

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 4905

Petition of Vermont Electric Power)
Company, Inc., for a Certificate)
of Public Good, pursuant to 30)
V.S.A. §248, for authority to)
construct a back-to-back direct)
current converter terminal in)
Highgate, Vermont, and an)
associated transmission corridor in)
Franklin and Highgate, Vermont)

Order Entered: July 9, 1984

I. INTRODUCTION

This case was initiated by a petition filed by Vermont Electric Power Company, Inc. (VELCO) on May 16, 1984. The petition requests a certificate of public good pursuant to 30 V.S.A. §248 for site-preparation and construction of a converter terminal facility in Highgate, Vermont, and for associated transmission facilities in Highgate and Franklin, Vermont. The facilities would be used to interconnect the Vermont transmission system with the electric system of Hydro-Quebec. Although the petition relates to both site-preparation and construction of both the converter terminal and the transmission line, VELCO has requested an "interim" certificate of public good restricted to certain site-preparation activities at the proposed converter terminal location only. This order is confined to that subject and to incidental procedural issues.

A duly noticed hearing was held on June 28, 1984, at City Hall in St. Albans, Vermont. In addition to the Petitioner, the Department of Public Service, the Vermont

Public Power Supply Authority and the Vermont Independent Power Producers Association, all of which had been granted either unconditional or limited party status at the prehearing conference on June 4, 1984, were present.

II. FINDINGS

A. Background

1. The facilities which are the subject of this proceeding consist of a 200 megawatt direct current, back-to-back converter terminal and a 120 KV transmission line. Zuckernick, First Affidavit at 1; Harrison, pf. at 2-3.

2. These facilities have been proposed in order to enable the State of Vermont to accept and to sell to Vermont utilities large quantities of electric power to be sold by Hydro-Quebec pursuant to a Letter of Intent, executed on March 18, 1984, by Hydro-Quebec and the Vermont Department of Public Service. Zuckernick, pf. at 3-5; VELCO Exh. 3.

3. The transmission line -- which would carry any power at Canadian voltage (120 KV) -- would run from the proposed converter site in Highgate Center through the Towns of Highgate and Franklin to the Canadian border near Border Station 620. All of the area proposed to be traversed is rural in character. Klunder, pf. at 9, 12, 17; Countryman, pf. at 3-5.

4. The terminal would consist of two converters, one of which would receive AC current from one transmission line and convert it to DC current. The DC current would then travel a short distance (approximately 10 feet) to a second converter which would convert the DC current back to AC for transmission along a second transmission line. The purpose of the facility is to permit the interconnection of the electric system of Hydro-Quebec (which would send or receive power via the 120 KV transmission line which will be the subject of further proceedings in this docket) with the 115 KV transmission system of Vermont. The converter terminal is required because of the technical problems of maintaining the Hydro-Quebec and Vermont/New England electric systems in synchronism. By the use of the converters, contingencies and outages on one system can be isolated from the other. Harrison, pf. 2-4; Zuckernick, pf. at 11-12, 14-15.

5. The terminal is proposed to be located on approximately four acres within a twenty-five acre parcel in Highgate Center, Vermont. The site is south of Route 78, between that highway and the Missisquoi River, immediately west of an existing 115 KV transmission line with which it will interconnect. The terminal will be approximately 500 feet from the nearest road and the nearest residence. Klunder, pf. at 4-5; Harrison, pf. at 7-8; VELCO Exh. 5.

6. Site preparation activities at the converter terminal location would consist of the construction of a 700

foot gravel access road, clearing of approximately one and one-half acres of woodland, regrading of the four acre converter site, and the construction of retaining walls, together with the implementation of erosion control measures and the performance of archaeological research. The total cost of these activities will be approximately \$300,000. Boyle, pf. at 2; Zuckernick, Supplemental Affidavit at 1.

