

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6976

Petition of Entergy Nuclear Vermont Yankee,)
LLC for a certificate of public good, pursuant to)
30 V.S.A. § 248(j), authorizing the construction)
of parking lots totaling 991 spaces and related)
access road and security lighting, along with)
minor improvements to an existing parking area)
by the so-called Governor Hunt House, other)
miscellaneous parking and roadway)
improvements and the relocation of a certain)
portion of the proposed security barrier system,)
on the site of its electric generation station in the)
Town of Vernon, Vermont)

Order entered: 9/21/2004

I. INTRODUCTION

On June 21, 2004, the Vermont Public Service Board ("Board") received a petition from Entergy Nuclear Vermont Yankee, LLC ("Entergy VY") for a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248(j) to construct several parking lots (totaling 991 parking spaces) and a related access road and security lighting, along with minor improvements to an existing parking area by the so-called Governor Hunt House, other miscellaneous parking and roadway improvements, and the relocation (change in design) of a certain portion of the proposed security barrier system ("SBS") that was approved by the Board in Docket No. 6953 (the "Entire Project") on the site of its electric generation station, the Vermont Yankee Nuclear Power Plant ("Station" or "Vermont Yankee"), in Vernon, Vermont. Entergy VY proposes to construct all portions of the Entire Project in the fall of 2004, except for the 556-space "Outage Parking Area," which it plans to construct during the spring or summer 2005 construction period, prior to the fall 2005 refueling outage.

Notice of the filing in this docket was sent on July 7, 2004, 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

August 6, 2004. In addition, notice was published in the *Brattleboro Reformer* on July 9 and July 16, 2004, stating 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 August 6, 2004.

Appearances were filed by: Geoffrey Commons, Esq., Vermont Department of Public Service ("DPS" or "Department"), on July 12, 2004; David Englander, Esq., Vermont Agency of Natural Resources ("ANR"), on August 6, 2004; and by James P. Matteau, Windham Regional Commission, on August 13, 2004.

On August 6, 2004, comments were received from the ANR, which stated:

The proposed project by Entergy Nuclear Vermont Yankee, LLC (Petitioner) does not appear to raise any significant concerns for the Agency of Natural Resources (Agency) pursuant to 30 V.S.A. § 248(b)(5) other than those issues raised by the Petitioner in its petition and direct filing and therefore, with respect to the petition for a certificate of public good, the Agency does not seek a hearing. The Agency has reviewed the Project and found that coverage under the Construction General Permit (CGP) and Stormwater Discharge permit will be necessary.

On August 6, 2004, comments were received from the Department, which stated:

The Department of Public Service has reviewed the petition and supporting materials provided in this docket. The DPS does not believe that the petition raises substantive issues with respect to the substantive criteria of 30 V.S.A. § 248, and therefore recommends that the Board grant the requested CPG without hearing.

On August 6, 2004, the New England Coalition ("NEC") filed a Petition for Leave to Intervene. In its petition, NEC claims that the Project raises seven potential issues, summarized as:

(1) the Entire Project is not inconsequential because 461 new parking spaces will be added, and the Entire Project will total 991 parking spaces;

(2) substantial habitat now available to native flora and fauna will be paved over;

(3) the Entire Project will alter run-off and groundwater flow without adequate analysis of its impacts;

(4) failure of Entergy VY to adequately analyze alternatives for an additional 461 spaces proposed only for periodic use;

(5) no offer to offset or mitigate visual impacts, especially regarding the impacts of 461 additional windshields glaring in the sun;

(6) potential link of proposed parking lot project to a future dry cask waste fuel storage installation; and

(7) environmental ramifications of parking heavy trucks near the Connecticut River.

NEC requested that the Board find that Entergy VY's petition raises significant issues under 30 V.S.A. § 248, that the Board schedule a prehearing conference within 30 days, and that the Board grant NEC leave to intervene.

On August 6, 2004, Entergy VY filed an initial response to NEC's petition. Entergy VY states "unequivocally" that the location of the parking lots are not related to the location of the facilities that will be required for dry fuel storage ("DFS"), and that the DFS facilities would be located inside the owner-protected area. In response to NEC's position that the proposed parking lot raises significant issues under 30 V.S.A. § 248, Entergy VY notes that the DPS and ANR have both concluded that the Entire Project does not raise such an issue, and that the Vernon Planning Commission and the Windham Regional Commission did not ask for a hearing. In its response, Entergy VY did not specifically object to NEC's intervention. No other person commented on NEC's Petition for Leave to Intervene.

On August 13, 2004, the Board sent a memorandum to Entergy VY requesting further information to clarify certain aspects of the petition. On August 25, 2004, Entergy VY filed a response to the Board's information request.

On September 7, 2004, Energy VY filed a copy of the Construction General Permit issued by ANR for the Entire Project. In addition, Entergy VY also gave notice that a 10-day public comment period commenced on September 1, 2004, for the Stormwater Discharge Permit, and that the ANR would make a final determination after reviewing comments received, if any.

