



MEGAN R. LUDWIG
mludwig@drm.com

February 1, 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; Response to Motions to Intervene

Dear Mrs. Hudson:

Enclosed for filing in the above-referenced docket please find an original and six copies of the Response of Petitioners to the Motions to Intervene of the Towns of Brattleboro and Brookline, the Vermont Land Trust, ISO-New England and the Vermont Public Power Supply Authority.

Very truly yours,

Megan R. Ludwig

Enclosure

cc: Service List

2390417.1

PSB Docket No. 7373 – SERVICE LIST

Parties:

Susan M. Hudson, Clerk (6 copies and 1 original)
Vermont Public Service Board
112 State Street (Chittenden Bank Building)
Drawer 20
Montpelier, VT 05620-2701

James H. Porter, III, Esq.
Laura Scanlan Beliveau, Esq.(2 copies)
Vermont Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601

Morris L. Silver, Esq. (for Central Vermont Public Service Corp.)
Law Offices of Morris L. Silver
The Kellogg Farm
Stage Road
P.O. Box 606
Benson, VT 05731-0606

David Englander, Esq.
Vermont Agency of Natural Resources
103 South Main Street - Center Building
Waterbury, VT 05671-0301

George T. McNaughton, Esq. (for Carl Ferenbach, III, and Judy W. Ferenbach)
Law Offices of George W. Lamb, P.C.
6 Main Street, P.O. Box 860
Springfield, VT 05156

Shannon Meckle, Administrative Asst.
Town of Newfane Selectboard
P.O. Box 296
Newfane, VT 05345

Richard F. Svec, Town Manager
Town of Cavendish
37 High Street
P.O. Box 126
Cavendish, VT 05142-0126

Sandra Levine, Esq.
Conservation Law Foundation
Suite #4
15 East State Street
Montpelier, VT 05602

Thomas W. Clynes
Town of Brookline
379 Hill Road
Brookline, VT 05345

Dennis L. Shaffer
Vice President for Stewardship
Vermont Land Trust
8 Bailey Avenue
Montpelier, VT 05602-2161

David John Mullett, General Counsel
Vermont Public Power Supply Authority
5195 Waterbury-Stowe Road
P.O. Box 298
Waterbury Center, VT 05677-0298

Bernard D. Lambek, Esq. (for ISO New England, Inc.)
Zalinger Cameron & Lambek, P.C.
140 Main Street, P.O. Box 1310
Montpelier, VT 05601-1310

Anthony M. Macleod, Esq.
Whitman Breed Abbott & Morgan
500 West Putnam Avenue
Greenwich, CT 06830-2250

Kevin Flynn, Esq.
Regulatory Counsel
ISO New England, Inc.
One Sullivan Road
Holyoke, MA 01040

Marc and Candace Daniell
1564 Melendy Hill Road
Guilford, VT 05301

Robert M. Fisher, Esq. (for the Town of
Brattleboro)
Fisher & Fisher Law Offices
114 Main Street, P.O. Box 621
Brattleboro, VT 05302-0621

Statutory Interested Persons:

Attorney General William H. Sorrell
Vermont Attorney General's Office
109 State Street
Montpelier VT 05609-1001

Betsy Bishop
Vermont State Planning Office
c/o Office of the Governor
109 State Street
Montpelier, VT 05609

Sharon Moffatt, RN, MSN, Commissioner of Health
Vermont Department of Health
108 Cherry Street
Burlington, VT 05402

Scenery Preservation Council
ATTN: John LaBarge
One National Life Drive
Montpelier, VT 05633-5001

Tom Kennedy, Executive Director
Southern Windsor County Regional
Planning Commission
Ascutney Professional Building, Route 5
P.O. Box 320
Ascutney, VT 05030

Annette Royden, Chair
Town of Vernon Selectboard
567 Governor Hunt Road
Vernon, VT 05354

Frederick Zamore, Chair
Town of Guilford Planning Commission
236 School Road
Guilford, VT 05301

Kevin Maloney, Chair
Town of Brattleboro Planning Commission
230 Main Street
Brattleboro, VT 05301

Neale Lunderville, Secretary of Transportation
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001

Roger Allbee, Secretary of Agriculture
Vermont Agency of Agriculture
116 State Street Drawer 33
Montpelier, VT 05620

Jane Lendway, State Historic Preservation
Officer
Vermont Division for Historic Preservation
National Life Building, 6th Floor
Montpelier, Vermont 05620

James Matteau, Executive Director
Windham Regional Commission
139 Main Street
Brattleboro, VT 05301