B. Present and Future Demand for Service; Economic Factors

7. Vermont Yankee, which, when operating, provides 290.4 megawatts, or almost one-third of Vermont's peak load, will be out of service for some thirty-six weeks, commencing on or about September 1, 1985, in order to undergo repairs to cracked pipes. Tr., 6/28/84 at 37, 39.

8. If the converter terminal and transmission line are approved by the Board and constructed in time, much of the replacement power to cover the Vermont Yankee outage can be supplied by Hydro-Quebec under the contract to be negotiated pursuant to the Letter of Intent (see Finding No. 2) of March 8, 1984. Id. at 39.

9. If these facilities are not in place, the replacement power will come from the New England Power Pool as scheduled or unscheduled power. Id.

10. Power from Hydro-Quebec would be the least expensive power available to the state, and would save Vermont ratepayers a total of \$50,000 per day during the first

nineteen weeks of the Vermont Yankee outage and \$75,000 a day during the balance of the outage period. *Id.* at 41, 47, 50-54.

11. VELCO has a contract with ASEA, Inc. under which ASEA, Inc. has committed itself to supply the converter terminal and to have it operational by September 9, 1985. The timing of this commitment, however, is conditioned upon VELCO completing site-preparation by August 1, 1984; any delay in completing site preparation beyond August 1, 1984, poses a risk of at least an equal amount of delay in completion of the converter terminal. Extensive delay (approximately thirty days or more) poses a risk of two- or three-fold delays in completion of the entire project because of problems that would be caused by shifting converter terminal construction activities into periods of severe winter weather. Zuckernick, First Affidavit at 2-3; Zuckernick, pf. at 5; tr., 6/28/84 at 58-60.

12. VELCO can complete site preparation by August 1, 1984, if its contractor can commence the work during the first week of July, 1984. Zuckernick, First Affidavit at 2.

13. The schedule established for further hearings in this docket will not permit a final decision to be rendered before July 16, 1984, and, potentially, substantially longer. Prehearing Conference Order, June 11, 1984.

14. Vermont's allotment of power from the Power Authority of the State of New York, currently 150 megawatts,

will be reduced in phases to approximately three megawatts, with reductions commencing in July, 1985. Tr., 6/28/84 at 38.

15. The proposed site preparation activities at the converter terminal location are required in order to meet present and future demand for service.

16. Immediate commencement of site preparation activities will save Vermont ratepayers several million dollars if the converter terminal and transmission lines are approved and constructed. Findings Nos. 7-13. If construction approval is withheld, the costs of site preparation and of restoring the site (see condition no. 1 of the certificate) will yield no benefits. Regardless of where responsibility for the payment of those costs falls (and it is not now possible to determine that responsibility), those costs will not, in view of the potential for such large savings, impose adverse effects on system economics that are undue.

C. Effects

1. The natural environment: air and water purity.

17. The proposed converter terminal site contains no endangered species of flora or fauna, no significant natural areas and no critical wildlife habitat. Countryman, pf. at 4.

18. Provided that reasonable mitigating measures are employed, e.g., seeding to avoid erosion, there will be no substantial effect on water purity from site preparation

activities. Id. at 5; Myers, pf. at 2; Boyle, pf. at 2; Harrison, pf. at 9.

19. There will be no substantial effect on air purity from site preparation. Harrison, pf. at 9.

20. There will be no undue adverse effect on air or water purity or on the natural environment from site preparation activities at the proposed converter terminal location.

2. Public health and safety.

21. No evidence was adduced as to adverse effects on public health and safety from site preparation activities, and there is no reason to assume that there will be any such adverse effects.

22. There will be no undue adverse effect on the public health and safety from site preparation activities at the proposed converter terminal location.

3. Historic sites.

23. There are no historic sites at the proposed location of the converter terminal. Klunder, pf. at 21.

24. In early 1984, VELCO began consultations with the Vermont Division for Historic Preservation in order to determine whether the proposed site contained archaeological properties which are entitled to protection under law. The area was determined to have a high probability of containing archaeological sites, and VELCO subsequently hired an archaeologist, Dr. Peter Thomas, to survey the area. Dr.

