

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7211

Petition of Vermont Electric Power Company, )  
Inc. and Vermont Transco, LLC for Permission )  
to Amend Certain Existing Indentures )  
)

Order entered: 9/29/2006

**I. INTRODUCTION**

On August 7, 2006, Vermont Electric Power Company, Inc. ("VELCO") and Vermont Transco, LLC ("VT Transco") (collectively, the "Petitioners") filed a petition with the Public Service Board ("Board") seeking permission to change certain existing mortgage indentures dated as of September 1, 1957. If approved, the amendments would require VT Transco to satisfy the conditions of a so-called issuance test prior to the issuance of additional first mortgage bonds and commit to increasing its equity as a percent of total capital. In support of the petition, the Petitioners submitted the prefiled testimony and supporting exhibits of Derek W. HasBrouck, VELCO's Chief Financial Officer.

On August 30, 2006, the Department of Public Service ("Department") informed the Board that it had reviewed the petition and prefiled testimony. Based on its review, the Department recommends approval without further investigation or hearing. The Department states that the petition is consistent with the general good of the state because the proposed amendments would provide VT Transco with access to debt capital needed for additional investments in transmission capacity, align VT Transco's equity level with the equity levels of other regional transmission companies, and limit the financial obligations of Green Mountain Power Corporation ("GMP") and Central Vermont Public Service Corporation ("CVPS") under existing transmission agreements. Additionally, the Department states that allowing VT Transco to increase its equity capital to a level that is comparable to the equity proportions of other

regional transmission companies would reduce an existing subsidy that Vermont consumers pay for regional transmission service. According to the Department, Vermont consumers pay more for transmission service than other customers in New England due to the higher proportions of equity on the balance sheets of other regional wholesale transmission companies.

Pursuant to 30 V.S.A. §§108 and 232, the Board may consent to the issuance of indebtedness, including amendments to the terms and conditions of existing indentures, if it finds that such actions would be consistent with the general good of the state of Vermont. Based on my review of the petition, prefiled testimony and supporting exhibits, I conclude that approval is appropriate. As such, I recommend that the Board find the petition to be consistent with the general good of the state and consent to the proposed amendments.

## **II. BACKGROUND**

Effective March 23, 1992, VELCO began operating under an agreement (the "1991 Agreement") with CVPS, GMP, the Department and 20 other electric distribution companies that provides for so-called revenue balancing. Under the 1991 Agreement, electric distribution companies are required to provide VELCO with additional funds in the event anticipated revenues are insufficient to cover VELCO's costs.<sup>1</sup> In addition to the 1991 Agreement, there is also a 1969 Three Party Transmission Agreement ("1969 TPTA") between VELCO, GMP and CVPS which includes a different revenue-balancing provision requiring the distribution utilities to provide VELCO with additional revenue funds, if necessary, based on electric load.<sup>2</sup> Since the inception of the 1991 Agreement, no revenues have been collected under the 1969 TPTA but the terms of the 1969 TPTA with respect to revenue-balancing could be viewed as an additional obligation of the electric distribution companies.<sup>3</sup> The 1991 Agreement and the 1969 TPTA were transferred to VT Transco in June, 2006.

The proposed amendments to the indenture are the result of a request by CVPS to reduce its potential exposure under the 1969 TPTA by changing the terms under which additional funds are provided by the Vermont utilities to VT Transco, if necessary, for repayment of future bonds.

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1. HasBrouck pf. at 5-6.

