

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6832

Joint Petition of Central Vermont Public Service)
Corporation and Vermont Electric Power Company, Inc.,)
for a certificate of public good authorizing the)
installation, construction and relocation of transmission)
lines located in Bennington, Vermont, to accommodate)
the construction of the northeast quadrant of the)
Bennington Bypass by the Vermont Agency of)
Transportation)

Hearing at
Montpelier, Vermont
August 29, 2003

Order entered: 2/4/2004

PRESENT: Peter B. Meyer, Hearing Officer

APPEARANCES: Kenneth C. Picton, Esq.
for Central Vermont Public Service Corporation and
Vermont Electric Power Company, Inc.

Thomas N. Wies, Esq.¹
for Vermont Electric Power Company, Inc.

Dixie Henry, Esq.
for Vermont Department of Public Service

Judith L. Dillon, Esq.
Assistant Attorney General
for Vermont Agency of Transportation

Warren T. Coleman, Esq.²
David Englander, Esq.³
for Vermont Agency of Natural Resources

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1. Did not attend August 29, 2003, hearing.
 2. Did not attend August 29, 2003, hearing.
 3. Did not file a Notice of Appearance.

Representative Joseph Krawczyk⁴
for Town of Bennington Selectboard

Ralph and Cindy Watson⁵
appearing Pro Se

I. INTRODUCTION

This case concerns a joint petition filed by Central Vermont Public Service Corporation ("CVPS") and Vermont Electric Power Company, Inc. ("VELCO") on March 3, 2003, requesting a certificate of public good ("CPG") authorizing (1) CVPS to relocate portions of its existing 69 kV and 46 kV transmission lines, and (2) VELCO to relocate and reconfigure a portion of two of its existing 115 kV transmission lines. The CVPS and VELCO projects ("the Proposed Project") are designed to accommodate the construction of the Northeast Quadrant of the Bennington Bypass highway project, located in the Town of Bennington, Vermont.

On June 3, 2003, a public hearing was held in Bennington, Vermont. Notice of the public hearing was sent to all parties and interested persons on May 12, 2003. In addition, notice of the public hearing was published in "The Bennington Banner" on May 14 and 21, 2003. The public hearing was held as scheduled in the Rotary Room, located on the second floor of the Bennington Free Library, 101 Silver Street, Bennington, Vermont. Also, on June 3, 2003, a site visit was held at 4:00 p.m.

Notice of the technical hearing was sent on August 11, 2003, to all parties specified in 30 V.S.A. § 248 and all other interested parties. A technical hearing was held as scheduled on August 29, 2003, at 9:30 a.m. at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont. No one appeared in opposition to the petition and substantial evidence was presented in support of the petition.

On June 27, 2003, CVPS, VELCO, the Vermont Department of Public Service ("DPS"), the Vermont Agency of Natural Resources ("ANR"), and the Vermont Agency of Transportation ("AOT") submitted a Stipulation in which the parties agreed that the Board should issue a CPG

4. Given Party status at prehearing conference, but did not file a Notice of Appearance.

5. Given Party status at prehearing conference, but did not file a Notice of Appearance.

with specific conditions as described in the Stipulation (see exh. Joint-1). The Stipulation is conditioned upon Board approval.

The DPS filed a Determination under 30 V.S.A. § 202(f) on August 6, 2003.⁶

II. FINDINGS

Based upon the substantial evidence of record and the testimony presented at the hearing, I hereby report the following findings to the Board in accordance with 30 V.S. A. § 8.