Thomas has made a number of findings, including a prehistoric campsite and evidence of arrowhead manufacture, which indicate that the site was occupied approximately 6,000 years ago. Gilbertson, pf. at 2-4; tr., 6/28/84 at 176-79.

25. Dr. Thomas expects to complete his study of the site by July 13, 1984. Because of the limited area within which he and his staff are working, his research can be completed even while site preparation activities are underway. Tr., 6/28/84 at 188-92.

26. There will be no undue adverse effect on historic sites caused by site preparation work at the proposed converter terminal location.

D. System Stability and Reliability

27. Site preparation at the proposed converter terminal will have no effect, and therefore will have no undue adverse effect, on system stability and reliability. Tr., 6/28/84 at 36.

E. Aesthetics

28. Existing vegetation will conceal site preparation activities, except for the construction of the access road, from all directions except north. Klunder, pf. at 22.

29. The nearest road or residence to the north (or in any direction) is approximately 500 feet from the proposed converter location. Harrison, pf. at 7.

30. By their nature, site preparation activities are temporary, and in this case are planned to be completed within thirty days. Zuckernick, First Affidavit at 2.

31. Site preparation activities at the proposed converter terminal location will have no undue adverse effect on aesthetics.

F. Orderly Development of the Region

32. Because of the proximity of a railroad and an existing transmission line, and because of steep topography to the south, the site of the proposed converter terminal is only marginally suitable for major residential development. Klunder, pf. at 6.

33. The site was leased for haying in 1983, but it is not currently part of any agricultural operation. Klunder, pf. 5-6; tr., 6/28/84 at 198.

34. The site is partially screened from existing residences and highways, the nearest of which is 500 feet from the proposed converter site, by existing vegetation, and where existing screening is inadequate, it can be provided. Klunder, pf. at 6; Boyle, pf. at 2; Harrison, pf. at 7.

35. The Highgate town plan designates the site as a growth area, intended to accommodate residential, commercial or industrial uses. Klunder, pf. at 6.

36. The converter terminal would not interfere with or be inconsistent with present and anticipated land uses. Id. at 5-6.

37. VELCO's consultant conferred with the Highgate selectmen and the Highgate Planning Commission and offered to meet with the Fairfax-Grand Isle Regional Planning and Development Commission before the hearing on June 28. Notices of this proceeding were sent to such officials and agencies in accordance with 30 V.S.A. §248. On May 29, 1984, the executive director of the chapter of the Fairfax-Grand Isle Regional Planning and Development Commission advised the Board by letter that the Commission supported the proposed converter station and transmission line in concept. On June 15, 1984, the chairman of the Highgate Planning Commission advised the Board by letter that the Commission had unanimously endorsed the proposed converter station and, despite substantial reservations, the transmission corridor as well.

38. The proposed site preparation activities at the converter location will not unduly interfere with the orderly development of the region.

G. Compliance with Vermont Electric Energy Plan

39. The Vermont Electric Energy Plan, prepared by the Department of Public Service pursuant to 30 V.S.A. §202, concludes that the best electric supply options currently available to Vermont are Canadian. Electric Power in Vermont, 20 Year Plan, March 1983 at 40-43, 52, 54.

40. Said plan also recognizes that Vermont must develop new transmission facilities in order to be able to purchase as much Canadian power as may be desirable. Id. at 42, 52, 55.

41. Immediate preparation of the proposed converter terminal site will facilitate the importation of Canadian power at a time when it will be most advantageous to Vermont (see Findings 7-14) and said action is, therefore, consistent with the final electric energy plan approved by the Department of Public Service under 30 V.S.A. §202.

H. Submission of Plans

42. Plans for the proposed project, including site preparation, were submitted to the Highgate Town Planning Commission and to the Franklin-Grand Isle Regional Planning and Development Commission more than forty-five days prior to the date of the filing of the petition. VELCO Exh. 1.