On September 9, 2004, the Board granted permissive intervention to NEC, limited solely to the following two issues:

- the analysis of alternatives for the spaces only used periodically (the "Outage Parking Area," also referred to in Entergy VY's petition as the 556-space "North Overflow Parking" area in Exhibit Entergy-1), and
- the aesthetic impacts of the Outage Parking Area.

The Board's September 9, 2004, Order also bifurcated the Entire Project into two separate CPG proceedings – one for the permanent parking lot facilities, and the second for the outage parking lot facilities (referred to herein as the "Permanent Parking Area"¹ and the "Outage Parking Area,"² respectively). Bifurcation of the Entire Project was performed in this manner because the original petition contains insufficient information for the Board to make a positive finding under the aesthetics criterion [10 V.S.A. § 6086(a)(8) under 30 V.S.A. § 248(b)(5)] for the Outage Parking Area and its lighting, and because proceeding this way will allow NEC to intervene in a manner that should protect their interests while not creating an undue delay in the remainder of the proceeding, which involves replacement of parking spaces lost due to the current construction of the security-barrier system (the Permanent Parking Area), and the approval and installation of a portion of the security-barrier system.

On September 15, 2004, Entergy VY filed the Stormwater Discharge Permit issued by ANR for the Entire Project. In addition, Entergy VY filed the Erosion Prevention & Sediment Control Plan, as revised August 25, 2004, for the Entire Project, which was approved by the ANR under the Construction General Permit, which allows some of the Permanent Parking Area to be completed after October 15, 2004, subject to special requirements for wintertime construction. Entergy VY's September 15, 2004, filing also notes minor changes made by Entergy VY resulting in a reduction of the number of light fixtures proposed for the access road and the Permanent Parking Area, and also clarifies the legal ownership of the land upon which the tree buffer between the Permanent Parking Area and the Connecticut River will be retained.

1. The Permanent Parking Area is referred to in Exhibit Entergy-1 of Entergy VY's June 18, 2004, petition as the 326-space "North Parking" area. The cover letter (dated September 14, 2004) to Entergy VY's September 15, 2004, filing, as well as the revised findings of fact included in the September 15, 2004, filing, refer to the North Parking area as the Permanent Parking Area.

2. The Outage Parking Area is referred to in Exhibit Entergy-1 of Entergy VY's June 18, 2004, petition as the 556-space "North Overflow Parking" area. The cover letter (dated September 14, 2004) to Entergy VY's September 15, 2004, filing, as well as the prefiled testimony of David McElwee submitted with the original petition, refer to the North Overflow Parking area as the Outage Parking Area.

The Board has reviewed the petition and accompanying documents and has determined that, pursuant to 30 V.S.A. § 248(j), a CPG should be issued at this time, without the notice and hearings otherwise required by 30 V.S.A. § 248, for all portions of the Entire Project except for the 556-space Outage Parking Area. Today's decision covers only the Permanent Parking Area, as further described below, and the related stormwater improvements, the access road and lighting, the Governor Hunt House parking lot, miscellaneous parking and roadway improvements and the relocation of a portion of the SBS (the "Project"). The Board will address the Outage Parking Area in a separate proceeding and order.

Throughout today's Order and CPG, the "Entire Project" shall mean the project as originally proposed in Entergy VY's petition dated June 18, 2004 (which includes the Outage Parking Area), and the "Project" shall mean the project as proposed in Entergy VY's original petition and as modified in its filing on September 15, 2004, but not including the Outage Parking Area and its lighting.

II. FINDINGS OF FACT

Project Description

1. Entergy VY owns and operates the Vermont Yankee Nuclear Power Plant in Vernon, Vermont, which is an electric generation facility. McElwee pf. at 1.
2. In its original petition, Entergy VY proposes to construct two new parking lots and related stormwater improvements, access road and lighting, along with minor improvements to an existing parking area by the so-called Governor Hunt House, other miscellaneous parking and roadway improvements and the relocation (change in design) of a certain portion of the security barrier system ("SBS"), which was approved by the Board on July 8, 2004, in Docket No. 6953. McElwee pf. at 1, 2-5.
3. The Project will be located on land owned by Entergy VY within the Station's Owner Controlled Area ("OCA"). McElwee pf. at 2.
4. The current number of parking spaces at the Station is approximately 530 spaces. Of these 530 spaces, 403 parking spaces will be lost to accommodate the SBS, leaving approximately 127 existing parking spaces to remain at the Station. McElwee pf. at 2.

5. The parking lots proposed in the original petition would provide permanent parking spaces to replace the 403 spaces lost due to the SBS, and would add an additional 461 new spaces (for a grand total of 991 spaces) to more efficiently accommodate parking needed for contractors that work at the Station during regularly scheduled outages, which occur approximately every 18 months for approximately 30 days each. During regularly scheduled outages, the number of employees at the Station can increase from the normal operational level of approximately 600 employees working in two shifts, to over 1,000 employees working in two shifts. The 991 spaces represent the total number of spaces expected to be needed during the transition period between the night and day shifts. Boemig pf. at 3; McElwee pf. at 2; letter dated August 25, 2004, from John H. Marshall, Esq., Downs Rachlin Martin, to Susan M. Hudson, Clerk, Vermont Public Service Board.