1. CVPS and VELCO are both companies as defined by § 201 of Title 30, Vermont Statutes Annotated, and as such are subject to the Vermont Public Service Board's ("Board") jurisdiction pursuant to § 203 of Title 30. Pet. at 1.
2. CVPS and VELCO own and operate 46 kV, 69 kV, and 115 kV transmission lines in and around the Bennington, Vermont area. Johnson pf. at 1; Watts pf. at 1-2.
3. To accommodate the Bennington Bypass highway construction project, CVPS and VELCO must relocate and reconfigure portions of their existing transmission lines in the Bennington area. Johnson pf. at 2; Watts pf. at 1-2.
4. CVPS is proposing to relocate approximately 1400 feet of its existing 69 kV transmission line and approximately 8350 feet of its existing 46 kV transmission line to accommodate the Bennington Bypass highway construction project. Pet. at 1; Watts pf. at 1-2; exh. DGW-1; exh. TOU-1.
5. To accommodate the subject highway project, VELCO is proposing to relocate and reconfigure its two existing 115 kV transmission lines (one of them operates at 46 kV) that exit the Woodford Road Substation, located in Bennington, and go north. One of the 115 kV transmission lines runs to New York State and the other 115 kV transmission line (which operates at 46 kV) goes to East Arlington, Vermont. The proposed relocation and reconfiguration will involve approximately 8350 feet of the New York line and approximately 6350 feet of the East Arlington line. Pet. at 1; Johnson pf. at 1-2; exh. DGW-1; exh. TOU-1.

6. The Determination under 30 V.S.A. § 202(f) will be admitted into the record as exh. Joint-2, unless a party objects to its admission in its comments on this Proposal for Decision. If an objection is received, it will be ruled upon forthwith.

6. CVPS, VELCO, the DPS, the ANR, and the AOT submitted a Stipulation in which the parties agreed that the Board should issue a CPG with the following specific conditions:

- a. The implementation of the proposed project may commence only after the AOT notifies VELCO and CVPS that the AOT has either acquired all permits and property necessary to complete related road construction, or that the AOT has acquired all permits and property necessary to complete the Proposed Project.
 - b. CVPS and VELCO shall notify the affected landowners of their herbicide policies within 30 days of receiving the notification described in Paragraph 2.a. of the Stipulation, including the policy that landowners may request that herbicides not be applied.
 - c. VELCO and CVPS shall comply with the conditions outlined by Chet Mackenzie, of the Vermont Fish and Wildlife Department, relating to water quality, contained in the prefiled testimony of Timothy O. Upton. Those conditions include that the cutting of trees along the riverbank be minimized, particularly at the western edge of the corridor on the south bank of the river.
 - d. Prior to the commencement of construction, VELCO and CVPS shall apply for and obtain, if necessary, any required National Pollutant Discharge Elimination System ("NPDES") construction permit. If it is determined that a NPDES construction permit is needed, VELCO and CVPS shall comply with all the terms of the permit as issued.
 - e. Prior to the commencement of construction, VELCO and CVPS shall apply for and obtain a letter from the Vermont Wetlands Office stating that the Proposed Project will not have a significant impact on either wetland area as described in the prefiled testimony of Timothy O. Upton.
 - f. Prior to the commencement of construction, VELCO and CVPS shall apply for and obtain a letter from the Division of Historic Preservation stating that the Proposed Project will not impact any archeological or historic sites.
 - g. Prior to the commencement of construction, and subject to review and comment by all parties to this docket, VELCO and CVPS shall submit to the Board, for its review and

approval, detailed construction plans showing all facilities to be constructed, pole locations, and clearing.

Exh. Joint -1 (Stipulation).

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

7. 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 8 through 11, below.

8. As stated in the findings above, the purpose of the Proposed Project is to accommodate construction by the AOT of the Bennington Bypass. The Proposed Project's impact on existing and potential land uses in the subject area will be minimal, because the proposed construction will take place in an area already crossed by multiple transmission lines, and the Project has been designed to minimize impacts to neighboring properties and natural resources. Upton pf. at 2.

9. The Proposed Project will not conflict with any land conservation measures in the municipal plan. The Bennington Town Plan includes a general planning goal of encouraging "the long-term preservation and wise use of important natural features including high quality agricultural land, water resources and wetlands, significant natural areas and wildlife habitat areas, and scenic and historic resources." The proposed design avoids and minimizes impacts to each of these resources. The Bennington Town Plan also includes the following goal: "Insist upon the initiation, construction, and completion of the entire Bennington New Highway project. Oversee and integrate planning and design of the new Route 7 and 9 corridors with established community visions – including vistas, recreational uses, and access along and across the transportation corridors – maintenance of defined commercial and residential patterns, and relationship to existing and proposed in-town vehicular circulation." The Proposed Project's sole purpose is to facilitate the successful completion of the Bennington New Highway project (also referred to in this docket as the Bennington Bypass). The Bennington County Regional Planning Commission, the Town of Bennington Planning Commission, and the Bennington Select Board

have been provided with plans and a description of the Proposed Project; in addition, CVPS staff conducted presentations of the proposal to each of these three groups. The Bennington County Regional Planning Commission did not have any recommendations. The Town of Bennington Planning Commission and the Bennington Select Board both expressed their support for the project as proposed, provided that there is successful resolution of all issues related to necessary taking of private property. Upton pf. at 2-3.