2. Exhibit DWH-5.

3. HasBrouck pf. at 7.

According to VT Transco, CVPS expressed concern that its obligations under the 1969 TPTA may have a negative effect on its credit rating. As VT Transco issues more debt over time, CVPS anticipates that the credit rating agencies' concerns about this potential obligation could increase and the agencies may begin to impute the revenue-balancing obligation as a form of debt.<sup>4</sup>

In Docket 7174, the Board approved VT Transco's request to issue up to \$115 million in Series Q and Series R first mortgage bonds under an existing indenture to fund additional capital investments in Vermont's transmission infrastructure. The actual issuance of the bonds is scheduled for September, 2006, and the closing is scheduled for October, 2006.<sup>5</sup> VT Transco requested a Board order on this matter by September 30, 2006.<sup>6</sup>

Prior to issuance, VT Transco must first obtain the consent of its equity-unit holders. CVPS indicated that it would not provide its consent to the issuance of the Series Q and Series R bonds unless certain amendments were made to the 1969 TPTA. CVPS's consent is conditioned upon limiting its (and GMP's) financial assurances to the lesser of VT Transco's unrecovered expenses or the amortization of the currently-existing first mortgage bonds.<sup>7</sup> However, under existing First mortgage indentures, amendments to prior transmission agreements that limit the financial obligations of CVPS and GMP require bondholder approval.<sup>8</sup>

In lieu of CVPS's and GMP's financial assurances, VT Transco and its bondholders have agreed to amend certain existing indentures. The amendments require VT Transco to satisfy an issuance test prior to the issuance of additional first mortgage bonds and to increase its equity as a proportion of total capital.<sup>9</sup>

Pursuant to the proposed issuance test, when VT Transco's equity is less than 40% of total capital at any time prior to 2036, new first mortgage bonds may only be issued if the regularly

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4. HasBrouck pf. at 6.

5. HasBrouck pf. at 9.

6. On September 14, 2006, an informal workshop was held to review the prefiled testimony of Derek W. HasBrouck. As a result of this workshop, the parties satisfactorily clarified certain statements included in Mr. HasBrouck's testimony.

7. Petition at 3; Exhibit DWH-5.

8. Petition at 3.

9. Petition at 3.

scheduled amortization of outstanding and proposed new first mortgage bonds will be less than an amount equal to the sum of VT Transco's depreciation expense, excess cash flow with respect to tax expenses collected in rates, if any, and a multiple of 1.5 times VT Transco's authorized return on capital.<sup>10</sup> With respect to equity, VT Transco and its bondholders agreed that VT Transco shall commit to increasing its equity as a proportion of total capital to levels that are similar to other regional transmission companies.<sup>11</sup>

### **III. FINDINGS OF FACT**

Based on the evidence of record, I hereby report the following findings to the Board in accordance with 30 V.S.A. §8.

1. Vermont Electric Power Company, Inc. is a "company" within the meaning of Section 201 of Title 30 of the Vermont Statutes Annotated, because it is engaged in the transmission of electricity to be used ultimately by the public within the meaning of subsection (1) of Section 203 thereof and as such it is subject to the Board's jurisdiction. Petition at 1.

2. Vermont Transco, LLC is a "company" within the meaning of Section 201 of Title 30 of the Vermont Statutes Annotated, because it is engaged in the transmission of electricity to be used ultimately by the public within the meaning of subsection (1) of Section 203 thereof and as such it is subject to the Board's jurisdiction. Petition at 1.

3. To fund expansion of its transmission network, VT Transco will issue Series Q and Series R First Mortgage Bonds in the aggregate principal amount of \$115 million. The proposed issuance of the First Mortgage bonds was approved in Docket No. 7174. Petition at 1; Docket 7174, Order of 6/20/06.

4. The actual issuance of the First Mortgage Bonds requires the approval of GMP and CVPS. Petition at 1.

5. In 1969, VELCO entered into the 1969 TPTA, which provides certain protections by CVPS and GMP to VELCO's bondholders (and stockholders). The agreement has been transferred to VT Transco. HasBrouck pf. at 5.

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10. HasBrouck pf. at 3.

11. HasBrouck pf. at 4.

6. The currently-existing covenants under the 1969 TPTA are unnecessary to provide protection to future bondholders and stockholders of VELCO and the future bondholders and equity unit-holders of VT Transco. HasBrouck pf. at 6; Petition at 2.

