

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6709

Petition of Central Vermont Public Service)
Corporation pursuant to 30 V.S.A. § 248(j) for a)
certificate of public good authorizing relocation)
of transmission lines to accommodate a)
proposed expansion by Ben & Jerry's)
Homemade, Inc. in St. Albans, Vermont)

Order entered: 7/23/2002

I. INTRODUCTION

This case involves a petition filed on May 31, 2002, by Central Vermont Public Service Corporation ("CVPS") requesting a certificate of public good ("CPG") under 30 V.S.A. § 248(j) to relocate two 33 kv transmission lines presently located adjacent to the St. Albans Industrial Park in St. Albans, Vermont, to a new location running just west of the New England Central Railroad track and behind the existing manufacturing facility of Ben & Jerry's Homemade, Inc. ("Ben & Jerry's"). The proposed relocation will allow Ben & Jerry's to construct a planned expansion of its manufacturing facility. The proposal will also remove the existing transmission lines from an area planned for future expansion of the industrial park.

On May 31, 2002, CVPS served the petition, prefiled testimony, proposed findings, and a proposed order (along with a prospective CPG) on the Public Service Board ("Board"), the Vermont Department of Public Service ("DPS") and the Vermont Agency of Natural Resources ("ANR"), as specified in 30 V.S.A. § 248(a)(4)(C), pursuant to the requirements of 30 V.S.A. § 248(j)(2). On June 18, 2002, CVPS submitted Supplemental Testimony of Timothy O. Upton. On July 15, 2002, CVPS submitted Supplemental Testimony of David Watts and Second Supplemental Testimony of Timothy O. Upton. By letter dated July 16, 2002, CVPS provided additional clarification of its request in this docket to include approval of a component to a proposed future CVPS project.

Notice of the filing in this docket was sent on June 14, 2002, to all parties specified in 30 V.S.A. § 248(a)(4)(C) and all other interested persons. 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 must file the comments with the Board on or before July 16, 2002. Notice of the filing, with a request for comments on or before July 16, 2002, was also published in the *St. Albans Messenger* on June 18 and 25, 2002.

The ANR filed comments with the Board on July 17, 2002. In its filing, the ANR does not oppose the proposed project and does not request a hearing. The ANR states that it does not believe that the petition submitted by CVPS raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248(b)(5).

The DPS filed its comments with the Board on July 16, 2002. The DPS does not oppose the proposed project and does not request a hearing. The DPS stated that it is satisfied with the responses of CVPS to its informal questions and that the only portion of the future reliability project for which CVPS presently seeks approval is the additional pole height described in the prefiled and supplemental testimony of David Watts.

The DPS also filed a Determination under 30 V.S.A. § 202(f) on July 15, 2002.

No comments were received from 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 accompanying documents, the Board hereby makes the following findings in this matter.

1. CVPS is a duly organized public service corporation with a principal place of business at 77 Grove Street, Rutland, Vermont. Pet. at 1.
2. CVPS owns and operates electrical distribution and transmission systems in the Town of St. Albans, Vermont. Watts pf. at 1.
3. The right-of-way for two existing CVPS 33 kv transmission lines passes through the St. Albans Industrial Park. These two existing transmission lines (Milton-St. Albans 33 kv and

Fairfax-St. Albans 33 kv) are adjacent to a Ben & Jerry's manufacturing facility, which was constructed in 1993. Watts pf. at 1; exh. DGW-1.

4. Ben & Jerry's is proposing to construct a major expansion of its existing plant, which will require relocation of a portion of the above-mentioned two existing CVPS transmission lines. Watts pf. at 1; exh. DGW-1.

5. To accommodate the proposed Ben & Jerry's expansion, CVPS is proposing to relocate approximately 3,500 feet of its Milton-St. Albans 33kV transmission line and its Fairfax-St. Albans 33kV transmission line, both located in St. Albans, Vermont. Watts pf. at 1.

6. To reduce costs in anticipation of a soon-to-be-proposed reliability improvement project (not a part of this proceeding), CVPS also requests approval to install 60-foot Class II poles for the Fairfax-St. Albans 33 kV transmission line. The proposed project which is the subject of this docket requires only 50-foot Class III poles for completion, however, CVPS will need the 60-foot Class II poles for a future proposed upgrade which will consist of adding a second line to the existing center line, and changing the tangent single pole single circuit to tangent single pole double circuit design. The pole class difference is necessary to provide strength for the future second circuit conductors. Watts pf. at 1-2; Watts supp. pf. at 1-2; Pet. Letter of July 16, 2002.