10. The implementation of the Proposed Project may commence only after the AOT notifies VELCO and CVPS that the AOT has either acquired all permits and property necessary to complete related road construction, or that the AOT has acquired all permits and property necessary to complete the subject transmission line Proposed Project. Exh. Joint-1 at 2 (Stipulation).

11. The proposed route allows for the retention of the maximum amount of useful land across all properties, and avoids the unnecessary fragmentation of existing parcels by the utility transmission lines. Local and regional planning and development agencies support the construction of the Bennington Bypass. The layout of the Bennington Bypass route is the result of decades of planning and study by the AOT (which included extensive consideration of local planning and land conservation issues), and requires the relocation of the subject transmission lines. Upton pf. at 3.

Need For Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

12. 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. This finding is supported by findings 3-5, above, and finding 13, below.

13. The Proposed Project is not driven by, nor will it impact, present or future demand for service. It is simply a physical relocation and reconfiguration to accommodate the planned construction of a new highway. Upton at 3.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

14. The Proposed Project is a relocation and replacement with like facilities, and will not adversely affect system stability or reliability. Watts pf. at 3.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

15. The Proposed Project will result in an economic benefit to the State. This finding is supported by findings 16 through 19, below.

16. The Proposed Project consists of a relocation and replacement of existing transmission facilities with like facilities, the cost of which will be borne by the AOT, and therefore, will not have an undue adverse impact on Vermont utilities or customers. Watts pf. at 3.

17. CVPS' construction cost for the Proposed Project is estimated at \$360,300 of which \$269,000 is for the 46kV line and \$91,300 is for the 69 kV line. CVPS will be reimbursed by AOT for its costs. Watts pf. at 3.

18. VELCO's construction cost for the Proposed Project is estimated to be approximately \$750,000 in 2002 dollars. VELCO will be reimbursed by the AOT for its costs. Johnson pf. at 3.

19. By enabling the Bennington Bypass to proceed, the proposed relocation of transmission lines will benefit and promote the general good of the State of Vermont. Pet. at 2.

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

Health and Safety

[30 V.S.A. § 248(b)(5)]

20. The Proposed Project will not have an undue adverse affect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by findings 21 through 72, 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)]

21. The Proposed Project is not located on or near any Outstanding Resource Waters. The relocation will not have an impact on water quality or water supplies, wildlife or fish habitat, or

flood storage. There are no known rare or irreplaceable natural areas, or endangered species at the project site. There are no significant scenic or historic resources associated with adjacent waterways, and the reconstruction of the existing transmission lines will not materially impact any potential or known archeological sites. The project will not have an effect on the existing or potential use of any nearby waters for recreation, research, or educational purposes. Upton pf. at 15.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

22. The project as proposed will not result in undue water or air pollution. This finding is supported by findings 23-37, below.

23. The project does not involve industrial/manufacturing emissions, excessive dust and smoke during construction, dust or noise from blasting, odors or excessive noise from construction activity, or processing or storage of radioactive materials, and therefore will not cause undue air pollution. Earth disturbance will be minimal and will not take place within 100 feet of the shoreline of the Roaring Branch. Brush cleared from the site will be chipped or windrowed on site, or disposed of off-site. No burning will take place. Upton pf. at 5.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

24. The transmission lines to be relocated are partially within the Wellhead Protection Area for the Bennington Water Department public water supply. The project will not adversely impact the water supply; overhead transmission lines pose an extremely low risk to a water supply, and transmission lines already exist in the area. As is the case for the existing transmission lines, any herbicide treatment performed on the relocated lines would be regulated under the terms of a permit issued by the Vermont Department of Agriculture, Food, and Markets upon recommendation from the Vermont Pesticide Advisory Council, which includes strict limitations on application near public and private water supplies. The source protection plan for the water supply should not need to be amended because of the relocation of existing lines. Upton pf. at 5-6; exh. TOU-1.