6. The proposed final Station parking configuration, as proposed in the original petition, would total 991 parking spaces, as described in Findings 7 through 11. The 556-space Outage Parking Area described in Finding 11 is not addressed in today's Order and CPG, but will rather be addressed in a subsequent proceeding. Today's Order and CPG address the 435 parking spaces described in findings 7 through 10, below, as well as the other proposed improvements described in findings 12 through 27 (the "Project"), below.

7. The existing entrance parking lot (also referred to as the Governor Hunt House Lot) will contain 28 spaces. The lot currently has 31 parking spaces, and three will be lost due to the Project. As part of the Project, Entergy VY also plans to make minor improvements to this lot, including the replacement of existing spots which were lost as a result of a security check point added after September 11, 2001. McElwee pf. at 3; exh. Entergy-1; letter dated August 25, 2004, from John H. Marshall, Esq., Downs Rachlin Martin, to Susan M. Hudson, Clerk, Vermont Public Service Board.

8. Twenty-six spaces will remain west of the SBS in the former main parking area. Exh. Entergy-1.

9. An existing gravel parking area of 55 spaces west of the 345 kV switchyard will remain. Exh. Entergy-1.

10. A new, paved, 326-space parking lot would be constructed adjacent to and north of the 345 kV switchyard, and generally between the 115 kV and 345 kV switchyards. This area is referred to as the 326-space "North Parking" area in Exhibit Entergy-1 and will be referred to hereafter as the "Permanent Parking Area." The construction limits of the Permanent Parking Area are shown as "Edge of Paved Parking Lot" and "Limit of Construction for Work in 2004" in Exhibit PB-14 (Erosion Prevention and Sediment Control Plan, Sheets 10-13). Exh. Entergy-1; exh. PB-14; letter dated September 14, 2004, from Suzanne M. Monte, Esq., Downs Rachlin Martin PLLC, on behalf of Entergy VY, to Susan M. Hudson, Vermont Public Service Board.

11. Subject to receiving a CPG in a separate proceeding, a new, gravel, 556-space parking lot would be constructed on a field immediately adjacent to and north of the proposed North Parking area. This parking lot is referred to as the "North Overflow Parking" area or the "Outage Parking Area". The Outage Parking Area will generally not be used for parking during the Station's normal operations, and will therefore generally be used for 30 days every 18 months. The Outage Parking Area is shown on Exhibit Entergy-1 as the 556-space North Overflow Parking, and as the gravel parking lot to the northward of the "Edge of Paved Parking Lot" line and as the "Limit of Construction for Work in 2005" in Exhibit PB-14 (Erosion Prevention and Sediment Control Plan, Sheets 11-13). McElwee pf. at 2; exh. Entergy-1; exh. PB-14. The Outage Parking Area will not be addressed in today's Order and CPG, but will rather be addressed in a subsequent proceeding. The "Project" does not include the Outage Parking Area.

12. Because a portion of the SBS will be constructed over an existing parking lot and the proposed parking lot will provide permanent replacement parking for the resulting lost spaces, Entergy VY seeks to begin construction of the replacement parking so that it is constructed and in place prior to the winter season. McElwee pf. at 5; exh. PB-14.

13. Subject to receiving a CPG in a separate proceeding, Entergy VY plans to construct the additional Outage Parking Area during the spring/summer 2005 construction period so that it will be completed prior to the 2005 fall refueling outage. McElwee pf. at 5; exh. PB-14.

14. As part of the Project, Entergy VY plans to construct an access and egress road from the current access road that will travel along the western perimeter of the Station, in front of the

Plant Support Building, to the west of the 345 kV switchyard, to the proposed location of the new parking lots. McElwee pf. at 3.

15. The exit road will branch off the new entrance road and exit on the north side of the existing Gate One. McElwee pf. at 3.

16. The access and egress roads will be designated for one-way traffic on each side of Gate One to enhance personnel safety. McElwee pf. at 3.

17. Entergy VY plans to install lighting along the new access and egress road and within the Permanent Parking Area to provide visibility and security. McElwee pf. at 3.

18. The Permanent Parking Area will contain five 30-foot light poles (two poles will have a single, 400-watt high pressure sodium downcast light facing into the Permanent Parking Area and three poles will have two 400 watt high pressure sodium downcast lights) and two 400-watt high-pressure sodium downcast lights mounted approximately 30 feet above the ground on an existing electrical transmission tower. The proposed access road will contain nine 30-foot poles with a single, 400-watt high pressure sodium downcast light facing into the Station on each pole. Exh. PB-14 (Sheets 7-11); letter dated September 14, 2004, from Suzanne M. Monte, Esq., Downs Rachlin Martin PLLC, on behalf of Entergy VY, to Mrs. Susan M. Hudson, Vermont Public Service Board.

19. Each light pole will be installed on a concrete foundation. McElwee pf. at 5; Boemig pf. at 12.

20. Trenching will be performed between the light poles and existing buildings and structures to bring power to the lights. The trenching areas will be backfilled and regraded as the necessary conduit and cabling are installed. McElwee pf. at 5; Boemig pf. at 12.

