

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

RE: Burlington Electric Department      DECLARATORY RULING #119  
c/o Joseph E. McNeil, Esq.  
City Attorney  
Burlington, Vermont 05401

On June 25, 1980, the City of Winooski filed a request for a Declaratory Ruling concerning the applicability of Act 250 to the Joseph C. McNeil Station, a 50-megawatt electric generating station proposed to be built in the City of Burlington by the Burlington Electric Department. The Board served notice of the petition on all parties, and conducted pre-hearing conferences on July 10 and August 20, 1980. On August 26, 1980 a public hearing was held on this matter before the Environmental Board, with Chairman Leonard U. Wilson presiding.

The following parties were present:

Petitioner, City of Winooski, by William E. Wargo,  
Esq.  
City of Burlington Electric Department, by Joseph  
E. McNeil, Esq.  
Chittenden County Regional Planning Commission, by  
Arthur R. Hogan, Jr., Executive Director  
State of Vermont, by William Griffin, Esq.

FINDINGS OF FACT

1. The City of Burlington has authorized and planned, and intends to construct the Joseph C. McNeil Station, a 50-megawatt electric generating facility on a 36-acre tract of land in Burlington, Vermont. This plan is designed to burn wood products; it will also be capable of conversion to burn coal.
2. On March 14, 1980, the Burlington Electric Department (BED) applied to the Public Service Board for a certificate of public good to construct and operate the McNeil Station. Hearings on this application have been proceeding before the Public Service Board pursuant to the requirements of section 248 of Title 30 of the Vermont Statutes.
3. If operated as currently planned, the McNeil station will burn approximately 500,000 tons of wood chips per year. Procurement of these chips will involve logging and chipping operations of substantial magnitude. The actual acreage of forest land in Vermont involved in supplying chips to the McNeil Station will be a function of several variables, including: the operating load factor of the plant, the extent of use of waste wood products, the extent of use of wood imported to Vermont, and the type

and intensity of cutting that is performed.

4. Neither the City of Burlington nor the Burlington Electric Department will be engaged directly in wood cutting or chipping operations for the supply of the McNeil Station. BED will purchase wood chips in bulk from chippers and landowners operating as independent contractors. While BED may impose minimum conditions on those contractors, its proposed oversight role is not a sufficient involvement in wood procurement to characterize BED as a chipper, logger, or manufacturer of wood fuel.
5. The parties to this matter have presented no evidence of additional development to be performed by BPD that is not a component of the electric generating facility itself.

#### CONCLUSIONS OF LAW

1. The Joseph C. McNeil Station is a development for municipal purposes on a tract of land involving more than 10 acres. This project would thus be subject to the jurisdiction of Act 250 were it not for the exemption in the statute for "an electric generation or transmission facility which requires a certificate of public good under section 248 of Title 30." 10 V.S.A. §6001(3). This exemption extends to those physical improvements and development activities that are directly related to the construction and operation of the generating facility. See Opinion No. 715, 1971 Op. Atty. Gen. 167.
2. Chip harvesting, logging, and other off-site wood procurement activities are not directly related to the construction and operation of the McNeil generating facility, and are thus not exempt from the jurisdiction of the Act by virtue of the exclusion quoted above. The Public Service Board has indicated in a communication to the Board that it intends to consider, at least generally, the impacts of off-site wood fuel procurement activities during its review of BED's application for a certificate of public good for the McNeil Station. Letter of Chairman Saudek to Chairman Garland, July 14, 1980. We have carefully considered this matter, and we conclude that such review by the Public Service Board does not in and of itself exempt those activities from the jurisdiction of Act 250. The Public Service Board exercises broad oversight over the activities and impacts of regulated public utilities that extends beyond the review of electric generating and transmission facilities themselves. The BED has demonstrated that wood chip harvesting for the McNeil Station will be carried out by independent contractors on scattered sites not owned or controlled by BED. This commercial activity is not a part of the generating facility exemption, and therefore must be considered in

the context of the other jurisdictional language of the Act.

3. At this time, this Board is unable to conclude whether or not commercial chip harvesting is subject to the jurisdiction of Act 250 as commercial "development". In its review of this petition, the Board did not have before it any commercial chip harvesters, loggers, or foresters actively engaged in commercial chip harvesting for the McNeil Station or for any other purpose. We do not have adequate information at this time upon which to base a determination of jurisdiction for chip harvesting operators. However, this determination is not necessary to our ruling on the City of Winooski's petition concerning the McNeil Station. Since we have found that BED does not propose to engage in chip harvesting itself, and that chip harvesting is not a component of the McNeil facility, we are able to conclude that the McNeil facility is not subject to the jurisdiction of Act 250, whether or not particular off-site chip harvesting or wood processing projects are subject to the Act's jurisdiction.

ORDER

Because the McNeil Station is an electric generation facility subject to the review of the Public Service Board under Title 30, section 248, those aspects of the BED project that are directly related to the construction and operation of that facility are exempt from the jurisdiction of Act 250. The petitioner's request for review of the McNeil Station under the Act 250 permit process is hereby denied.

Dated at Montpelier, Vermont this 8th day of October, 1980.

ENVIRONMENTAL BOARD

By Richard H. Cowart  
Richard H. Cowart  
Executive Officer

Roger N. Miller  
Donald B. Sargent