25. CVPS and VELCO have agreed to notify affected landowners of their herbicide policies within 30 days of receipt of all permits and acquisition of property necessary to complete the Proposed Project. Exh. Joint-1 at 2.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

26. 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 27 and 28, below.

27. The Proposed Project will not involve disposal of wastes or injection of any material into ground water or wells. Upton pf. at 6.

28. Any construction debris will be disposed of at an approved landfill. Upton pf. at 6.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

29. The project will not require the use of water. Upton pf. at 6.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

30. The project will not involve construction in a floodway. Upton pf. at 6.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

31. The Proposed Project will maintain the natural condition of any streams in the area. While there are no free-flowing streams crossed by the relocation, there are two Class 3 wetlands associated with seeps and intermittent drainage ways. A representative of the ANR visited the site and determined that the project will not have a significant impact on either wetland area. Upton pf. at 6.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

32. The Proposed Project will retain the shoreline and water of the Walloomsac River in their natural condition, it will allow continued access to the waters and the recreational opportunities provided by the waters, it will retain vegetation to screen the project from the waters, and it will stabilize the bank from erosion with vegetative cover. This finding is supported by findings 33 and 34, below.

33. The project involves an aerial crossing of the Roaring Branch of the Walloomsac River by four transmission lines, just north of the Woodford Road substation. All four lines presently cross the river in the same area; their alignments will be shifted so that they are closer together and generally farther to the west. No poles will be located within 100 feet of the top of the riverbanks, and clearing of vegetation will be minimized on both sides of the river. In areas where transmission lines will be removed from their present locations, CVPS and VELCO will allow the corridors to naturally revegetate on land that they own on both sides of the river. The proposed route avoids impacts to the shoreline area now providing the greatest water quality benefits. This area, at the western limits of the corridor along the south side of the river, consists of a steep forested bank where mature trees stabilize the soil and provide significant shading over the water. Upton pf. at 6-7.

34. A representative of the Vermont Fish and Wildlife Department ("VF&WD") visited the site. VELCO and CVPS have agreed to comply with the conditions outlined by VF&WD relating to water quality and aquatic habitat, including minimizing the cutting of trees along the riverbank, particularly at the western edge of the corridor on the south bank of the river. Upton pf. at 6-7; exh. Joint-1 at 2.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

35. The Proposed Project will not violate the rules of the Water Resources Board related to significant wetlands. This finding is supported by findings 36 and 37, below.

36. There are no Class 1 or 2 wetlands in the project area. A representative of the Vermont Wetlands Office visited the project site to assess potential impacts to two Class 3 wetlands. One of these wetlands is located just north of the proposed Bakers Road crossing, and the other is located on the east side of the proposed road crossing. The project will not have a significant

impact on either wetland because the lines will cross them aerially (with no soil disturbance) and existing wetland vegetation will not be impacted by construction or maintenance activities.

Upton pf. at 7-8.

37. Prior to the commencement of construction, VELCO and CVPS will apply for and obtain a letter from the Vermont Wetlands Office stating that the Proposed Project will not have a significant impact on either wetland area. Exh. Joint-1 at 2.

Sufficiency of Water And Burden on

Existing Water Supply

[10 V.S.A. § 6086(a)(2)&(3)]

38. The project will not require the use of water and will not place a burden on any existing water supply. Upton pf. at 8.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

39. Earth disturbance will be minimal and confined mainly to the immediate areas of new pole locations. Because of the terrain and the presence of several existing access points along the route, construction of roads will not be necessary. Construction will not result in unreasonable soil erosion or reduction in the ability of the land to hold water. Upton pf. 8.

40. Prior to the commencement of construction, CVPS and VELCO have agreed to apply for and obtain, if necessary, any required National Pollution Discharge Elimination System ("NPDES") construction permit. If it is determined that an NPDES permit is required, the petitioners have agreed to comply with all terms of the permit as issued. Exh. Joint -1 at 2.

Traffic

[10 V.S.A. § 6086(a)(5)]

41. The project will not have an effect on the use of any highways or waterways for transportation. The purpose of the project is to accommodate a planned upgrade of transportation infrastructure. Upton pf. at 8.