21. The proposed lighting will be angled downward, when possible, to minimize the impact, if any, to surrounding neighbors. McElwee pf. at 4.

22. The closest neighbor's house to the new lighting (at its closest point) will be approximately one hundred fifty feet away. McElwee pf. at 4.

23. The proposed security lighting will not substantially increase the amount or impact of lighting already visible from outside the Station site. McElwee pf. at 5; Boemig pf. at 14.

24. Entergy VY proposes to re-align the SBS from Station 12 + 00 to Station 23 + 00 to conform more closely to that segment of the proposed parking lot access road; this re-alignment will reduce the amount of excavation necessary for the installation of the SBS and is preferable from a security perspective. McElwee pf. at 3.

25. By order of the NRC, construction of the SBS must be completed no later than October 29, 2004. McElwee pf. at 5.

26. At the request of the Vernon Fire Chief, Entergy VY will also extend an existing dry fire hose connection from its current location directly outside the owner protected fence to a location to the west of the new security barriers, near the Plant Support Building. McElwee pf. at 3, 12; Boemig pf. at 11.

27. The Station has historically utilized a graveled road for emergency and/or temporary access to the Station from Governor Hunt Road that runs along the northerly property line of its property and the southerly property line of Paul and Mary Miller, and then in a generally southerly direction to the general area proposed for the Project. Concurrent with the Project, Entergy VY intends to repair the graveled road in its original location with limited cut and gravel fill so that the graveled road can continue to provide adequate emergency and/or temporary access to the Station. Entergy VY represents that the road was built as part of the pre-section-248 construction.³ McElwee pf. at 4.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

28. The 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 29 through 42, below.

29. By letter dated June 10, 2004, Entergy VY provided the Town of Vernon Planning Commission with plans for the construction of the Project as required by subsection 248(f). McElwee pf. at 6.

3. The Station was originally constructed prior to the enactment of 30 V.S.A. § 248.

30. By letter dated June 15, 2004, 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 or overburden municipal and governmental services in the Town of Vernon. McElwee pf. at 6; exh. DM-3.

31. At its meeting held on June 7, 2004, the Vernon Selectboard voted that the Project will not unduly interfere with the orderly development of the region and will not overburden municipal and governmental services in the Town of Vernon. McElwee pf. at 6; Boemig pf. at 11; exh. DM-2.

32. The Vernon Town Plan, which was adopted on November 3, 2003, 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. McElwee pf. at 6-7; exh. DM-4 at 2.

33. The plan specifically cites the 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. McElwee pf. at 7; exh. DM-4 at 17.

34. The Vernon Town Plan states the town's policy to encourage land uses that help to protect river corridors, scenic highways and roads, scenic views and other scenic resources. McElwee pf. at 7; exh. DM-4 at 33.

35. The Project will not adversely affect river corridors, scenic highways and roads, scenic views or other scenic resources. The Project will be sited near Entergy VY's electric generation facility, which is industrial in character, consists of concrete and metal sidings and includes transmission lines, towers and transformers. The Project is not located on a scenic highway or road. McElwee pf. at 7-8.

36. On June 9, 2004, Entergy VY provided the Windham Regional Commission ("WRC") with plans for the Project as required by Section 248(f). McElwee pf. at 8.

37. By letter dated June 15, 2004, Mr. James P. Matteau, Executive Director of the WRC, responded that the Project will not have an adverse aesthetic effect and will not unduly interfere with the orderly development of the region. The WRC further waived the 45-day, pre-application review allowed under subsection 248(f). McElwee pf. at 8; exh. DM-5.

38. The Windham Regional Plan, which was adopted in December 2001, is intended to provide continuing guidance for change in the Windham region. McElwee pf. at 8; exh. DM-6 at 2.

39. The Windham Regional Plan is to be used by the WRC, town planning commissions, selectboards, state agencies, landowners and citizens to provide guidance for local planning and development initiatives, guide basic decisions for planning programs at the WRC, serve as a basis for evaluation and review of developments and subdivisions proposed under Act 250, and assist in determining compatibility of agency plans affecting land use with regional and local planning and development priorities. McElwee pf. at 8; exh. DM-6 at 3.

40. The Windham Regional Plan acknowledges the significant role the Station plays in providing 33% of Vermont's annual electrical requirements at the time the Plan was drafted. Vermont Yankee provides 38 percent and 36 percent of the electricity supplied to Vermont customers by Central Vermont Public Service Corporation ("CVPS") and Green Mountain Power Corporation ("GMP"), respectively. McElwee pf. at 9; exh. DM-6 at 65.

41. The Windham Regional Plan references the 1999 Vermont Yankee Economic Study conducted by the Vermont Department of Public Service, which found that in the mix of power supplies for CVPS and GMP, Vermont Yankee is the lowest-cost, long-term supply. McElwee pf. at 9; exh. DM-6 at 65.

