STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc.	)
(VELCO), Vermont Transco, LLC, Green Mountain Power	)
Corporation (GMP), and Central Vermont Public Service	)
Corporation (CVPS) for a certificate of public good,	)
pursuant to 30 V.S.A. Section 248, 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 reconstruction of a portion of 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	)

Order entered: 9/7/2007

ORDER RE MOTION FOR CLARIFICATION

Today's Order rules on a Motion for Clarification filed on July 31, 2007, by Vermont Electric Power Company, Inc. and Vermont Transco, LLC (collectively "VELCO"). In its motion, VELCO requests that the Public Service Board ("Board") issue a ruling regarding the restrictions on herbicide application set forth in the Board's Order of January 28, 2005. For the reasons set forth below, we deny VELCO's Motion for Clarification.

On January 28, 2005, the Public Service Board ("Board") issued an Order and Certificate of Public Good approving, with modifications and conditions, the Northwest Vermont Reliability Project ("NRP") proposed by VELCO and Green Mountain Power Corporation ("GMP"). In the January 28 Order, the Board's findings include the following:

> 462. Vermont's Pesticide Advisory Council does not allow VELCO to apply herbicides within 30 feet of surface waters, but VELCO is allowed to apply herbicides within wetlands without surface water. Rowe/Disorda/Gilamn [sic]/Briggs reb. pf. at 6–7.

463. Herbicides should not be applied within the buffer of any wetland that contains standing water. Tr. 6/16/04 (Vol. I) at 22 (Quackenbush); exh. Towns Cross 270.

464. The Vermont Wetlands Rules establish buffer zones around Class I and Class II wetlands. The purpose of the buffer zones is "to protect those functions that make a wetland significant." For a Class II wetland, a fifty-foot buffer zone is established contiguous to the boundaries of the wetland, unless a buffer zone specific to a particular wetland is established by the Water Resources Board. Vermont Wetlands Rule, as adopted December 10, 2001, Section 4.3.[1]

The January 28 Order then includes the following discussion:

> Shelburne and Charlotte argue in their briefs that VELCO should be prohibited from applying herbicides within the buffer zones of any wetlands that contain standing water. VELCO objects to this proposed requirement, relying on the Pesticide Advisory Council's determination that VELCO may apply herbicides within the buffer zones of such wetlands.
>
> We conclude that prohibiting use of herbicides within the buffer zone of wetlands with surface water is justified. The proposed Project will impact hundreds of wetlands and the additional protection that will be afforded to a portion of these wetlands (those with standing water), will help in balancing the cumulative impact of the proposed Project. Requiring more stringent standards that [sic] the Pesticide Advisory Council will provide an environmental benefit without causing any meaningful (or perhaps even measurable) economic impact.[2]

On May 10, 2007, in response to public comments that suggested that VELCO had received an herbicide application permit for vegetative clearing within the NRP 345 kV right-of-way that conflicts with the January 28 Order's findings and conclusions, the Board issued a memorandum instructing VELCO to address the issue, and allowing other parties an opportunity to respond to VELCO.

On May 30, 2007, VELCO filed a letter acknowledging inconsistencies between the conditions in the January 28, 2005, Order and permits VELCO has received from the Agency of Agriculture and the Agency of Natural Resources ("ANR"). In its May 30 letter, VELCO states, "Of course, VELCO understands that it is bound to adhere to the conditions contained in the

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1. Docket 6860, Order of 1/28/05 at 154.

2. Docket 6860, Order of 1/28/05 at 154-155.

Board's Order, unless or until the conditions are changed to conform to the Agency of Agriculture permit, the [Conditional Use Determination] and ANR and [Vermont Pesticide Advisory Council] policy."

VELCO filed another letter, on June 21, 2007, in response to comments that had been submitted by ANR and the Town of Charlotte. In its June 21 letter, VELCO states that the herbicide restrictions contained in the Board's January 28, 2005, Order could be interpreted in two different ways, and that ". . . VELCO believes that the differing interpretations of the Order's language warrant clarification from the Board." VELCO further states that ". . . the Board should modify its findings and limitations for herbicide use to conform to the Agency of Agriculture Permit and [Conditional Use Determination] . . . ."

