

NORTHEAST CENTER FOR SOCIAL ISSUE STUDIES

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Public Service Board

Docket No. 6140

Investigation into the Reform of Vermont's)

Electric Power Supply)

October 2, 1998

Reforming Vermont's Role as Power Exporter

Introduction

The Northeast Center for Social Issue Studies is a non-profit organization based in Brattleboro, Vermont. NECSIS has studied the relationship between energy, the environment and our economy for many years.

Background

The purpose of this paper is to propose why and how Vermont should reconsider its role as New England's largest exporter of electricity while importing 30% of its electric needs from Hydro Quebec.

In a sense this recommendation was originally made by Franklin Billings in his 1912 report 'The Rights of the Public in Water Powers' to Governor Allen M. Fletcher. To quote Billings, "...the natural resources of our State should be used and developed in a way that will accrue to the greatest good of the greatest number of the inhabitants of Vermont, and in so doing, accrue to the benefit of the State as a whole. Has this development in the past been made in this way? My personal opinion is emphatic that it has not been, but that it has, on contrary, been used for the benefit of the few." This was written before Vermont became the region's largest generator of electricity for export. Billings also realized that, "The State of Vermont could very wisely and profitably develop some of her now neglected (today they are used for export) water powers,... Many of our water-powers are likely to become increasingly valuable (oil will is expected to reach the \$50 a barrel range by 2010), and the time will come when this acquisition for public and general purposes will be far more difficult than now."

Docket No. 6140 initiates a process which 'will call forth for disciplined review, the best proposals for reducing current and future power costs in Vermont.' Vermont already produces some of the cheapest power in New England, but it is not available to Vermont. Beginning in 1909 a series of dams was built on the Connecticut and Deerfield Rivers to provide electricity for eastern Massachusetts. This system of hydro stations is considered in some quarters as New England's largest source of green power since it uses an indigenous and renewable resource, the flowing waters of these rivers, to turn its generators.

As a consequence of deregulation in Massachusetts these hydro stations have been sold to a transnational utility headquartered in California. While Vermont and New Hampshire appear content to see their own water resources become a profit center for an absentee owner, the city of Holyoke, Massachusetts, also on the Connecticut, is in the process of reclaiming its rights to the benefits of the river. Although the initiative came from the city, it needed help from the Commonwealth of Massachusetts to file its application for a FERC license and to raise the capital needed to purchase the Holyoke Dam. Now considered one of New England's poorest cities, Holyoke, with the help of the legislature and governor of Massachusetts, looks forward to an economic renaissance through control over its water resources. With similar cooperation from their respective states, the communities on the upper Connecticut north of the Massachusetts line, could duplicate Holyoke's expectations.

Holyoke's action is entirely consistent with the central rules of water law as explained in *Legal Control of Water Resources*, a standard reference on that subject. "The public retains an interest in every water right, and all water rights are defined in terms of the public interest. ...water must be put to some use that benefits the community as a whole, rather than just the owner."

The initiative of Holyoke is also consistent with *Sustainable Electricity for New England*, a report to the New England Governors' Conference. *SENE* proposed, as part of restructuring, the formation of independent entities, generically termed "cleancos" which would focus exclusively on the efficiency and renewable energy business. Another *SENE* recommendation is that the New England states should work together to develop a "regional sustainability initiative." Again, Holyoke can be cited as an example of a sustainability initiative. Were the NE states in practice committed to protecting the region's economic future, Massachusetts would cooperate with New Hampshire and Vermont in keeping the benefits produced by our largest river, an American Heritage River, in New England.

Sequence of Events

The Federal Energy Regulatory Commission recognized that NECSIS (Northeast Center for Social Issue Studies), stands alone as a party with local interests in the conditions that will govern divestiture of these generating facilities (the NEPCO stations). Based on this status, NECSIS has filed petitions with both FERC and the Federal court seeking stays of the FERC orders transferring the hydro operating licenses to the new owner.

