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February 8, 2008

Mrs. Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: Southern Loop Project
Public Service Board Docket No. 7373; Reply to Ferenbachs' Response to Motion in
Limine

Dear Mrs. Hudson:

Enclosed for filing in the above-referenced docket please find an original and six copies of
Petitioners' Reply to the Ferenbachs' Response to Petitioners' Motion in Limine to Exclude
Evidence with Respect to Vermont Land Trust Restrictions on the Ferenbach Parcel.

If you have any questions, please do not hesitate to call me.

Very truly yours,


Megan R. Ludwig

Enclosure

cc: Service List

2390417.1

PSB Docket No. 7373 – SERVICE LIST

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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

PETITIONERS' REPLY TO FERENBACHS' RESPONSE TO
MOTION IN LIMINE REGARDING VERMONT LAND TRUST
RESTRICTIONS ON THE FERENBACH PARCEL

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 submit this reply to the Response of Carl Ferenbach, III and Judy W. Ferenbach (the "Ferenbachs") to Petitioners' Motion in Limine Regarding Vermont Land Trust Restrictions on the Ferenbach Parcel. Petitioners maintain that the Ferenbachs' response fails to refute the Petitioners' principal argument that evidence as to the Vermont Land Trust

easement is irrelevant as a matter of law because private property rights are not a subject of Section 248, and even if they were, the Land Trust easement is subordinate to VELCO's pre-existing exclusive easement. Therefore, the Board should grant the relief requested by Petitioners' Motion.

I. Argument

To the extent the Ferenbachs have argued that the Land Trust easement constitutes a "property right" that is relevant to these proceedings, *see* Ferenbachs' Response at 2, Petitioners note that individual property rights are regarded as irrelevant to the Board's review of the Petition under 30 V.S.A. § 248. *Vermont Electric Power Company, Inc. v. Bandel*, 135 Vt. 141, 145 (1977) ("Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved."). In Docket No. 6860, the Board imposed conditions on landowners' intervention requiring that the landowners' participation should "be limited to issues related to the general public good under the Section 248 criteria, not individual property rights." *Order Re Second Round of Motions to Intervene, Groupings of Intervenors, and Appointment of Discovery Officer*, Docket No. 6860, Order of 10/17/03 at 3. The Ferenbachs themselves concede that the Board is "an inappropriate forum to determine the priorities of conflicting easements." Ferenbach Response at 1. Had the legislature intended the Board to consider individual property rights including easements in its review under Section 248, the legislature would have expressly included those interests among the enumerated statutory criteria. As individual property rights are clearly beyond the scope of Section 248, the Ferenbachs' claim that the easement's restrictions are "highly relevant in determining the appropriateness of the project" is inapposite and should be rejected.

Even if individual property interests were somehow relevant under Section 248, the Board need not look further than the Ferenbachs' own Response to reach the conclusion previously articulated by Petitioners' Motion: that VELCO's 1970 Easement confers exclusive and perpetual rights to the encumbered land that cannot be interfered with absent VELCO's

consent, and therefore the restrictions imposed by subsequent easements conferred over the same property are as a matter of law irrelevant to this proceeding.

As intervenors in this proceeding under Rule 2.209(B), the Ferenbachs have the burden of demonstrating that they have substantial interests recognized under Section 248 that may be adversely affected by the Project, and they have failed to carry that burden with respect to the Land Trust restrictions. They offer only a broad and unsupported claim that such covenants bear upon aesthetic and environmental factors and therefore satisfy the standard for relevance in Board proceedings. *See Ferenbach Response* at 3. This argument entirely misses the point: regardless of what aesthetic and/or environmental restrictions the Vermont Land Trust easement impose on the Ferenbachs' land generally, the fact remains that those restrictions are precluded as to the area encumbered by VELCO's Easement and are accordingly irrelevant to this proceeding. Evidence with respect to the easement will not "illuminate the case"; instead, it will 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").


II. Conclusion

For the reasons stated above and previously stated in Petitioners' Motion in Limine, Petitioners respectfully urge the Board to exclude as irrelevant all evidence the Ferenbachs or any other party seek to enter into the record with respect to interests in land which interfere with VELCO's exclusive easement rights on the Ferenbach property.

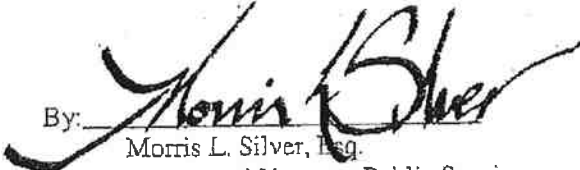
DATED at Burlington, Vermont, this 8th day of February, 2008

Respectfully submitted,

VERMONT ELECTRIC POWER COMPANY,
INC. AND VERMONT TRANSCO, LLC

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