Robert Miller, Jr., Chair
Town of Vernon Planning Commission
567 Governor Hunt Road
Vernon, VT 05354

Richard Clark, Chair
Town of Guilford Selectboard
236 School Road
Guilford, VT 05301

Audrey Garfield, Chair
Town of Brattleboro Selectboard
230 Main Street
Brattleboro, VT 05301

Tom Bodett, Chair
Town of Dummerston Selectboard
1523 Middle Road
East Dummerston, VT 05346

Steve Mindel, Chair
Town of Dummerston Planning Commission
1523 Middle Road
East Dummerston, VT 05346

Arthur Monette, Chair
Town of Townshend Planning Commission
2006 Route 30
P.O. Box 223
Townshend, VT 05353-0223

William Kearns, Chair
Town of Grafton Planning Commission
117 Main Street
Grafton, VT 05146

Michael Simons, Chair
Town of Windham Planning Commission
5976 Windham Hill Road
Windham, VT 05359

Joe Fromberger
Chair of Planning Commission
Town of Andover
953 Weston-Andover Road
Andover, VT 05143

Tom Bock, Chair
Town of Chester Planning Commission
556 Elm Street
P.O. Box 370
Chester, VT 05143

Fred Glover, Chair
Town of Ludlow Planning Commission
37 Depot Street
Ludlow, VT 05149

Henry Martin, Chair
Town of Townshend Selectboard
2006 Route 30
P.O. Box 223
Townshend, VT 05353-0223

Christopher Moore, Chair
Town of Grafton Selectboard
117 Main Street
Grafton, VT 05146

Walter Woodruff, Chair
Town of Windham Selectboard
5976 Windham Hill Road
Windham, VT 05359

Harold Johnson, Chair
Town of Andover Selectboard
953 Weston-Andover Road
Andover, VT 05143

Richard Jewett, Chair
Town of Chester Selectboard
556 Elm Street
P.O. Box 370
Chester, VT 05143

Howard Barton, Jr., Chair
Town of Ludlow Selectboard
37 Depot Street
Ludlow, VT 05149

**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 MOTIONS TO INTERVENE OF THE TOWNS OF BRATTLEBORO AND
BROOKLINE, THE VERMONT LAND TRUST, ISO-NEW ENGLAND AND THE
VERMONT PUBLIC POWER SUPPLY AUTHORITY

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 motions to intervene filed by the towns of Brattleboro and Brookline, the Vermont Land Trust ("VLT"), ISO-New England ("ISO-NE") and the Vermont Public Power Supply Authority ("VPPSA").

I. Towns of Brattleboro and Brookline

The Town of Brattleboro's Motion to Intervene dated January 24, 2008 ("Brattleboro Motion") requests intervention as of right under Board Rule 2.209(A) and maintains that the town "has a substantial interest in the outcome of the matter before the Board that may be adversely affected by the Board's decision." Brattleboro Motion at 1. The town asserts its interests pertain to "the orderly development of the town, the environmental effect of the construction of the power line, the economic interest of the town and how the proposed project affects local businesses and residents employed by those businesses, and the Town's conservation interests as those are linked to the present and future demand for the service" and seeks intervention on the basis of Section 248(b)(1), (2), (4) and (5). *Id.* at 1-2.

The Town of Brookline's Petition to Intervene¹ dated January 18, 2008 seeks permissive intervention pursuant to Board Rule 2.209(B) and asserts interests relating to criteria under Section 248(b)(1), (2), (4), (5) and (7).

Petitioners initially note that Brattleboro has not provided a sufficient basis for intervention as of right under Board Rule 2.209(A).² Intervention as of right requires affirmative findings by this Board that the requesting party has demonstrated three necessary elements: that the party has a substantial interest which may be adversely affected by the outcome of the proceeding; that the proceeding affords the exclusive means by which the party can protect that interest; and that the party's interest is not adequately represented by existing parties, including

¹ Petitioners note that Brookline did not provide a copy of its filing to VELCO and request that the town include VELCO on its service list in future filings.

² Board Rule 2.209 (A) (Intervention as of Right) provides:

(A) Intervention as of right. Upon timely application, a person shall be permitted to intervene in any proceeding (1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.

the Department of Public Service, which is charged with representing the interests of the people of the state under 30 V.S.A. § 2(b). *See In re: CVPS Affiliate Transactions*, Docket No. 5797, Order of 5/19/1995 at 2-3, 7; *Investigation into the Existing Rates of Vermont Telephone Company, Inc.*, Docket No. 5904, Order of 10/15/1996 at 2; *see also* Docket No. 7373, *Response of Petitioners VELCO and CVPS to Motion of Carl Ferenbach, III and Judy W. Ferenbach to Intervene and for Determination of Party Status*, January 2, 2008, at 3-4 and Order of 1/10/2008. Brattleboro has not demonstrated it meets these criteria.

