.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

90. The Project will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public-utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to, such facilities, services, or lands. This finding is supported by findings 91 through 95, below.

91. The only significant impact on public investment will be on Vermont Yankee's facilities, and the impact on those facilities will be positive. Greenbaum pf. at 15.

92. The Project's construction and operation will not adversely affect the State's or Vernon's investments in highways. *Id.*

93. The Project is located approximately 2,500 feet away from the New England Central Railroad mainline and will not affect that facility. *Id.*

94. The Project will have no effect on the Connecticut River as it will be located more than 350 feet from the river, its existence has no effect on access to or use of the river, and discharges caused by construction on the Project will be to the ground, not the river. *Id.*

95. The Project is located approximately 1,250 feet from the Vernon dam and will have no effect on the hydroelectric station located at the dam. *Id.*

Executive Order 80-52: Agricultural Resources

96. The Project will not eliminate or significantly interfere with agricultural activities on productive agricultural lands or reduce the potential of primary agricultural soils, taking into account the location of the Project, the existing terrain and soil conditions, the lack of feasible alternatives to the Project and the mitigation efforts that will be implemented at the Project site. This finding is supported by findings 97 through 101, below.

97. The overall goal of Executive Order 80-52 is to ensure that development requiring state permits will not eliminate or significantly interfere with agricultural activities on productive agricultural lands or reduce the potential of primary agricultural soils, taking into account whether there is a feasible and prudent alternative and whether the project has been planned to minimize its effect on such lands. Greenbaum pf. at 16.

98. Based on a review of the Soil Conservation Services Soil Survey of Windham County and Agricultural Value Group for Soils within Windham County, the Project site is located in an area that is shown as having state-wide significant agricultural soils of statewide significance. *Id.*

99. The Project site is currently maintained partly as a lawn. *Id.*

100. The site is not presently in agricultural use, and only approximately 10,572 square feet of the site will be covered with impervious structures and therefore no longer be available for future agricultural use. *Id.*

101. Vermont Yankee has reviewed alternatives to the Project site and concluded that there is no feasible and prudent alternative that will meet its security needs and be cost-effective. *Id.*

Least Cost Integrated Plan

[30 V.S.A. § 248(b)(6)]

102. The Vermont retail utilities that Vermont Yankee serves have integrated resource plans that in general treat Vermont Yankee as a committed resource and emphasize minimizing the cost of service. Murphy pf. at 11.

103. The Project will help Vermont Yankee to maintain at the current level, and may help it to reduce, its cost of service. *Id.*

Compliance With Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

104. Vermont's Electric Energy Plan, dated December 1994, does not specifically mention the Project, but in general it treats Vermont Yankee as a committed resource and encourages Vermont's utilities to minimize their cost of service. Murphy pf. at 11.

105. The Plan states (at page 2-1) that "[a] utility must at a minimum provide, and carry out the planning necessary to continue providing, adequate services at reasonable prices, meeting industry standards for reliability and quality of service." *Id.* at 11, 12.

106. Constructing the Project is a means to reduce the additional costs of inefficient security services now incurred because the receiving facility is located approximately four miles away. *Id.* at 12.

Existing Transmission Facilities

[30 V.S.A. § 248(b)(10)]

107. The Project does not require access to or use of transmission facilities, so the tenth 248 criterion is not applicable. Murphy pf. at 12; *see* 30 V.S.A. § 248(b)(10) (Supp. 2001).

III. CONCLUSION

Based upon all of the above evidence, the proposed construction will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized in 30 V.S.A.

§ 248(j); and the proposed project will promote the general good of the state.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the construction of a 1,500-square-foot, temporary receiving building on the site of the Vermont Yankee electric generation station in Vernon, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248, and a certificate of public good shall be issued in this matter.

Dated at Montpelier, Vermont, this 11th day of March, 2002.

_____	s/Michael H. Dworkin _____)	PUBLIC SERVICE
_____	_____)	
	s/David C. Coen _____)	BOARD
	_____)	
	s/John D. Burke _____)	OF VERMONT

OFFICE OF THE CLERK

FILED: March 11, 2002

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.