I. Executive Order No. 52

43. Executive Order No. 52, issued by the Governor on September 25, 1980, provides that "it is the policy of the

State of Vermont . . . to provide for the preservation of agricultural productivity of the land and the economic viability of agricultural units in planning for land use and economic development" and that "uses which threaten or significantly inhibit these resources should be permitted only when the public interest is clearly benefited thereby." State agencies, including the Public Service Board, are required by the order to assure that "development requiring state permits will not eliminate or significantly interfere with or jeopardize the continuation of agriculture on productive agricultural lands or reduce the agricultural potential on primary agricultural soils unless there is no feasible and prudent alternative and the facility or service has been planned to minimize its effect on such lands."

44. The proposed converter terminal site is located on primary agricultural soils which have high agricultural potential, but only if drained artificially. The site was hayed as recently as 1983 under lease, but it is not currently being cultivated. Tr., 6/28/84 at 68, 197-98.

45. Farming activities in the vicinity of the proposed site have decreased as a result of development pressures associated with the growth of Highgate Center. Id. at 68.

46. Land not actually taken by the converter terminal, access road and other development will continue to be available for agricultural use. Id. at 198.

47. Site preparation or use of the site for a converter terminal will not disrupt any existing agricultural uses, nor will it substantially interfere in the future with nearby but off-site agricultural activities. Id.

48. Before selecting the converter terminal site proposed in this petition, VELCO's consultant conducted a preliminary analysis of the general area within which it must be located, that is, at some site adjacent to the existing 115 KV transmission line with which it is to interconnect. Klunder, pf. at 4.

49. After conducting the preliminary analysis, the consultant focused on the three sites he determined to be the most feasible. One of these three sites was rejected because landscaping and future expansion would be unduly restricted by an existing railway, substation and village development. The second was rejected because, inter alia, it is located on prime agricultural land currently in active use. Id. at 4-5; VELCO Exh. 4.

50. The site proposed was selected because it would not be inconsistent with existing uses at the site, would not cause undue interference with adjacent land uses, and because it was consistent with the town plan. Klunder, pf. at 5-7.

51. Although the proposed site will remove some potentially productive land from the possibility of being used for agriculture, it does not involve a significant amount of land (see Finding No. 1); there is no feasible alternative;

the site has been planned to minimize its effect on agricultural lands; and the public clearly will be benefited by the use of the site as proposed.

III. Discussion

A. Issuance of the Certificate

This case is unusual in that the Petitioner presently seeks what it characterizes as an "interim" certificate of public good, one which would apply only to site preparation activities and, even at that, would involve only a portion of the facilities which constitute the entire project. The Vermont Independent Power Producers Association (VIPPA), one of the intervening parties, contends that we lack authority to grant such a certificate. We conclude that we are empowered to certify site preparation only. We would not label our certificate an interim one, however, even though it contains a condition which may require the work to be undone.

There is no provision within the statute itself which expressly forbids the award of a certificate for only a part of a project or for less than all of the activities required to complete a project; nor do we think one may fairly be inferred. What is clear, though, is that the Board must find that all of the criteria of the statute are satisfied with respect to any activity which is to be authorized. Whether such findings are possible will, of course, depend on

particular circumstances. In this case, the evidence supports all of the necessary findings.

We would prefer in every instance to have projects presented in a unified manner in Section 248 proceedings. Given circumstances different from these, we might decline to consider a project in piecemeal fashion. Were we to insist on a unified presentation here, however, completion of the project -- if it is finally authorized -- could be delayed for a substantial period of time, and such a delay would cost Vermont ratepayers millions of dollars. We think that this consideration warrants the exercise of discretion in favor of utilizing a bifurcated procedure in this instance.