42. The Project is consistent with the policies of the Vernon Town Plan and the Windham Regional Plan. McElwee pf. at 9.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

43. The Project will not affect power generation or transmission, and therefore this criterion is not applicable. McElwee pf. at 9-10.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

44. Because the Station, and the transmission lines that serve it, will not change if the Project is constructed, system stability and reliability will not be affected. McElwee pf. at 10.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

45. The Project will not have an adverse economic effect; this finding is supported by findings 46 through 55, below.

46. The Project represents a substantial capital investment in Vermont that will be entirely borne by Entergy VY. McElwee pf. at 10.

47. Entergy VY considered several alternatives to the Project and determined that the proposed location and design are the most cost-effective and appropriate to provide the replacement parking needed as a direct result of constructing the SBS. McElwee pf. at 10-11.

48. The Project indirectly enhances security by making it possible to construct a portion of the SBS over existing parking facilities. McElwee pf. at 11.

49. Recognizing the benefits of increased security for the Station (which, as previously found, is a committed resource supplying one-third of Vermont's electric supply), the Project will provide an economic benefit to the state and its residents. McElwee pf. at 11.

50. One of the alternative locations considered by Entergy VY was the cornfield between the Station and neighboring properties along the Governor Hunt Road, which would have provided more convenient parking access to the Station. McElwee pf. at 11.

51. Entergy VY sent letters to neighbors along the Governor Hunt Road, as well as members of the Vernon Elementary School Board and the Vernon Selectboard, and held a meeting with neighbors along Governor Hunt Road to discuss the proposed parking plan in the cornfield location. McElwee pf. at 11.

52. At the meeting neighbors identified a concern that the cornfield location could potentially cause adverse aesthetic and traffic impacts. McElwee pf. at 11.

53. The cornfield location would also remove more productively and currently farmed agricultural lands from future production than the proposed location of the Project. McElwee pf. at 11.

54. The Project as proposed avoids additional direct and indirect costs associated with the cornfield location. McElwee pf. at 11.

55. Entergy VY held a follow-up meeting with neighbors to present the Project as now proposed, at which all neighbors in attendance expressed general support for the Project. McElwee pf. at 11-12.

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

[30 V.S.A. § 248(b)(5)]

56. The Project (which does not include the Outage Parking Area) 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 57 through 129 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).

Public Safety

57. As further described below, the Chief of the Vernon Fire Department and the Chief of the Vernon Police Department have reviewed the Project plans and determined that the Project will not have an adverse effect on the public health and safety. McElwee pf. at 12; exhs. PB-5, PB-6.

58. The Chief of the Fire Department raised a concern that the installation of the SBS would limit the accessibility to an existing fire hose connection for the purposes of fighting a fire at the Plant Support Building. While the proposed parking lots do not affect the fire hose access, Entergy VY has committed to the Vernon Fire Chief that it will extend the existing dry hose connection from the current location near the owner protected fence to a location on the west side of the new barriers, which will be accessible from the new access road being installed as part of the Project. The Chief of the Vernon Fire Department has agreed with this proposal and determined that the Project will not have an adverse effect on the public health and safety. McElwee pf. at 12.

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

59. The Project will not be located on or near any segment of any outstanding resource waters, as defined by the Vermont Water Resources Board. Boemig pf. at 2; exh. PB-2.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

60. The Project as proposed will not result in undue water or air pollution; this finding is supported by findings 61 through 84, below.

61. The Project will not cause air pollution levels that create a threat to public health or a nuisance for nearby neighbors. There will be no sources of emissions other than minimal dust during construction. Boemig pf. at 3-4.

62. Dust will be controlled during construction by quickly seeding and mulching non-roadway areas when completed, and through the use of water spray trucks as necessary. Boemig pf. at 4.

63. The Entire Project (including the Outage Parking Area) will add an additional 461 net parking spaces, resulting in a total Station parking capacity of 991 vehicles, which is less than the 1,000 space threshold for an indirect source permit under Section 5-503 of the Vermont Air Pollution Control Regulations. Boemig pf. at 4; exh. Entergy-1.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

64. The Project is not in a headwaters area. Boemig pf. at 4.

65. Specifically, the Project area is not the headwaters of applicable waters as characterized by steep slopes and shallow soils and has a drainage area greater than 20 square miles. Boemig pf. at 4-5.

66. The Project area is not over 1,500 feet in elevation – the elevation is between 252 feet and 263 feet above sea level – and is not the watershed of a public water supply designated by the Vermont Department of Health. Boemig pf. at 5.

67. The Project area is not a significant aquifer recharge area. Boemig pf. at 5.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

68. The Project does not involve the disposal of waste. Boemig pf. at 5.

69. The Project will not generate industrial or manufacturing wastewater, chemicals, pesticides, batteries, radiation, hazardous wastes or any other harmful or toxic substances. Boemig pf. at 5.

70. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Boemig pf. at 5.

71. The total area of impervious surface proposed for the Entire Project (including the Outage Parking Area) is approximately 9.6 acres, of which approximately 7 acres is new impervious surface, and approximately 2.6 acres is redeveloped existing impervious surface. The total area of impervious surface proposed for the Project (excluding the Outage Parking Area) is approximately 5.7 acres, of which approximately 3.1 acres is new impervious surface, and approximately 2.6 acres is redeveloped existing impervious surface. Boemig pf. at 9; exh. PB-14.