On July 5, 2007, the Board issued a memorandum informing the parties that it would not treat VELCO's June 21 letter as a motion to clarify or modify the January 28 Order, because VELCO's letter "does not identify specific findings, conclusions, or conditions for which VELCO seeks clarification or modification, does not identify specifically how VELCO proposes that the findings, conclusions or conditions be clarified or modified, and does not provide citations to evidence in support of any modified findings."

On July 31, 2007, VELCO filed a Motion for Clarification, pursuant to V.R.C.P. 60(b)(6),[3] of the Board's January 28, 2005, Order in this proceeding. In its Motion, VELCO requests that the Board clarify that under the January 28 Order, "VELCO is authorized to apply herbicides in the manner stated in its herbicide use permit issued on May 3, 2007, by the Vermont Agency of Agriculture."[4] VELCO further requests, in the alternative, that "if the Board intended to impose a different restriction than VELCO's permits, the Board intended to impose a restriction limiting herbicide application within 50 feet of standing water . . . ."[5]

In its memorandum in support of its Motion, VELCO notes (as it did in its May 30 letter) that "[t]he Board's Order precludes VELCO from applying herbicides within wetland buffers

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3. Rule 60(b)(6) is applicable to Board proceedings pursuant to Board Rule 2.221.

4. VELCO Motion for Clarification at 1.

5. *Id.*

(50 feet of the wetland) if the wetland contains surface water."[6] VELCO contends that "[t]he restrictions imposed by the Board's Order will potentially result in more adverse environmental impacts, as well as more difficult and expensive vegetation management."[7] According to VELCO, in wetland areas where it is unable to apply herbicides, it must rely on mechanical clearing of vegetation which, VELCO claims, has greater environmental impacts than does selective herbicide use.

VELCO further asserts that "the Order's broad restrictions – which effectively preclude the use of herbicides along the entire corridor – are unnecessary, given that VELCO's vegetation management plan incorporating the use of herbicides is consistent with Act 250 Criterion 1(G) . . . ."[8] VELCO argues that Criterion 1(G) requires compliance with the Vermont Wetland Rules, and that VELCO's herbicide practices have been approved by ANR as consistent with those rules.

VELCO also points to higher costs as justification for its requested clarification of the January 28 Order. According to VELCO, mechanical vegetation management costs $1,124 more per acre than management using herbicides, and the 345 kV right-of-way encompasses 215 acres of wetlands.

On August 15, 2007, the Town of Charlotte ("Charlotte") filed a letter in opposition to VELCO's Motion for Clarification. Charlotte contends that the Board should deny VELCO's motion because the January 28 Order requires no clarification. Charlotte asserts that the relevant language of the Order is clear, as is the testimony upon which the Board relied. Charlotte points to the language in the Board's discussion (quoted above) in which the Board concluded that standards more stringent than those of the Pesticide Advisory Council would provide an environmental benefit.

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6. VELCO Motion at 3.

7. *Id.* at 5.

8. *Id.*

Charlotte claims, in addition, that VELCO's Motion for Clarification "is untimely and unreasonable,"[9] in that VELCO is seeking modification of the January 28 Order approximately two and one-half years after its issuance. Charlotte contends that VELCO had a full and fair opportunity to litigate the herbicide issue in the original proceedings in this Docket, and that VELCO failed to seek reconsideration of, or appeal, the herbicide restrictions in the January 28 Order. Charlotte further asserts that V.R.C.P 60(b)(6), under which VELCO filed its Motion, should apply only in extraordinary circumstances and within a reasonable time period, and that VELCO's Motion fails to meet either of these requirements.

We have reviewed our January 28 Order, VELCO's Motion for Reconsideration and supporting memorandum, and Charlotte's reply. We deny VELCO's Motion for two fundamental reasons. First, the herbicide restrictions contained in our January 28 Order are clear and unambiguous. The Order specifically adopted the herbicide restriction that Charlotte and the Town of Shelburne had proposed, and expressly noted that that restriction is more stringent than that of the Pesticide Advisory Council. Second, VELCO has presented no "extraordinary circumstances" that would justify relief pursuant to V.R.C.P. 60(b)(6). *See John A. Russell Corp. v. Bohlig*, 170 Vt. 12, 24 (1999).

SO ORDERED.

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9. Charlotte August 15 Response at 3.

Dated at Montpelier, Vermont, this 7th day of September, 2007.

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	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/John D. Burke	)	

OFFICE OF THE CLERK

FILED: September 7, 2007

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)