

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Petition of Vermont Transco, LLC, and )  
Vermont Electric Power Company, Inc. )  
(collectively, “VELCO”), and Central Vermont )  
Public Service Corporation (“CVPS”) for a )  
Certificate of Public Good, pursuant to 30 )  
V.S.A. § 248, for the “**Southern Loop Project**,” )  
located in Vernon, Guilford, Brattleboro, )  
Dummerston, Newfane, Brookline, Townshend, )  
Grafton, Windham, Andover, Chester, Ludlow )  
and Cavendish, Vermont, consisting of the )  
following elements: (1) a new, approximately )  
51-mile, 345 kV transmission line between )  
Vernon-Cavendish, to be built parallel to and )  
within the same utility right-of-way as )  
VELCO’s existing Vernon-Cavendish 345 kV )  
line; (2) a new VELCO 345/115 kV Vernon )  
substation, to be located just north of the )  
Vermont Yankee Nuclear Power Station; (3) a )  
new 345/115/46 kV Newfane substation; (4) a )  
new, approximately one-mile, 345 kV )  
transmission line loop between the new )  
Newfane substation and the new Vernon- )  
Cavendish 345 kV line; (5) expansion of )  
VELCO’s Coolidge substation in Cavendish, )  
Vermont; and (6) the implementing of )  
incremental energy efficiency to defer )  
transmission upgrades in Southern Vermont )

Docket No. 7373

RESPONSE OF PETITIONERS VELCO & CVPS TO  
THE REPLY OF THE VERMONT LAND TRUST WITH RESPECT  
TO THE PUBLIC SERVICE BOARD ORDER RE: MOTIONS  
TO INTERVENE AND MOTION TO ADMIT PRO HAC VICE

NOW COME Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively “VELCO”), and Central Vermont Public Service Corporation (“CVPS” and, with VELCO, “Petitioners”), and respectfully submit this response to the Vermont Land Trust (“VLT”)’s February 22, 2008 Reply to the Board’s February 8, 2008 Order Re: Motions to Intervene and Motion to Admit Pro Hac Vice.

## I. INTRODUCTION

Petitioners do not object to the Board granting VLT permissive intervention under Board Rule 2.209(B)<sup>1</sup> insofar as VLT's participation is limited to the issues it specifically identifies in its Reply that relate to the criteria articulated in 30 V.S.A. § 248(b)(5). However, VLT should not be permitted to raise issues relating to private property interests – in particular, VLT's interests in conservation easements that are subordinate to VELCO's preexisting exclusive easements – and other purely private interests that are beyond the scope of the public good under the statutory criteria.

## II. ARGUMENT

### A. Vermont Land Trust's Reply

The Reply identifies seven properties on which VLT holds either conservation easements or fee interests. For each parcel, VLT represents that its interests in the proceeding fall within the scope of 30 V.S.A. § 248(b)(5) because the protected resources on each parcel “will be impacted by the [Project] due to the disturbance and removal of vegetation and alteration of access points and roads.” VLT Reply at 2-3. VLT further maintains that its interests relate to Section 248(b)(5) to the extent the Project may impact each parcel's particular timber resources, forestry management plans, productive agricultural soils, productive sugarbush, continued eligibility for inclusion in the Vermont Land Use Value Program and property tax burden.

### B. Petitioners' Response

Rule 2.209(B) requires that persons requesting intervention demonstrate a “substantial interest that may be affected by the outcome of the proceeding.” VLT has identified issues relating to wildlife habitats, biological communities, aesthetics and natural beauty, among others, that fall within the scope of the statutory criteria. Insofar as these interests relate specifically to impacts to natural resources under Section 248(b)(5) and the incorporated Act 250 criteria on

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<sup>1</sup> VLT's Reply specifically seeks permissive intervention, and does not request intervention as of right under Rule 2.209(A).

lands adjoining the VELCO corridor on which VLT holds conservation easements and/or fee interests, Petitioners do not object to the Board granting VLT permissive intervention under Board Rule 2.209(B). VLT's participation in this Section 248 proceeding, however, should not extend to its private property interests. For several reasons, VLT cannot demonstrate that its conservation easement interests are relevant, "substantial" and potentially impacted by the outcome of the proceeding as required by Board Rule 2.209.