72. Entergy VY applied to the ANR for a Stormwater Discharge Permit for the Entire Project. On September 15, 2004, Entergy VY filed the Stormwater Discharge Permit issued by the ANR for the Entire Project. Exhs. PB-11, PB-15.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

73. The Project will not have water-supply or wastewater connections, and therefore no additional water will be used as a result of the Project. Boemig pf. at 6.

Floodways, Streams, and Shorelines

[10 V.S.A. §§ 6086(a)(1)(D), (E) &(F)]

74. The Project site is outside of the 100-year floodway and outside of the floodway fringe. Boemig pf. at 6; exh. PB-3.

75. 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 76 through 81, below.

76. There are no streams in the Project area. The closest river shoreline is the Connecticut River. Boemig pf. at 7.

77. At its closest point, the Project will be located more than 50 feet from the Connecticut River's riverbank. Boemig pf. at 7.

78. No construction will occur within 50 feet of the riverbank. Boemig pf. at 7.

79. The Project will have no impact on the natural condition of the Connecticut River, its shoreline, vegetation or stability. Boemig pf. at 7.

80. The Station is a secure site, so no access to the water for recreation is presently provided from the property. Boemig pf. at 7.

81. With the potential exception of the Outage Parking Area, the visual character of the Project site will be in keeping with the industrial nature and existing lighting of the Station. In addition, the existing vegetation along the riverbank will provide some screening from the Connecticut River. Boemig pf. at 7.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

82. Based on a review of the National Wetlands Inventory Mapping, there are no Class I or Class II wetlands in the area of the Project. Boemig pf. at 7; exh. PB-4.

83. There are several un-mapped or Class III wetland areas involved in the Project site. Boemig pf. at 8; exh. PB-7.

84. The Project will impact less than 3,000 square feet of the Class III wetland areas. Therefore, the Project activity is covered under U.S. Army Corps of Engineers Vermont General Permit #58 without the need for further permitting. Boemig pf. at 8.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2)&(3)]

85. As the Project does not require water supply or wastewater connections, it complies with these criteria. Boemig pf. at 8.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

86. The Project as designed will not result in unreasonable soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition may result. This finding is supported by findings 87 through 92, below.

87. The Project site is relatively flat, and there are no drainage ways or streams around the construction site. Therefore, the risk of environmental damage due to erosion is minimal.

Boemig pf. at 8.

88. Entergy VY applied to the ANR for a Construction General Permit for stormwater discharges from the Project during construction. On September 7, 2004, Entergy VY filed the Construction General Permit issued by the ANR for the Project. Exhs. PB-10, PB-12, PB-14.

89. Changes in stormwater runoff caused by the Project will be addressed in accordance with the current ANR requirements for stormwater runoff, which include providing treatment of the prescribed water quality volume, providing infiltration of the required groundwater recharge volume (of stormwater), and checking affected stormwater pathways to ensure any changes in runoff rate will not cause an erosive condition downstream. Stormwater treatment methods include the use of grassy swales, infiltration basins, and stormwater ponds. Boemig pf. at 9.

90. The total area of impervious surface proposed for the Entire Project (including the Outage Parking Area) is approximately 9.6 acres, of which approximately 7 acres is new impervious surface, and approximately 2.6 acres is redeveloped existing impervious surface. The total area of impervious surface proposed for the Project (excluding the Outage Parking Area) is approximately 5.7 acres, of which approximately 3.1 acres is new impervious surface, and approximately 2.6 acres is redeveloped existing impervious surface. Boemig pf. at 9; exh. PB-14.

91. Entergy VY applied to the ANR for a Stormwater Discharge Permit for the Entire Project. On September 15, 2004, Entergy VY filed the Stormwater Discharge Permit issued by the ANR for the Entire Project. Exhs. PB-11, PB-15.

92. By following the methods outlined in the Erosion Prevention Sediment Control Plan submitted as part of the Construction General Permit application, the potential for discharge of sediment or erosion of the Project area will be minimized. Boemig pf. at 9; exhs. Entergy-1, PB-14.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

93. The Project will not cause unreasonable congestion or unsafe conditions with respect to local highways, which are the only affected transportation facilities. This finding is supported by findings 94 through 96, below.

94. Aside from a limited temporary increase in construction vehicles during construction, the Project's limited traffic – similar to, but far less than, traffic during a scheduled outage – will not cause unusual congestion or unsafe transportation conditions. Boemig pf. at 10.

95. The Project will improve traffic flow to and from the Station by separating employee traffic from delivery vehicle traffic and by providing a separate exit lane that bypasses the area where vehicles can be checked. Boemig pf. at 10.

96. Access from Governor Hunt Road to the Station will remain unchanged from the existing access. Boemig pf. at 10.

Educational Services

[10 V.S.A. § 6086(a)(6)]

97. The Project will have no impact on educational services. It will not change employment at Vermont Yankee nor, therefore, the number of children to be educated in the area. Boemig pf. at 10.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

98. The Project will have no impact on the ability of the Town of Vernon to provide municipal services. This finding is supported by findings 99 through 105, below.