However, Petitioners do not object to the Board granting permissive intervention to the towns of Brattleboro and Brookline on the basis of the issues identified in their respective motions.

II. Vermont Land Trust

VLT's Motion to Intervene dated January 25, 2008 ("VLT Motion") requests intervention as of right under Rule 2.209(A), and, alternatively, permissive intervention under Rule 2.209(B). VLT asserts that it is "a private, non-profit land conservation membership organization that works with individuals, organizations, and communities to conserve land for the future of Vermont" and "is the fee owner of two properties and holds perpetual easements on five properties upon which VELCO proposes to clear an additional right-of-way corridor and erect structures thereon." VLT Motion at 2. VLT maintains that the lands and interests in lands owned by VLT and potentially impacted by the Project are located in Andover, Brattleboro, Dummerston, Townshend and Windham. *Id.*

VLT argues that it has substantial concerns and interests in the proposed Project related to criteria 248(b)(1) and (5). It asserts that the Project "directly impact[s] lands and interests in lands which VLT owns adjacent to the right-of-way corridor" and that the proposed clearing will potentially impact significant natural communities, timber rights and forest management plans, landowner qualification for the Use Value Appraisal Program (Current Use), and recreational and vehicle access. *Id.* at 3. VLT further bases its request for intervention on its "ability and

experience to effectively address the impacts [it identifies in its motion], and from a perspective not likely to be offered by other parties.” *Id.*

Petitioners submit that VLT has not satisfied the criteria for intervention as of right, for the reasons repeated in both Petitioners’ responses and Board rulings in this docket regarding the requirements of Rule 2.209(A), and as such Petitioners will not repeat those points again here.

Petitioners also submit that VLT has failed to satisfy the criteria for permissive intervention under Rule 2.209(B). First, the VLT Motion lacks sufficient information as to the specific and particularized property interests they wish to assert or protect, and fails to demonstrate how the proposed Project affects those property interests. *See, e.g., Order on Motion to Intervene*, Docket No. 6860, Order of 9/17/2003 at 5; *Order Re Second Round of Motions to Intervene, Groupings of Intervenors, and Appointment of Discovery Officer*, Docket No. 6860, Order of 10/17/2003 at 4-5. There is no information to describe the location of the VLT properties, other than references to towns. The Southern Loop Project corridor is 51 miles long. A vague reference to location of property within a town is not sufficient to identify the property in relation to the Project. The references to alleged VLT property interests “adjacent” to the corridor are similarly vague. Before granting property-owner intervention status in a Section 248 proceeding, this Board has required that the intervention provide at least the following information:

- (1) the location of the individual’s property in relation to the proposed project;
- (2) a description of the specific and particularized interest that the individual seeks to assert in [the] proceeding, with a demonstration that the individual’s interest may be affected by the outcome of [the] proceeding;
- (3) an explanation of whether the individual’s specific and particularized interest will be adequately protected by other parties; and
- (4) a demonstration that the individual’s participation will be related subject to review under 30 V.S.A. § 248.

Order on Motion to Intervene, supra at 5.

In addition to needing to provide a more particularized description of the location of the property interests alleged to be impacted, the VLT Motion is insufficient because it fails to

adequately describe each location of the specific property interest alleged to be impacted. VELCO's easements along the Project corridor are exclusive and broad, and any subsequent conservation easements or restrictions are subject to and cannot interfere with or impair VELCO's existing easement rights, see *Petitioners' Motion in Limine to Exclude Evidence with Respect to Vermont Land Trust Restrictions on the Ferenbach Parcel* February 1, 2008, and upon examination likely would not provide a sufficient interest that could be impacted by the outcome of this proceeding.

Petitioners respectfully request that VLT be required to supplement its Motion to provide more detailed information sufficient to satisfy each of the four requirements for landowner intervention, cited above, before this Board considers the its Motion. Petitioners also ask that the Board set a reasonable deadline for the filing of such information.