7. CVPS has indicated that it will not consent to the issuance of Series Q and Series R First Mortgage Bonds unless certain amendments to the 1969 TPTA are put in place which limits GMP's and CVPS's obligation thereunder to the lesser of VT Transco's unrecovered expenses or the amortization of the currently-existing Mortgage Bonds. HasBrouck pf. at 6; Petition at 3; Exhibit-DWH-5.

8. To protect existing bondholders, VELCO and VT Transco have agreed to amend certain existing indentures by (a) requiring VT Transco to satisfy certain financial conditions prior to the issuance of future First Mortgage Bonds, (b) requiring VT Transco to commit to increase its equity level a percent of total capital to more closely match the equity levels of other regional transmission providers; and, (c) allowing for the limits in the 1969 TPTA. Existing bond indentures have been transferred from VELCO to VT Transco. HasBrouck pf. at 3-4; Exhibit DWH-2.

9. The existing bondholders have consented to these amendments. Petition at 3.

#### **IV. DISCUSSION AND CONCLUSION**

In this proceeding, the Board is asked to consent to certain proposed amendments to existing bond indentures of VT Transco. The Petitioners have asked the Board to issue its consent pursuant to 30 V.S.A. § 108. I conclude that it is appropriate for the Board to also issue its consent under Section 232, given that the Board, in Docket 7174, approved VT Transco's request to assume substantially all of VELCO's liabilities under 30 V.S.A. § 232.

The proposed amendments would require VT Transco to satisfy the conditions of a cash-flow test prior to issuing additional first mortgage bonds and to increase its equity as a proportion of total capital. The cash-flow test provides bondholders with assurances that VT Transco would continue to generate sufficient cash flows to repay future loan obligations. Additionally, the proposed amendments require VT Transco to commit to increasing its equity as a percent of total

capital over time. VT Transco anticipates increasing equity to 28 percent of total capital by December 31, 2010, and to 33 percent of total capital by December 31, 2015.<sup>12</sup>

Based on the record evidence, I conclude that the proposed amendments are consistent with the general good of the state of Vermont and recommend that the Board issue its consent to amend the indentures, pursuant to 30 V.S.A. §§ 108 and 232. The record evidence shows that changing the terms of VT Transco's indentures is appropriate in order to reduce CVPS's and GMP's potential credit-risk exposure under the 1969 TPTA. Additionally, by increasing its equity as a percentage of total capital, VT Transco may be able to access lower-cost debt capital as future bondholders perceive VT Transco to be a lower risk investment. An increase in VT Transco's equity may also help to minimize the effects of future cost-of-service increases as the earnings from investments in VT Transco equity units are imputed as revenue to Vermont's electric distribution companies.

Opportunity to File Exceptions and Present Arguments

The Department and the Petitioners have waived their opportunity to file exceptions and present arguments pursuant to 3 V.S.A. §811.

Dated at Montpelier, Vermont, this 27th day of September, 2006.

s/ Thomas S. Lyle

Thomas S. Lyle  
Hearing Officer

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12. HasBrouck pf. at 4.

**V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendations of the Hearing Officer are hereby adopted.
2. In accordance with 30 V.S.A. § 232, the Board consents to and approves the proposed amendments to existing bond indentures, and finds that such amendments will promote the general good of the state of Vermont.
3. In accordance with 30 V.S.A. § 108, the Board consents to and approves the proposed amendments to existing bond indentures, and finds that such amendments will be consistent with the general good of the state of Vermont.
4. This Order does not constitute approval of any particular capital or operating expenditure, or the underlying capital structure resulting from this financing.

Dated at Montpelier, Vermont, this 29th day of September, 2006.

<u>s/ James Volz</u>	)	PUBLIC SERVICE
	)	
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	
<u>s/ John D. Burke</u>	)	OF VERMONT

OFFICE OF THE CLERK

FILED: September 29, 2006

ATTEST: s/ Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*