99. The Project has been reviewed with the Vernon Fire Chief, the Vernon Police Chief and the Vernon Selectboard. Boemig pf. at 11.

100. The only comment received during these reviews was from the Fire Chief requesting an extension of the existing dry pipe fire line from the plant security fence to the west side of the SBS near the Plant Support Building. Entergy VY incorporated the Fire Chief's request into the design of the Project as shown on Exhibit Entergy-1. Boemig pf. at 11; exh. Entergy-1.

101. Other than the one comment received from the Fire Chief, 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. Boemig pf. at 11; exhs. PB-5, PB-6.

102. At its June 7, 2004, meeting, the Vernon Selectboard voted that the Project will not interfere with the orderly development of the region and will not overburden municipal services. McElwee pf. at 6; Boemig pf. at 11; exh. DM-2.

103. The Project will not require municipal sewer or water supply services. Boemig pf. at 11.

104. Vermont Yankee proposes no new public road construction for the Project. Boemig pf. at 11.

105. The Town of Vernon will not be required to provide any additional road maintenance services as a result of the Project. Boemig pf. at 11.

Aesthetics, Historic Sites and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

106. The Project is proposed to be located on generally disturbed areas amongst the existing Station facilities. Exh. Entergy-1; exh. PB-14.

107. Most of the Project will be located between 252 feet and 263 feet above sea level, which is approximately ten to eighteen feet below the elevation of Governor Hunt Road. Boemig pf. at 13-14.

108. The existing buffer of mature trees outside of the SBS between the Project and the Connecticut River on land now or formerly owned by USGen New England, Inc., and the existing screen of trees between the Project and Governor Hunt Road, will be retained. Boemig pf. at 13; exhs. Entergy-1, PB-14 (Sheet 10 of 17); letter dated September 14, 2004, from Suzanne M. Monte, Esq., Downs Rachlin Martin PLLC, on behalf of Entergy VY, to Susan M. Hudson, Vermont Public Service Board.

109. Existing trees along the OCA fence line will provide some screening for that portion of the Project that is located at a slightly higher elevation than Governor Hunt Road. Boemig pf. at 14.

110. Existing vegetation will provide some screening for the Project from other buildings in the area, especially during the summer months. Boemig pf. at 16.

111. The additional lighting from the Project will not substantially increase the amount or impact of lighting already visible from outside the Station site. McElwee pf. at 5; Boemig pf. at 13.

112. The additional lighting from the Project will be marginally visible from Governor Hunt Road. Boemig pf. at 15.

113. The adjacent and visually dominant nuclear power Station is industrial in character and contains concrete and metal siding with transmission lines, towers and transformers. The Station is also well lit. Boemig pf. at 14.

114. The Project's design will be compatible with the appearance of the generating station. Boemig pf. at 15.

115. The Project does not violate a clear, written community standard intended to preserve the aesthetic and scenic or natural beauty of the area. It complies with the scenic resources policies of the Vernon Town Plan and the Windham Regional Plan. Boemig pf. at 15; McElwee pf. at 6-9.

116. The Project will not offend the sensibilities of the average person, when taking into account the visual dominance of the Station and the developed character of the nearby area. Boemig pf. at 15.

117. Entergy VY has taken generally available mitigating steps to improve the harmony of the proposed Project with its surroundings, including maintaining the existing buffer of trees between the parking lot and Governor Hunt Road and between the parking lot and the Connecticut River, and limiting the lighting to be installed to the extent necessary to provide visibility and security for the new parking area and access road. Boemig pf. at 16.

118. The proposed Project will be visually considered part of the existing power plant facility and will not significantly change the character of the area. Boemig pf. at 16.

119. Some of the site of the Project was extensively disturbed during the construction of the Station in the early 1970s and has been actively used for high-tension towers, stormwater lines, access roads, a rail line and storage of materials. Boemig pf. at 16-17.

120. In 1991, Entergy VY's predecessor, Vermont Yankee Nuclear Power Corporation, commissioned a Phase I Cultural Resource Investigation by Hanson Engineers Incorporated ("Hanson Engineers") for the purpose of evaluating the construction of a low-level radioactive waste disposal facility in a larger area that included the proposed parking area; the proposed parking area is encompassed largely within the study area designated as Area V in the 1991 Phase I Cultural Resources Study. Boemig pf. at 17; exh. PB-8 at 5-2.

121. Shovel probe excavations conducted by Hanson Engineers indicated that significant cutting and filling has occurred across Area V, and that construction of the various improvements in Area V have altered the ground surface and compromised any cultural resources that may have been present in Area V. Boemig pf. at 17; ex. PB-8 at 5-3.

122. The portion of the parking area and access road not subject to the 1991 Phase I Cultural Resources Study has been the source of even greater construction activity and use over the years of the Station's construction and operation. Boemig pf. at 17.