Further, Petitioners note that VLT alleges that it "has substantial concerns and interests over and above those of the general public ..." and asserts, among other things, that VELCO's activities, including clearing, will impact conservation interests in land, timber rights, forest management, landowner qualification for the Use Value Appraisal Program (Current Use), and recreational and vehicle access. VLT Motion to Intervene at 3. First, only the interests of the general public are relevant under Section 248. See *Vermont Elec. Power Co. 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 addition, none of the stated interests relate to the issues that are subject to review under Section 248, and therefore they do not form a basis to intervene in this proceeding. As this Board has already ruled, property owners who intervene in Section 248 proceedings before the Board must demonstrate that their participation will be related to the issues subject to review under Section 248. See *Order on Motion to Intervene, supra* at 5; see also *Procedural Order Re Schedule And Motions to Intervene, Docket No. 7032, Order of 2/2/2005* at 2 (denying landowner intervention on certain issues because "[t]he issue of

impact of the proposed project on individual property values does not fall within the criteria of Section 248.”).

Finally, Petitioners note that VLT seeks to participate in this proceeding through a member of its staff, and not an attorney. Although Board Rule 2.201(B) allows intervention through *pro se* representatives, the Board has discretion to permit a non-attorney representative of an organization to appear on behalf of the organization in proceedings before the Board. *See Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 159 Vt. 454, 458, 621 A.2d 225 (1992) (“We hold, therefore, that courts have discretion to permit an organization to appear through a non-attorney representative where the proposed representative establishes that (1) the organization cannot afford to hire counsel, nor can it secure counsel on a pro bono basis, (2) the proposed lay representative is authorized to represent the organization, (3) the proposed lay representative demonstrates adequate legal knowledge and skills to represent the organization without unduly burdening the opposing party or the court, and (4) the representative shares a common interest with the organization.”). If the Board were to grant intervention to VLT through its *pro se* representative, Petitioners submit that VLT must comply with Rule 2.201(B) which requires VLT and Mr. Shaffer to observe all rules and procedures of this Board in addition to the obligations of an attorney admitted to practice in the State of Vermont. *See Order Re Second Round of Motions to Intervene, Grouping of Intervenors, and Appointment of Discovery*, Docket No. 6860, Order of 10/17/2003 at 8 (stating that as to *pro se* intervention, “parties who appear in Board proceedings have obligations similar to those of a party in court. As a matter of fairness to all parties, only those who are prepared to accept and honor these obligations can participate in formal contested-case proceedings before the Board, such as the present Docket.”).

III. ISO-New England

ISO-NE filed a Motion to Intervene on January 25, 2008 (“ISO-NE Motion”) seeking intervention as of right, and, alternatively, permissive intervention. ISO-NE cites its substantial

interests relating to electric generation, transmission, system reliability, and bulk power system planning and operation in support of its request. ISO-NE Motion at 2.

Petitioners do not oppose the Board granting ISO-NE permissive intervention under Rule 2.209(B) relating to the issues it identifies in its motion.

IV. Vermont Public Power and Supply Authority

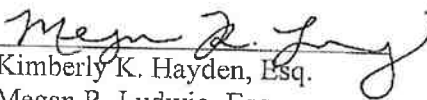
VPPSA filed a Motion to Intervene on January 25, 2008 ("VPPSA Motion"). In its motion, VPPSA maintains it satisfies the standard for either intervention as of right or permissive intervention. VPPSA Motion at 1. VPPSA asserts it "provides numerous services to the fourteen geographically dispersed municipal electric systems who comprise its membership, including but not limited to power supply and resource planning services." *Id.* The VPPSA Motion cites the Project's impacts on issues relating to economics and reliability as substantial interests of its members for which it should be granted intervention. VPPSA notes that it intends to limit its participation in the docket to such interests affecting its members. *Id.*

Petitioners do not object to the Board granting VPPSA permissive intervention under Rule 2.209(B) relating to the issues it identifies in its motion.

DATED at Burlington, Vermont, this 1st day of February, 2008

Respectfully submitted,

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

By: 
Kimberly K. Hayden, Esq.
Megan R. Ludwig, Esq.
Downs Rachlin Martin PLLC
199 Main Street, P.O. Box 190
Burlington, VT 05402-0190
Tel: (802) 863-2375
Fax: (802) 862-7512

CENTRAL VERMONT PUBLIC SERVICE
CORPORATION

CENTRAL VERMONT PUBLIC SERVICE
CORPORATION

By: 

Morris L. Silver, Esq.
For Central Vermont Public Service
Corporation
The Kellogg Farm
Stage Road
Post Office Box 606
Benson, Vermont 05731
Tel: (802) 537-2264
Fax: (802) 537-2265

2394044.1