

STATE OF VERMONT  
ENVIRONMENTAL BOARD  
10 V.S.A., CHAPTER 151

RE: N.E. Telephone & Telegraph Co. Findings of Fact,  
P.O. Box 669 Conclusions of Law  
Rutland, VT 05701 and Order  
and Land Use Permit  
Central Vermont Public Amendment #1R0436-1-EB  
Service Corporation  
77 Grove St.  
Rutland, VT 05701

An appeal to the Environmental Board (the "Board") was filed on March 18, 1982, by the Permittee, New England Telephone and Telegraph Company ("NET") from District #1 Environmental Commission's ("District Commission") Findings of Fact, Conclusions of Law and Land Use Permit #1R0436 dated March 8, 1982. The permit authorizes the Permittees, NET and Central Vermont Public Service Corporation ("CVPS"), to run electric and telephone routing 8876 feet in length north from the Pittsford/Brandon town line to the vicinity of the Brandon Motor Lodge, along U.S. Highway 7 in the Town of Brandon, Vermont.

A pre-hearing conference was held on April 6, 1982, in Montpelier, Vermont. The Brandon Planning Commission notified the Board on April 1, 1982, that it would not be present at the pre-hearing conference but intended to appear at the reconvened public hearing on April 28, 1982.

A public hearing was convened on April 14, 1982, and was immediately recessed. The Board reconvened the public hearing on April 28, 1982, at City Hall, Rutland, Vermont. Parties present at the hearing were the following:

Appellant, NET by Steven F. Stitzel, Esq., David Magnant, Engineering Manager, and John Hunt, Contract Engineer for Continental Field Services; and  
Brandon Planning Commission by Charles Jakiela and William Braun.

CVPS notified the Board on April 20, 1982, of its intention to participate in the appeal but did not appear at the reconvened hearing.

I. ISSUES IN THE APPEAL

Permittee NET objects to the District Commission's findings of fact and conclusions of law regarding Criterion 8 (aesthetics and scenic beauty). The District Commission found that NET's proposed aerial routing location along U.S. Highway 7 would be an undue aesthetic burden on the area. The District Commission then ruled that the routing should be located within an existing CVPS right-of-way or located underground along U.S. Highway 7.

Based on the record developed at the hearing, the Board makes the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

1. NET's proposed project is an upgrading and modernization of its telephone toll line system to be located along U.S. Highway 7 in the Town of Brandon, Vermont. The new toll line will ultimately replace an existing toll line.
2. The project involves new telephone routing of approximately 8876 feet in length, alternating aerial and underground cables, and running north from the Pittsford/Brandon town line to the vicinity of the Brandon Motor Lodge (Exhibit #2).
3. NET currently maintains aerial telephone distribution lines in a right-of-way located off U.S. Highway 7. In approximately five years, NET intends to dismantle these aerial distribution lines. District #2 Commission authorized NET's proposed routing if it were buried underground along U.S. Highway 7. In the vicinity of NET's right-of-way, CVPS maintains a 44 KV transmission line. The District Commission also authorized the CVPS right-of-way as an alternative route. CVPS will not permit NET to utilize this right-of-way for NET's proposed telephone routing (Exhibit #4).
4. There are scenic vistas to the west and east of U.S. Highway 7 south of Ryan's Chevrolet dealership. Prior to the hearing, NET and the Brandon Planning Commission arrived at an agreement regarding the location of the proposed telephone toll line between Ryan's Chevrolet dealership south to the Otter Valley Union High School. The parties clarified the agreement subsequent to the hearing.
5. NET and the Brandon Planning Commission agreed that NET will bury approximately 2500 feet of its proposed telephone cable commencing at Pole No. 119, designated on Plan 22, and filed with the District Commission. The buried cable will continue south along the easterly side of U.S. Highway 7 to a point where four, white NET carrier cabinets are located. These cabinets are located opposite the parking lot of the Otter Valley Union High School. The exact length of the buried cable segment will be determined by the distance between these points.

III. CONCLUSIONS OF LAW

1. According to 3 V.S.A. §809, parties may make an informal disposition by stipulation unless precluded by law. NET and the Brandon Planning Commission have made such agreement. We accept the parties' agreement concerning the location of the buried cable segment along U.S. Highway 7 as satisfying the requirements of Criterion 8 (aesthetics and scenic beauty) under 10 V.S.A. §6086(a).
2. Condition #3 contained in Land Use Permit #1R0436 is hereby deleted as to any location of the telephone cable within the CVPS 44 KV transmission line right-of-way. Condition #3 shall be revised to reflect the agreement of the parties concerning the buried cable along U.S. Highway 7. In addition, quick growing trees, such as white pines or hemlocks, are to be planted by NET to screen the carrier cabinets. Existing telephone poles are to be utilized where feasible for the new toll line system, and new poles are to be placed, if feasible, where trees skirt the highway.
3. The Board notes that the district commission approved an alternate route for NET's proposed project that involves new land. The Board would like to clarify that a district commission must review the applicant's project as proposed. The district commission cannot approve and should not propose alternative locations without giving interested and affected parties the opportunity to participate in the district commission's proceedings as required by 10 V.S.A. §§6084 and 6085. See In re Juster Associates, 136 Vt. 577, 396 A.2d 1382 (1978).

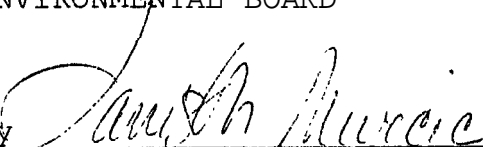
IV. ORDER

The Permittee's project, as proposed before the District #1 Environmental Commission and as amended by the agreement between NET and the Brandon Planning Commission, if completed and maintained in conformance with all of the terms and conditions of the amended Land Use Permit #1R0436-1-EB, will not cause or result in a detriment to public health, safety, or general welfare under the criteria described in 10 V.S.A. §6086(a). Jurisdiction over this project and related permits is returned to District #1 Environmental Commission.

Dated at Montpelier, Vermont this 14th day of May, 1982.

ENVIRONMENTAL BOARD

By



Janis M. Murcic  
Acting Executive Officer

Board members participating  
in this decision:

Leonard U. Wilson  
Ferdinand Bongartz  
Dwight E. Burnham, Sr.  
Melvin H. Carter  
Warren Cone  
Roger N. Miller  
Priscilla N. Smith