7. The six proposed 60-foot Class II poles have a total cost of \$1,000 more than the 50-foot Class III poles. This additional cost will be paid by CVPS. Since the proposed project in this docket does not need the taller poles, it is not fair to require Ben & Jerry's to pay the additional \$1,000 for the taller poles. If CVPS placed the 50-foot Class III poles as required by the current proposed project, and then received approval for its future proposed project, it would then need to replace the 50-foot Class III poles with 60-foot Class II poles. The estimated cost of this replacement would be approximately \$30,000 in new construction and retirements. In anticipation of future needs, and to avoid these significant replacement costs, CVPS proposes to install the 60-foot Class II poles at the time of the current proposed relocation project. The only aspect of the future proposed project for which CVPS seeks approval in this docket is the 60-foot Class II poles. CVPS understands that approval of this single item would not constitute approval of the future proposed project itself. Watts pf. at 1-2, Watts supp. pf. at 1-2; Pet. Letter of July 16, 2002.

8. The proposed project in this docket will relocate the two existing transmission lines from a location near the center of the industrial park property to a location at the edge of the property adjacent to the New England Central Railroad track and behind the existing Ben & Jerry's plant. Watts pf. at 1; Watts supp. pf. at 1-2; Upton second supp. pf. at 1-2.

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 13, below.

10. The proposed project involves the relocation of existing electric transmission facilities for the purpose of accommodating a planned expansion by Ben & Jerry's in the St. Albans Industrial Park. The proposed project's impact on existing or potential land uses in the region will be positive. The transmission lines presently bisect a field adjacent to the industrial park and moving the transmission lines to the edge of the field will enhance the usefulness of the land regardless of the use deemed most appropriate by the Town and the property owner. Upton pf. at 1-2.

11. The proposal will not impact areas of natural or cultural significance. Upton pf. at 2-10.

12. The proposed project will not impact any land conservation measures included in the St. Albans Town Plan. The St. Albans Planning Commission, the St. Albans Selectboard, and the Northwest Regional Planning Commission have all been notified of the proposed project and approve of it without any further recommendations. Upton pf. at 1-3; Upton supp. pf. at 1.

13. The proposed project will accommodate a planned expansion in an established industrial district, and will reduce potential impacts on the use of land adjacent to existing industrial facilities. Upton pf. at 2.

Need For Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

14. The proposed project is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy efficiency and load management measures. The project is simply a relocation and is not related to present or future electrical demands. Watts pf. at 1-2.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

15. The proposed project is a relocation of existing lines and will not adversely affect system stability or reliability. Watts pf. at 1-2.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

16. The proposed project will result in an economic benefit to the State. This finding is supported by finding 17, below.

17. The total construction cost for the proposed project is estimated at \$172,000, which will be paid by Ben & Jerry's. CVPS will pay the additional \$1,000 for the proposed taller 60-foot Class II poles. In addition, CVPS will reimburse Ben & Jerry's for 50% of the pole and pole setting costs, since these poles will now be joint-use by CVPS and Ben & Jerry's. The total proposed reimbursement is estimated to be \$6,000 to \$8,000. Watts pf. at 2; Watts supp. pf. at 2.

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

Health and Safety

[30 V.S.A. § 248(b)(5)]

18. 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 19 through 42, 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)]

19. The proposed project is not located on or near any Outstanding Resource Waters. Upton pf. at 9.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

20. The project as proposed will not result in undue water or air pollution. This finding is supported by findings 21 through 30, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

21. The proposed project will not be located in a headwaters area. Upton pf. at 4.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

22. The proposed 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. This finding is supported by findings 23 and 24, below.

23. There will be no disposal of any waste material into surface or groundwater. Upton pf. at 4.

24. Any construction debris will be disposed of at an approved landfill. Upton pf. at 4.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

25. The proposed project will not require the use of water. Upton pf. at 4.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

26. The proposed project is not located in a floodway. Upton pf. at 4-5.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

27. No streams will be impacted by the proposed project. Upton pf. at 5.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

28. The proposed project is not located on a shoreline. Upton pf. at 5.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

29. There are two locations identified as Class II wetlands in the proposed project area. The proposed project has been reviewed by the Vermont Wetlands Office, which has determined that the proposed project will not have an impact on any wetlands. Upton pf. at 5-6.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

30. The proposed project will not result in unreasonable air pollution because there will be no emissions from the proposed project. Vegetative materials for any necessary trimming will be chipped and mulched or disposed of at an approved off site location. No burning will be required for this proposed project. Upton pf. at 4.

Sufficiency of Water And Burden on

Existing Water Supply

[10 V.S.A. § 6086(a)(2)(3)]

31. The proposed project will not require the use of water and will not place a burden on any existing water supply. Upton pf. at 6.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

32. The proposed project will not result in unreasonable soil erosion or reduce the ability of the land to hold water. Earth disturbance will be limited to the immediate areas of the proposed new pole locations. Upton pf. at 6.