Educational Services

[10 V.S.A. § 6086(a)(6)]

42. Educational services will not be impacted by this project. Upton pf. at 8.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

43. The project will not require any additional municipal services or governmental services. Upton pf. at 9.

Aesthetics, Historic Sites or Rare

And Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

44. 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 45 through 70, below.

45. Transmission lines already exist in the area. Near the eastern end of the project there are two separate corridors that will be consolidated as a result of the project. Upton pf. at 9.

46. The proposed design moves the lines farther away from several residences; it also attempts to use existing terrain and forest cover to screen the lines from view, both from the new bypass route and other areas of Bennington farther to the west. In addition, the nature of the surroundings will change once the new road is constructed and the lines will comprise a smaller part of the overall built landscape. Upton pf. at 9-10.

47. The lines may have an adverse aesthetic impact for users of the new highway, but natural vegetative cover and additional tree plantings within the highway right of way should mitigate this impact. Upton pf. at 10; Boyle pf. at 3.

48. The AOT has agreed to consider the petitioners' consultant's recommendations for plantings in the highway right of way, subject to conformance with highway safety standards. Upton pf. at 10; Boyle pf. at 3.

49. Local and regional land use plans include the construction of the Bennington Bypass as one of their most important priorities for meeting the area's transportation needs. Upton pf. at 10.

50. The petitioners have taken steps to minimize the aesthetic impacts of the project. CVPS and VELCO have chosen the route likely to have the least aesthetic impact as seen from all public vantage points, including the new highway, and have made use of terrain and existing and planned tree cover to reduce the lines' visibility. Upton pf. at 10-11.

51. There are buildings of potential historic significance, including residential and agricultural structures, that will have to be removed prior to construction. These buildings, owned by Ralph and Cindy Watson, are located on Chapel Road just east of the point where the lines will re-enter the existing transmission corridor. Upton pf. at 11; exh. TOU-5.

52. Although CVPS and VELCO, along with AOT, tried to avoid a situation that required taking residential properties, analysis of available alternative routes in the area shows that the use of the Watson's property has the fewest negative impacts in terms of cost, natural resources, future land use, and displacement of existing residences. Upton pf. at 11.

53. The location of the proposed highway dictates, to a great extent, decisions regarding the location of the relocated transmission lines. Upton pf. at 11.

54. The highway location was chosen after decades of detailed study by the AOT, and was chosen as the most appropriate way to balance concerns over safety, water resources, archeological sites, endangered species, and other factors. Upton pf. at 11.

55. The highway in the project area runs in the same direction as the existing transmission lines and occupies a significant portion of the existing corridors. The transmission corridors must be shifted to the east or to the west (or some combination thereof) to accommodate the new highway. In addition, the point at which the lines now cross Chapel Road will be occupied by the highway. Upton pf. at 11.

56. CVPS and VELCO considered line locations to the east and to the west of the Bypass route. (The lines exit the Woodford Road substation on the west side of the Bypass route.) Upton pf. at 12.

57. Keeping the lines on the western side of the highway for the entire project length presented several problems. Upton pf. at 12.

58. The Bypass itself crosses over Chapel Road at the point where the transmission lines now cross it, which means that in order to connect with existing lines north of this point, the new

lines would have to span a highway bridge, increasing pole heights and construction costs and placing limitations on future maintenance activities. Upton pf. at 12.

59. The new highway will bisect eight properties along Chapel Road south of the road crossing. This means that the eastern portions of these parcels will become landlocked and of much less value to the property owners. Consequently, it makes sense to locate the line to the east in this unusable area, rather than to further encumber these properties with transmission lines on the west on the new highway. Upton pf. at 12.

60. All of the eight property owners informed CVPS and VELCO that they did not want the lines on the west side of the highway. Upton pf. at 12.

61. Even if the impacts on future land use were not considered, placing the line to the west of the highway would also entail the taking of at least one, and perhaps as many as four, residences. (An underground crossing of the Bypass west of Chapel Road was considered as a way to mitigate concerns over spanning the highway bridge, but in addition to dramatically increasing project costs it, too, results in the displacement of at least one home, and likely more.) Upton pf. at 12.

