

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc. (“VELCO”) and Green Mountain Power Corporation (“GMP”) for a Certificate of Public Good authorizing VELCO to construct the so-called Northwest Vermont Reliability Project, said project to include: (1) upgrades at 12 existing VELCO and GMP substations located in Charlotte, Essex, Hartford, New Haven, North Ferrisburgh, Poultney, Shelburne, South Burlington, Vergennes, West Rutland, Williamstown, and Williston, Vermont; (2) the construction of a new 345 kV transmission line from West Rutland to New Haven; (3) the construction of a 115 kV transmission line to replace a 34.5 kV and 46 kV transmission line from New Haven to South Burlington; and (4) the reconductoring of a 115 kV transmission line from Williamstown, to Barre, Vermont **AND** amendment to VELCO petition to provide for: (1) proposed modifications to the route of the line between New Haven and South Burlington, specifically in the City of Vergennes and the Towns of Ferrisburgh, Charlotte and Shelburne; (2) proposed changes to the substations located in Vergennes, Shelburne, Charlotte and South Burlington; and (3) proposed changes to pole heights

VERMONT ELECTRIC POWER COMPANY, INC.
MOTION TO RECONSIDER THE PUBLIC SERVICE BOARD’S
NOVEMBER 24, 2004 ORDER PERMITTING THE ADMISSION OF PREVIOUSLY
STRICKEN TESTIMONY OF ROBERT BLOHM AND ALLOWING NEW TESTIMONY
REGARDING NERC PLANNING STANDARDS

NOW COMES Vermont Electric Power Company, Inc. (“VELCO”) and respectfully moves the Public Service Board (“Board”) to reconsider its November 24, 2004 ruling permitting the admission of previously stricken testimony of Robert Blohm and allowing Mr. Blohm to provide new testimony at the December 3, 2004 hearings regarding North American Electric Reliability Council (“NERC”) Planning Standards.

Background

On September 3, 2004, the Town of New Haven (“New Haven”), the Conservation Law Foundations (“CLF”), the Vermont Citizens for Safe Energy (“VCSE”) and the Addison County Regional Planning Commission (“ACRPC”) (collectively the “Opposing Parties”) filed

surrebuttal testimony of Robert Blohm. Mr. Blohm was presented as “an expert on reliability issues.” See July 22, 2004 letter from James Dumont, Esq. to Kurt Jansen, Esq., PSB General Counsel. His ultimate opinion, which appears at page 30 of his surrebuttal prefiled testimony, is that VELCO has failed to justify need for the Northwest Vermont Reliability Project (“NRP” or “Project”) “in general, and the 345 kV line in particular.”

On September 14, 2004, VELCO moved to strike the testimony of Mr. Blohm, principally on the grounds that it materially exceeded the scope of surrebuttal authorized by the Board in its August 9, 2004 Scheduling Order. In that order, the Board stated that “[p]refiled surrebuttal testimony must be *narrowly focused* to address evidence in the record, *and should be limited to responding to new matters which could not have been reasonably responded to in an earlier round of prefiled testimony.*” (emphasis added.). VELCO’s direct case, and specifically the testimony and reports submitted by the VELCO Planning Panel, addressed reliability standards and the need for the Project. To the extent that they were in issue, they were placed in issue last summer and should have been challenged by Opposing Parties in their direct case or, at the latest, their rebuttal case. VELCO also objected on the grounds that the probative value of Mr. Blohm’s testimony, if any, was substantially outweighed by the danger of unfair prejudice, confusion of issues and delay. See V.R.E. 403.

The Board agreed with VELCO, and on October 8, 2004, the Board issued an order striking portions of the surrebuttal testimony of Mr. Blohm. VELCO prepared for and cross-examined Mr. Blohm on October 20, 2004, but only as to portions of his testimony not previously stricken.

On November 16, 2004, New Haven filed a motion to reconsider the Board’s October 8, 2004 order. On November 24, 2004, the Board granted New Haven’s motion to reconsider and reversed its order striking Mr. Blohm’s testimony. The November 24, 2004 ruling also allows Opposing Parties to conduct additional direct examination of Mr. Blohm at the December 3, 2004 hearing regarding the NERC Planning Standards, even though Mr. Blohm failed to address the NERC Planning Standards in his prefiled surrebuttal testimony.