First, as briefed in previous filings in this docket, it is well-settled that private property interests do not fall within the criteria of Section 248. *Vt. Elec. Power Co. v. Bandel*, 135 Vt. 141, 145, 375 A.2d 975 (1977); *Auclair v. Vt. Elec. Power Co., Inc.*, 133 Vt. 22, 28, 329 A.2d 641 (1974); see *Procedural Order Re Schedule and Motions to Intervene*, Docket No. 7032, Order of 2/2/2005 at 2 (denying landowner intervention where "[t]he issue of impact of the proposed project on individual property values does not fall within the criteria of Section 248"). See also *Petitioners' Reply to Ferenbachs' Response to Motion in Limine Regarding Vermont Land Trust Easements on the Ferenbach Parcel* at 2.

Second, VLT's conservation easement interests are irrelevant to this proceeding because the conservation easements are subject to and subordinate to VELCO's preexisting perpetual and exclusive easements. See generally *Motion in Limine Regarding Vermont Land Trust Easements on the Ferenbach Parcel*. VLT's Reply simply ignores VELCO's recorded easements on the subject properties. VELCO's easements afford it exclusive rights to erect, construct, maintain, reconstruct, relocate, operate and remove electric transmission, distribution and communication lines, and engage in clearing to the full width of the corridor. VLT does not, and cannot, contest that its conservation easements are subordinate to VELCO's easements. See *id.* Even if it were to contest VELCO's easement rights, this Section 248 proceeding would not be the proper forum in which to address such private property issues. See *Bandel, supra*. Thus, evidence with respect to the easements will only lead to an unnecessary waste of resources, delay and will ultimately detract from the other critical issues in this docket. See Rule 2.209(B)(3) (the

Board shall consider “whether intervention will unduly delay the proceeding or prejudice the interests of the existing parties or of the public”).

Third, VLT’s other alleged interests (each parcel’s individual timber resources, forest management plans, productive agricultural soils and productive sugarbush,<sup>2</sup> eligibility for the Vermont Land Use Value Program, and property tax burden) are purely private interests outside the scope of the Board’s review of issues in the public good under the statute. *See Bandel, supra; see also Procedural Order Re Schedule and Motions to Intervene*, Docket No. 7032, Order of 2/2/2005 at 2. To the extent these interests relate to property within the VELCO corridor, such property and activities thereon are subject to VELCO’s property rights under its easements. Enrollment in the Land Use Value Program, sugar mapling, and other activities are permitted as long as they do not interfere with the VELCO easements. However, in any event, these private property interests are not relevant to any Section 248 criteria and therefore are beyond the scope of this proceeding.

Finally, to the extent VLT “commits to work with the other parties to avoid duplication of effort, delay, and waste of Board time,” VLT Reply at 4, the Board should require VLT to confer with parties with overlapping interests – particularly the Ferenbachs and the Agency of Natural Resources – and to cooperate with those parties in developing discovery requests.

### III. CONCLUSION

To the extent VLT’s participation specifically relates to potential impacts to natural resources under Section 248(b)(5), Petitioners do not object to the Board granting VLT permissive intervention under Rule 2.209(B). However, VLT should not be granted intervention as to the private property interests it identifies that are outside the scope of the Section 248

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<sup>2</sup> To the extent that landowners have benefited from the use of sugarbush, Petitioners note that sugar maples are not protected species and therefore do not relate to natural resources impacts under Section 248(b)(5). Moreover, VELCO’s easements give it authority to clear to the full width of the corridor. VELCO has developed its Transmission Vegetation Management Plan to comply with the requirements of the North American Electric Reliability Corporation (“NERC”) Transmission Vegetation Management Reliability Standard FAC-003-1. *See* Exh. Petitioners JD-2 and Exh. Petitioners JD-4.

criteria. Petitioners also request that the Board require VLT to cooperate with other parties in discovery to the extent there are overlapping interests.

DATED at Burlington, Vermont, this 28th day of February, 2008.

Respectfully submitted,

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