

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6316

Petition of Town of Hardwick Electric)
Department for authorization to make repairs to)
the Mackville Dam located in Hardwick,)
Vermont)

Order entered: 1/11/2000

PROCEDURAL ORDER

I. Introduction

On November 30, 1999, the Town of Hardwick Electric Department ("Hardwick") filed a petition with the Public Service Board ("Board"). The petition seeks an order of the Board giving authorization to proceed with repairs to the Mackville Dam.

A hearing was held in this case on December 17, 1999. This Procedural Order addresses several matters discussed at the hearing and requiring further ruling or comment.

II. Motion to Continue

At the hearing, the Agency of Natural Resources ("ANR") filed a Motion for Continuance in this case. The motion states that:

1. The ANR, via the Department of Environmental Conservation ("DEC"), typically issues certificates of public good for dam projects pursuant to 10 V.S.A. § 1085. Because the subject proposed project is "part of a public utility system," the Board has jurisdiction over the proposed dam repairs in accordance with 10 V.S.A. § 1081(a).

2. The ANR is acting as a party in this proceeding with the interest of ensuring that the proposed project conforms with the criteria set forth in 10 V.S.A. § 1086.

3. The ANR has reviewed the subject petition and supporting material for conformance with the relevant criteria of 10 V.S.A. § 1086. The ANR has several questions regarding the proposal that must be addressed by Hardwick. In addition, the ANR must issue three individual permits for the proposed project - - a Water Quality Certification, a Wetland Conditional Use Determination ("CUD"), and a Lakes and Ponds Encroachment permit. The Water Quality

Certification and the CUD are germane to the subject proceeding in that they involve determinations that relate directly to the Section 1086 criteria.

4. The ANR requests that the Board continue this proceeding until (1) the ANR issues its Water Quality Certification and CUD, and (2) until such time as the ANR receives a response to its questions so that it may in turn provide a recommendation for action to the Board, as required under 10 V.S.A. § 1086 (b).

Upon reading the motion, it appeared that the ANR was requesting that the Board place this docket on hold and not hold a hearing to take evidence until (1) the three permits sought by the ANR have been obtained by Hardwick and (2) the ANR has provided the Board with its suggested conditions for minimum stream flow, as required under 10 V.S.A. § 1086(b). After discussion of the motion at the hearing, the ANR clarified its position by stating that it, in fact, wanted the hearing to proceed, have the Board receive evidence, but leave the record open to allow further evidence relating to the above three permits and minimum steam flow conditions. The hearing then proceeded forward and evidence was taken.

In accordance with 10 V.S.A. § 1087, the Board's engineering consultant will be preparing and submitting a report of his findings relating to the adequacy of the proposed dam repair to provide for the public safety. The report will be prepared and submitted upon the receipt and review of information requested by him at the hearing and at subsequent meetings, as necessary, with Hardwick. The record in this case will be kept open until receipt of the report from the Board's engineering consultant. As a result of the procedural schedule established by the parties at the hearing (see below), the record in this docket will remain open at least until January 28, 2000, which will allow time for Hardwick and the ANR to proceed with and hopefully complete the process of obtaining the subject three permits and water quality conditions.

If the Water Quality Certification and CUD permits have not been obtained by the time the Board's engineering consultant's report is received or by January 28, 2000, (whichever is later), I will prepare and condition the proposed order to require that those permits be obtained and complied with (see Section III below).

III. Conditions of Order

There was discussion at the hearing (and a request for a ruling) on the appropriateness of the Board conditioning its order to require the obtaining of a permit from another agency and to specifically require that the petitioner comply with the conditions and requirements of that permit. Such conditions are frequently used in Board orders and certificates of public good (see Certificates of Public Good ("CPG") in Docket Nos. 5750, 5772, 5823 and 5931) and will be used in this docket if appropriate. For example, Condition #5 of the CPG in Docket No. 5931 states ". . . shall comply with all conditions and requirements of any other permits required by the State of Vermont, which includes Conditional Use Determination . . ."

IV. Fish and Wildlife Letter

As required by 10 V.S.A. § 1084, the Department of Fish and Wildlife ("Department") of the ANR submitted a letter (dated December 14, 1999) to the Board prior to the hearing, certifying that the Department does not anticipate significant adverse effects on fish and wildlife habitats to result from this project, provided that (1) the project construction plan is followed and (2) measures are undertaken to ensure that uncured concrete is not discharged to State waters. This document was not placed into the record in this case; however, it would be appropriate to do so. As a result, I will mark this letter as Exhibit Board-1 and make it a part of the record, unless I receive a written objection from any party on or before January 21, 2000. In addition, I request that Hardwick, on or before January 14, 2000, provide the Board, its engineering consultant, and all parties, with information as to what measures it intends to undertake to ensure that uncured concrete is not discharged into State waters.

V. Schedule

The following schedule for this proceeding was established and agreed to by all parties at the hearing.

1. January 5, 2000 - The Board's engineering consultant to meet with Hardwick and DEC to discuss technical matters.
2. January 14, 2000 - Second meeting of the Board's engineering consultant, Hardwick and DEC to, hopefully, resolve all technical issues.
3. January 21, 2000 - The parties submit to the Board a stipulation resolving all issues.

4. January 28, 2000 - Board's engineering consultant to submit report.

SO ORDERED.

DATED at Montpelier, Vermont, this 11th day of January, 2000.

s/Wayne L. Foster

Wayne L. Foster
Hearing Officer

OFFICE OF THE CLERK

Filed: January 11, 2000

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 of any technical errors, in order that any necessary corrections may be made