62. Placing the lines on the uphill side of the highway greatly reduces their aesthetic impact. The hill rising to the east provides a natural backdrop for the lines from the highway and from other areas of town to the west, and a buffer of trees will further soften the lines' visual impact. Upton pf. at 12.

63. All of these factors indicate that the lines should be placed on the east side of the Bypass in this area, and should cross Chapel Road north of the Bypass bridge in the vicinity of the Watson's property. Upton pf. at 12.

64. Crossing Chapel Road farther to the north would only add distance and cost to the relocation. In addition, residences line the road farther to the north, and it would be difficult, if not impossible, to avoid the displacement of one or more homes regardless of where the crossing took place in this area. Upton pf. at 13.

65. The land most suitable for use as a crossing of Chapel Road in this area consists of a Class 2 wetland. The wetland area on the west side of the road crosses the road between two sharp corners and continues to the east. However, the proposed route will avoid unnecessary

fragmentation of land, it will avoid unnecessary impacts to regulated wetlands, and also it will minimize impacts to area residences. Upton pf. at 13.

66. CVPS and VELCO would prefer not to displace the Watson residence. However, the selected route that requires removal of the Watson's residence represents the best available alternative. Upton pf. at 13.

67. Implementation of the Proposed Project may commence only after the AOT notifies VELCO and CVPS that the AOT has either acquired all permits and property necessary to complete related road construction, or that the AOT has acquired all permits and property necessary to complete the transmission line relocation project. Exh. Joint-1 at 2.

68. The project will not impact archeological or historic sites. The petitioners commissioned a Phase I Survey of the proposed relocation route. No significant Native American or Euroamerican cultural deposits were discovered, and the Survey recommended no further exploratory work be done. Upton pf. at 13.

69. Prior to commencement of construction, VELCO and CVPS will apply for and obtain a letter from the Division of Historic Preservation stating that the Proposed Project will not adversely affect any archeological or historic sites. Exh. Joint-1 at 3.

70. Prior to the commencement of construction, VELCO and CVPS will submit to the Board, for its review and approval, detailed construction plans showing all facilities to be constructed, pole locations and clearing. Exh. Joint-1 at 3.

Discussion

Based on the above findings, I conclude that this project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, I have 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 project will be adverse. The 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 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 project with its surroundings.

Generally, the project will not have an adverse impact on aesthetics or the scenic and natural beauty of the area. I reach this conclusion because transmission lines already exist in the area, the proposed plan moves the lines farther away from several residences, and the proposed design uses the existing terrain and forest cover to partially screen the lines from view, both from the immediate area and from other areas in Bennington farther to the west. In addition, the relocated lines will become a smaller part of the overall built landscape once the Bypass has been completed.

Notwithstanding this general conclusion, the Proposed Project may have an adverse impact on the users of the new highway because of its visibility from the Bypass route. This adverse impact will not be undue, however, based on the following.

First, the relocation of these transmission lines will not violate a clear, written, community standard. Local and regional plans include the construction of the Bennington Bypass as one their most important priorities for meeting the area's transportation needs.

Second, the Proposed Project will not offend the sensibilities of the average person because transmission lines already exist in the area and because CVPS and VELCO have, to the extent possible, designed the route to minimize the visibility of the lines from the new highway.

Finally, CVPS and VELCO have taken reasonable mitigating steps to minimize the aesthetic impacts from the Proposed Project, including proposing the addition of landscape screening at appropriate locations within the highway right-of-way. This landscape plan will be reviewed and approved as part of the review of the final construction plans for this project.

Given that it is uncertain at this time whether the Watsons' residence and other outbuildings, which may be of historic significance, will be demolished or relocated, it is not possible to determine the impact of the Proposed Project on historic resources. Consequently, I recommend that the Board include a condition in the CPG that will require the petitioners to

obtain a letter from the Vermont Division for Historic Preservation which states that the Proposed Project will not have an undue adverse effect on any historic properties.