One purpose of these petitions is to allow time for joint or concurrent hearings between FERC and one or more state Commissions in Vermont. These hearings would address the environmental and economic implications of the transfer of ownership which were not fully investigated in the proceedings which led up to the approval of the sale and award of the licenses. FERC's rules allow for more than one state Commission to be involved, thus more than one agency of the State of Vermont can request that to be part of these hearings. If FERC approves the holding of hearings, it is expected that they will be scheduled before December 1, 1998.

To provide time for adequate study and the development of alternative forms of ownership, NECSIS proposes a six month extension of time, probably until July 1, 1999. Before that date a complete and feasible plan for keeping the waters of the Connecticut under local control could be prepared for submission. If this plan is accepted, the generation potential of the Connecticut would come under local control no later than January 1, 2000.

One action by the PSB which would be helpful to this proposal is a request for concurrent hearings with FERC. Since FERC's actions with regard to the Connecticut will have implications for how Vermont can reform its electric power supply, the Commission could be invited to participate in Docket No. 6140.

When the concurrent hearings are arranged, they will offer a forum for all state agencies, environmental and other public interest groups, utilities, private citizens and others to participate. This forum will accept expert testimony and witnesses to submit material for the record.

Another action the Board could take is to request that Massachusetts delay its approval of the divestiture of the NEPCO dams, their annual output is, after all, only 5% of NEPCO's entire generating business. This request would be consistent with the Connecticut River compact which the four governors signed as part of their application for American Heritage River designation. In it they agreed to cooperate in managing the Connecticut. Since it was an action on the part of Massachusetts which led to the sale of the NEPCO hydro plants, Vermont and New Hampshire could ask Massachusetts to cooperate with them just as it did in helping Holyoke reclaim its rights to the Connecticut.

If the cleanco is constituted as a private non-profit entity, there might not be a need for any legislation to purchase the dams. The complicating factor would be who holds the FERC operating license. It would simplify matters if Vermont passed legislation authorizing the cleanco to act as its agent in acquiring and holding the license. This arrangement would enable the state to exercise its fiduciary responsibility to the people of Vermont by protecting a natural resource which belongs to them without becoming involved in the ownership and operation of a generating utility.

In view of the complexity of the issue and its importance to Vermont, it would be desirable, through this forum, to seek a six month delay in the transfer of the licenses. This time would allow the states and communities to investigate further the implications of the transfer and how to mitigate their impact. At the same time these local stakeholders, including New Hampshire, could develop alternatives to the having their rights to the Connecticut transferred to a distant owner. By virtue of developing a comprehensive plan and representing the people and communities in the watershed, the cleanco would, in theory, have preference as the licensee holder over an absentee owner.

Reclaiming control of the Connecticut through a locally controlled cleanco can be accomplished independently of any comprehensive restructuring of Vermont's electric utility industry. Generation from the river would then, unlike the situation now, be available to energy service providers serving Vermont.

The concept of a cleanco can be applied to energy efficiency and generation from renewables throughout the state. While the major initial objective of the proposed cleanco is to give Vermonters their rightful share of the benefits produced by the Connecticut, it could be applied to generation from other renewables throughout of Vermont and New Hampshire. A model for this is the Lower Colorado River Authority. Since the 1930's LCRA has successfully managed the water and supported economic development in this watershed and has earned the reputation of being one of the ten best run utilities in the US.

One of the claims used to create an unregulated generation industry is that free market forces will lead to lower cost electricity. Those who have observed utility management of rivers, however, express deep concerns for the health of rivers, if these fragile ecosystems are put at the

mercy of an industry which is expected to be brutally competitive. Many propose, as does Sustainable Electricity, that cleancos operate as non-profits.

Advantages over alternatives

At the moment there is no initiative by any public or private agency other than NECSIS regarding an alternative to transferring control of the upper Connecticut to a distant transnational. Were the power potential of the river restored to local control, it would strengthen considerably the ability of Vermont to protect this priceless resources, not just for power production, but recreation, eco-tourism, irrigation and other important local needs. Furthermore, local ownership would mean that the economic benefits produced by the river would stay in the local economy and not be lost as profits to an absentee owner.