Discussion

Based on the above findings, the Board finds that the 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 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 would not be taken to improve the harmony of the Project with its surroundings. The Board's assessment of whether a

particular project will have an "undue" adverse effect based on these standards should be significantly informed by the overall societal benefits of the project.⁴

The proposed Project⁵ will not have an adverse effect on the aesthetics of the area. The Project involves the construction of a parking lot, security-barrier system, and associated access road and security lighting at the nuclear-power Station, which is already industrial in character and contains concrete and metal siding with transmission lines, towers and substations. The proposed facilities will be constructed in the midst of and will be compatible with the existing appearance of the generating station facilities. The additional lighting proposed will not create an adverse impact because the Station is currently well lit.

Even if the Project did have an adverse aesthetic impact, such impact would not be undue. The Project does not violate a clear, written community standard, is not shocking or offensive, and would not likely require additional mitigation because the visual appearance of the Station should not change. The Town of Vernon Planning Commission and the Windham Regional Commission were notified of the proposed Project and did not recommend any changes to the proposal. The Project is proposed in the midst of the existing Station facilities, and its presence will not be shocking, and will not offend the sensibilities of the average person. The existing buffer of trees between the parking lot and Governor Hunt Road and between the parking lot and the Connecticut River will be maintained, and the lighting to be installed was limited to the extent necessary to provide visibility and security for the new parking area and access road.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

123. There are no known occurrences of rare, threatened or endangered species in the Project area, and critical wildlife habitat will not be adversely affected by the Project. Based upon a review of the Project by Everett Marshall of the Vermont Fish and Wildlife Nongame and

4. Docket 6884, Order of 4/21/04 at 20-21.

5. The 556-space Outage Parking Area was excluded from the Project and is not addressed in this Order and CPG because the Board determined that there is insufficient information in the petition to make a positive finding for the aesthetic impact of the Outage Parking Area and for its lighting. NEC correctly raised this issue in its Petition for Leave to Intervene.

Natural Heritage Program for potential impacts to rare, threatened and endangered species and a search of the Department's databases, there are no known occurrences in the Project area. Mr. Marshall noted that there are several rare species associated with the Connecticut River adjacent to the Project site, but he did not anticipate any impact to these species. Boemig pf. at 16-18; exh. PB-9.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

124. 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 125 through 129, below.

125. The most significant public-utility facility is Entergy VY's electric generating Station, and the Station will be enhanced by the Project. Boemig pf. at 18.

126. The Project is located approximately 1,100 feet away from New England Central Railroad mainline and will not affect that facility. Boemig pf. at 18.

127. The Project will have minimal affect on the Connecticut River as the majority of the Project will be located more than 50 feet away from the riverbank and will have limited, if any, scenic impact and no water-quality impact on the river. Boemig pf. at 18.

128. The Project is located approximately 1,000 feet from the Vernon dam and will have no effect on the hydroelectric station located at the dam. Boemig pf. at 18.

129. The construction and use of the Project will have no permanent traffic impact on state or local highways and a very limited impact during construction. Boemig pf. at 18.

Least-Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

130. As a wholesale utility that does not distribute electricity to the public, Entergy VY has not been required to prepare or submit for approval an integrated-resource plan (or "IRP"). McElwee pf. at 17; *see* Docket No. 6812, Order of 3/15/04.

Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

131. Vermont's Electric Energy Plan, dated December 1994, does not specifically mention the Project, but in general it treats the Station as a committed resource and encourages Vermont's utilities to minimize their cost of service. McElwee pf. at 13.

132. 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." McElwee pf. at 13.

133. On September 14, 2004, Entergy VY filed a letter issued by the Department on August 10, 2004, which stated that, in accordance with 30 V.S.A. § 202(f), the Project is consistent with the 1994 *Vermont Twenty-Year Electric Plan*.

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

134. The Project will not be located on or near any segment of any outstanding resource waters, as defined by the Vermont Water Resources Board. Boemig pf. at 2; exh. PB-2.

Waste to Energy Facilities

[30 V.S.A. § 248(b)(9)]

135. The Project is not a waste-to-energy facility, and therefore this criterion is not applicable. McElwee pf. at 13-14.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

136. The Project does not require access to or use of transmission facilities, and therefore this criterion is not applicable. McElwee pf. at 14.

III. CONCLUSION

Based upon all of the above evidence, we conclude that the Project 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 by 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 State of Vermont Public Service Board that the construction by Entergy Nuclear Vermont Yankee, LLC of the 326-space Permanent Parking Area and related stormwater improvements, the 26-space Main Parking area, the 28-space Entrance Parking area, and the 55-space Gravel Parking area, and related access road and security lighting, along with minor improvements to an existing parking area by the so-called Governor Hunt House, other miscellaneous parking and roadway improvements, and the relocation (change in design) of a certain portion of the proposed security barrier system on the site of its electric generation station, the Vermont Yankee Nuclear Power Plant, 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 the matter, subject to the conditions set forth in the certificate of public good. This Order and certificate of public good specifically do not approve the 556-space Outage Parking Area, which will be addressed in a separate proceeding.

Dated at Montpelier, Vermont this 21st day of September, 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: September 21, 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.