Without question, the notice and finding requirements of Section 248 require strict compliance but, otherwise, we believe that Section 248 should be construed in a reasonably practical way, one in which the realities of providing for the state's electric power needs can be accommodated. Supreme Court precedent lends support to this view. In In re Vermont Electric Power Company, 131 Vt. 427 (1973), the Court held that the Board had authority under Section 248 to issue a certificate of public good for a generally defined transmission line corridor and to leave for later determination the specific route for the line within that corridor. While it is factually distinguishable from this case, Vermont Electric Power clearly stands for the proposition that the Board can issue a certificate for

something less than the entire project before all of the evidence regarding the project has been taken. The Court expressly referred to the need to accommodate the practical realities of the problems presented. The approach to Section 248 embraced by the Court's opinion is the one we adopt today.

B. Adequacy of Hearings and Notice

In addition to its contention that the Board cannot issue a certificate for only a part of a proposed project until all of the evidence with respect to the entire project has been received, VIPPA argues that because we scheduled what were denominated technical hearings commencing July 16, the hearing on June 28 was somehow improper or inadequate as a basis for issuing today's decision. See tr., 6/28/84 at 11, 15. We find this contention to be incomprehensible. In addition to newspaper notification of the June 28 hearing, the very same order (the Prehearing Conference Order of June 11, 1984) which announced the July 16 hearing stated that "a hearing relating to the site preparation portion of this proceeding has been scheduled for Thursday, June 28, 1984" That order was mailed to all parties to the proceeding, including VIPPA.

That statement, in light of the Petitioner's request -- included with its petition -- for an "interim" certificate with respect to site preparation was, we think, unquestionably sufficient to advise the parties of the nature of the June 28

hearing. It is inconceivable that VIPPA was in any way misled or confused by that notice, and its participation at the June 28 hearing would not suggest the contrary. In short, the notice was fair and adequate, it complied with all the requirements of law, it was not misunderstood by VIPPA, and the hearing held on June 28 was legal in all respects.

C. Motion to Appoint the Attorney General.

On June 13, 1984, VIPPA filed a motion requesting that we appoint the Attorney General to represent the interests of the public. The Attorney General had previously appeared in order to represent the Vermont Department of Agriculture. Tr., 6/4/84 at 35. On June 8, 1984, however, the Attorney General asked that VIPPA's motion be denied, observing that no sufficient reason for the Attorney General's participation on behalf of the public had been demonstrated.

We are empowered to request the Attorney General to appear to represent the interests of the public, 30 V.S.A. §§2(b), 217; but we have no power to compel such an appearance. In view of the Attorney General's response, the motion must be denied.

D. Motion for Permission for Interlocutory Appeal

At the commencement of the hearing on June 28, VIPPA asked that, in the event that we should grant a certificate for site preparation, we give permission to VIPPA to take an

interlocutory appeal from that order. The Vermont Rules of Appellate Procedure, Rule 5(b) allows permission for such an appeal to be granted if "the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and . . . [if] an immediate appeal may materially advance the termination of the litigation."

Today's order is not a controlling question of law as that phrase is used in Rule 5(b). In re Pyramid Company of Burlington, 141 Vt. 294 (1982). In addition, because the remainder of the merits of this case are to heard within the next several months at the latest, an immediate appeal has no prospect for advancing the termination of the litigation. If anything, such an appeal would prolong the proceedings. The motion must be denied.

IV. ORDER

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

1. Site preparation activities as proposed by the Petitioner at the proposed converter terminal location adjacent to Route 78 in Highgate Center, Vermont, will promote the general good of the State, and a certificate of public good shall be issued for the same pursuant to 30 V.S.A. §248. No other construction shall take place at said location except upon further order of the Board.

2. The motion of the Vermont Independent Power Producers Association for permission to take an interlocutory appeal (see tr., 6/28/84 at 17) is denied.

3. The motion filed on June 13, 1984, by the Vermont Independent Power Producers Association requesting the Board to appoint the Attorney General to represent the interests of the public is denied.

Dated at Montpelier, Vermont, this 9th day of
July, 1984.

s/V. Louise McCarren

PUBLIC SERVICE

s/William E. Markcrow

BOARD

OF VERMONT

OFFICE OF THE CLERK

FILED: July 9, 1984

ATTEST: s/Susan M. Hudson
Clerk of the Board