Traffic

[10 V.S.A. § 6086(a)(5)]

33. The proposed project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. Upton pf. at 6.

Educational Services

[10 V.S.A. § 6086(a)(6)]

34. The proposed project will have no impact on the ability of any of the involved municipalities to provide educational services. Upton pf. at 6-7.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

35. The proposed project will have no impact on the ability of any involved municipalities to provide municipal services. Upton pf. at 7.

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

[10 V.S.A. § 6086(a)(8)]

36. The project as proposed will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 37 through 40, below.

37. The proposed project involves the relocation of existing transmission lines. Upton pf. at 8.

38. The proposed project will remove the existing lines from an open field and move them to a new location at the edge of the same field parallel to a railroad right of way lined with trees and brush. The greatest aesthetic impact is seen from the industrial park area. In this area, instead of bisecting an open area and passing directly in front of the Ben & Jerry's plant, the lines will be moved to the edge of the field, in front of the hedgerow along the railroad track, and re-enter the existing right-of-way from behind the Ben & Jerry's building. They will be a little less obvious and will gain something of a backdrop along the railroad tracks. Route 7 is east of the railroad tracks and 25 feet higher than the utility line. Route 7 is lined with residential and commercial buildings with some tree coverage. Although the proposed relocation project will

result in the transmission lines being closer to the road and on taller poles, they will be immediately behind the trees and brush that separate the railroad tracks from the field. Very few trees will need to be removed for this proposal. Most of the existing vegetation is a solid line largely of sumac and brush on either side of the railroad fence, all of which will be left. This existing vegetation can be allowed to grow 15 or 20 feet tall without causing any problems for the transmission lines. Exh. DGW-1; Upton pf. at 8, Upton second supp. pf. at 1.

39. Based on the above, the proposed relocated transmission lines will fit within the context of the area in which they are proposed, and will not adversely impact the aesthetics of the area. U.S. Route 7 in this area is not the major north-south route that it is south of Burlington; most of the traffic between St. Albans and Georgia is on the interstate, which is some distance away to the east. Also, the area south of Ben & Jerry's where the transmission lines currently run has been targeted for expansion of the industrial park, so the proposal ties in well with local land use planning efforts. The Town Plan encourages industrial development in the subject area because of its proximity to existing industry, the railroad, the interstate, and water/wastewater facilities. As a result, the subject proposal fits well with local expectations for how the area will look in the future. In addition, the proposal is the shortest route for the transmission lines and places them directly adjacent to existing vegetation along the railroad track. Upton pf. at 8.

40. There are no known rare or irreplaceable areas, or historic sites in the proposed project area. Upton pf. at 9; exh. TOU-1.

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. The 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 that 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 generally available mitigating steps will not be taken to improve the harmony of the proposed project with its surroundings.

The proposed project will not have an adverse effect on the aesthetics of the area because the existing transmission lines will be relocated from the middle of an open field to the edge of the field, parallel to an existing railroad right of way lined with trees and brush, and behind an existing industrial plant.

**Necessary Wildlife Habitat and
Endangered Species**

[10 V.S.A. § 6086(a)(8)(A)]

41. The proposed project will not impact any necessary wildlife habitat or known endangered species sites. Upton pf. at 9; exh. TOU-1.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

42. The proposed 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. Upton pf. at 9-10.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

43. The proposed project will be constructed in conformance with CVPS electrical safety standards and in accordance with the National Electrical Safety Code. Upton pf. at 3; Public Service Board Rule No. 3.500.

Consistency with Resource Selection

Integrated Resource Selection

[30 V.S.A. Sec. 248(b)(6)]

44. The proposed project is consistent with the principals for resource selection in accordance with CVPS' approved least-cost integrated plan. Watts pf. at 3.

Compliance With Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

45. The project as proposed is consistent with the Vermont 20-Year Electric Plan. The DPS has determined, in a letter dated July 15, 2002, that the proposed project is consistent with the Vermont 20-Year Electric Plan in accordance with 30 V.S.A. § 202(f), provided that CVPS relocates the subject transmission lines in a manner consistent with the petition and testimony. DPS Section 202(f) Determination, dated July 15, 2002.

Outstanding Water Resources

[30 V.S.A. § 248(b)(8)]

46. The proposed project is not located on or near any "Outstanding Water Resource" as designated by the State of Vermont Water Resources Board. Upton pf. at 9.

Existing Transmission Facilities

[30 V.S.A. § 248(b)(10)]

47. The proposed project can be served economically by existing transmission facilities without undue adverse effect on Vermont utilities or customers. Watts pf. at 3.

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.

The Board wishes to make it clear that approval of the installation of 60-foot Class II poles for this proposed project does not indicate any approval for any future proposed project for which CVPS may request a certificate of public good.