**Necessary Wildlife Habitat and
Endangered Species**

[10 V.S.A. § 6086(a)(8)(A)]

71. There are no known endangered species sites in the project area. A representative of the Vermont Fish and Wildlife Department visited the site and concluded that the Proposed Project will not impact any significant wildlife habitat, and that current vegetation management in the existing corridor appears to benefit those species that are present in the area. Upton pf. at 14; exh. TOU-7.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

72. The proposed facilities 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. The only significant public investments impacted by the lines are Chapel Road and the proposed highway. The lines will continue to cross Chapel Road in essentially the same manner they do today, and the project is necessary to accommodate construction of the new highway. Upton pf. at 14.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

73. The Proposed Project will have no adverse effect on public safety. The proposed construction will be done consistent with sound engineering and construction practices and in compliance with all safety and health standards. Watts pf. at 4.

74. The Proposed Project must be constructed in accordance with the requirements of the National Electrical Safety Code. Public Service Board Rule No. 3.500.

Consistency with Resource Selection

Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

75. The Proposed Project is consistent with the principals for resource selection in accordance with CVPS' approved least-cost integrated plan. Upton pf. at 4.

Compliance With Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

76. The DPS has determined, in a letter dated August 6, 2003, 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's and VELCO's actions in this matter are consistent with its petition and testimony filed in this proceeding as supplemented and modified by the Stipulation between CVPS, VELCO, the DPS, the ANR, and the AOT in this docket. Exh. Joint-2.

Outstanding Water Resources

[30 V.S.A. § 248(b)(8)]

77. The project is not located on or near any Outstanding Resource Waters. The relocation will not have an impact on water quality or water supplies, wildlife or fish habitat, or flood storage. There are no known rare or irreplaceable natural areas, or endangered species at the project site. There are no significant scenic or historic resources associated with adjacent waterways, and the reconstruction of an existing transmission line will not materially impact any potential or known archeological sites. The project will not have an effect on the existing or potential use of any nearby waters for recreation, research, or educational purposes. Upton pf. at 15.

Existing Transmission Facilities

[30 V.S.A. § 248(b)(10)]

78. The Proposed Project is the relocation and reconfiguration of existing transmission facilities, the cost of which will be born by the AOT and, therefore, will not have an undue adverse effect on Vermont utilities or customers. Watts pf. at 3.

III. CONCLUSION

Based upon all the above evidence, the relocation of portions of existing CVPS 46 kV and 69 kV transmission lines, and the relocation and reconfiguration of a portion of two existing

VELCO 115 kV transmission lines, all in the Town of Bennington to accommodate the construction of the Bennington Bypass highway project:

- (a) 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, and the recommendations of the municipal legislative bodies;
- (b) 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 land management measures;
- (c) will not adversely affect system stability and reliability;
- (d) will result in an economic benefit to the state and its residents;
- (e) will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and § 6086(a)(1) through (8) and (9)(K);
- (f) is consistent with the principles of least-cost integrated planning;
- (g) is in compliance with the electric energy plan approved by the DPS under § 202 of Title 30 V.S.A.;
- (h) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Water Resources Board; and
- (i) can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

To the extent these findings are inconsistent with any proposed findings, such proposed findings are denied.

A Proposal for Decision pursuant to 3 V.S.A. § 811 has been served upon the parties to this case.

Dated at Montpelier, Vermont, this 20th day of January, 2004.

s/Peter B. Meyer

Peter B. Meyer
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The relocation, by CVPS, of a portion of its existing 69 kV and 46 kV transmission lines, and the relocation and reconfiguration, by VELCO, of a portion of two of its existing 115 kV transmission lines, all in the Town of Bennington, Vermont, to accommodate the construction of the Bennington Bypass highway project, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248, and a certificate of public good to that effect shall be issued.

2. The Stipulation, filed by CVPS, VELCO, the DPS, the ANR, and the AOT on June 27, 2003, is accepted and approved. Compliance with all terms of the Stipulation is required.

3. The Board has continuing jurisdiction to resolve any disputes arising under the above-referenced Stipulation.

4. Prior to the commencement of construction, CVPS and VELCO shall obtain a letter from the Vermont Division for Historic Preservation which states that the Proposed Project will not have an undue adverse effect on any historic properties.

5. Prior to the commencement of construction, and subject to the review and comment by the parties to this docket, CVPS and VELCO shall submit to the Board, for its review and approval, detailed construction plans showing all facilities to be constructed, pole locations, clearing, and landscaping.

Dated at Montpelier, Vermont, this 4th day of February, 2004.

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

OFFICE OF THE CLERK

FILED: February 4, 2004

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 in writing) 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.