Argument

VELCO objects to the Board's November 24, 2004 order on the grounds that New Haven's motion requesting reconsideration was extremely untimely, and the Board's last minute reversal of its decision to now allow this testimony in the record, leaves VELCO with less than five business days to prepare for the hearing. VELCO cannot prepare cross examination or new testimony in this limited time frame. Finally, Mr. Blohm should not now be allowed to present new evidence on the NERC Planning Standards when he had a fair opportunity to do so in his prefiled surrebuttal testimony.

On July 27, 2004, after attempting to cross-examine VELCO witnesses on the NERC Planning Standards, counsel for New Haven moved an excerpted portion of the NERC Planning Standards as Exhibit NH-Reb-8. Tr. 7/27/04, Vol. I at 8. At that time, VELCO raised concerns about excerpted portions of documents being admitted into the record because they could cause confusion and an inaccurate record. *Id.* at 8-10. As a result, New Haven and VELCO agreed that a complete version of the NERC Planning Standards would be entered into the record. Tr. 10/20/04, Vol. II at 65- 66. VELCO entered the complete version of the NERC Planning Standards on October 20, 2004, as VELCO Cross Blohm Surr-32. Tr. 10/20/04, Vol. II at 8. New Haven did not object, and in fact, acknowledged that the understanding from the July 27, 2004 hearing was that the entire NERC Planning Standards would be introduced. *Id.* at 62-64. Significantly, even though New Haven introduced the NERC Planning Standards into evidence on July 27, 2004, Mr. Blohm's prefiled surrebuttal testimony filed over one month later, on September 3, 2004, completely failed to address the NERC Planning Standards. Thus, when New Haven's counsel attempted to examine Mr. Blohm on the document at the October 20, 2004 hearing, VELCO objected on the grounds that it was beyond the scope of Mr. Blohm's direct and any cross examination. VELCO argued that if the admission of the entire document was going to open a new line of testimony, it would withdraw the entire document and simply offer the Introduction section to the NERC Planning Standards. *Id.* at 64. At the time, the Board

concluded with VELCO, admitted the full document and refused to allow redirect on the NERC Planning Standards. *Id.* at 70-71.

VELCO's September 14, 2004 Motion to Strike Mr. Blohm's testimony was premised in large part upon the untimeliness of Mr. Blohm's testimony, and the fact that, if allowed, VELCO would not have an opportunity to respond and fully prepare cross examination. The Board's last minute reversal to now allow this testimony, makes the time concerns even more severe. If allowed originally, VELCO would have had over a month (between September 3rd when Mr. Blohm's testimony was filed and October 20th, when he was cross examined) to prepare for the hearings. Now VELCO has less than one week to prepare. Further, to now allow Mr. Blohm to provide live testimony on NERC Planning Standards, an area that he could have and should have addressed in his prefiled testimony, leaves VELCO at a complete disadvantage because there will be no opportunity to conduct discovery, prepare cross examination or offer a rebuttal witness.

The inequity is even more apparent because the Board's reason for allowing Mr. Blohm's testimony to be entered into the record (despite finding it had properly stricken the testimony), is premised on the notion that VELCO introduced the NERC Planning Standards into the record and therefore somehow opened the door to allow Mr. Blohm to testify to the document. The premise is false. New Haven, not VELCO, originally introduced excerpted portions of the NERC Planning Standards (Exhibit NH-Reb-8) into the record on July 27th. Per the agreement with New Haven counsel, VELCO introduced the complete NERC Planning Standards on October 20, 2004 to make the record more complete. VELCO did not cross examine Mr. Blohm on the document. If the Board now believes that the admission of the entire NERC Planning Standards does open the door to Mr. Blohm's testimony on those standards, then VELCO would renew its offer to only enter the Introduction section, thus removing the need for Mr. Blohm to testify on the document.

DATED at St. Johnsbury, Vermont this ___ day of November, 2004.

VERMONT ELECTRIC POWER COMPANY, INC.

By: Primmer & Piper, P.C.

Kimberly K. Hayden
421 Summer Street
St. Johnsbury, VT 05819
802-748-5061
khayden@primmer.com