STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7373

Joint Petition of Vermont Electric Power Company, Inc.,	)
Vermont Transco, LLC, and Central Vermont Public	)
Service Corporation for a certificate of public good,	)
pursuant to 30 V.S.A. Section 248, authorizing the	)
construction of the Southern Loop Transmission	)
Upgrade Project	)

Order entered: 10/1/2008

ORDER ON VELCO'S RENEWED MOTION TO STRIKE AND REQUEST FOR A RULING REGARDING *PRO SE* REPRESENTATION

This procedural Order is issued in response to the renewed motion to strike and request for a ruling on *pro se* representation that was filed with the Public Service Board ("Board") by Vermont Electric Power Company, Inc. ("VELCO"), Vermont Transco, LLC ("Transco"), and Central Vermont Public Service Corporation ("CVPS" and, collectively with VELCO and Transco, "Petitioners") on September 5, 2008. In this Order, the Board grants the Petitioners' renewed motion to strike under Rule 12(f) of the Vermont Rules of Civil Procedure and reminds *pro se* representatives of their obligations in the conduct of their representation.

The procedural background for the renewed motion to strike follows. On July 3, 2008, a letter captioned "Notice and Request for Sanctions" was filed with the Board ("Request for Investigation") by Thomas W. Clynes. At the time, Mr. Clynes was the *pro se* representative for the Town of Brookline in this proceeding. In the Request for Investigation, Mr. Clynes advocated an investigation into "a possible attempt to improperly influence the outcome" of this proceeding, alleging that an officer of VELCO "apparently approached a Town of Brookline Selectboard member . . ., expressing an interest in purchasing" his property. Mr. Clynes also complained about allegedly disparaging remarks made about him to Town of Brookline officials by the VELCO officer and requested that VELCO "refrain from attempts to improperly influence members of municipal governing bodies."

In response to a request from the Board on July 7, 2008, for responses and comments on the Request for Investigation, VELCO and Transco filed a response on July 14, 2008, as materially corrected by a filing on July 17, 2008 ("VELCO Response"), which included requests to disqualify Mr. Clynes from appearing in this proceeding and to strike the Request for Investigation. In the VELCO Response, VELCO and Transco explained that VELCO did contact a Town of Brookline official about the possible purchase of his property at a time in June, 2008, when VELCO was re-examining the possibility of locating a substation in Brookline. VELCO and Transco indicated that it was clearly understood that the official would be disqualified from voting on the Brookline Select Board if there were a sale.[1] VELCO and Transco expressed concern over the possible injury to reputation and over the unsupported and false nature of Mr. Clynes' allegations. VELCO also filed an affidavit of the VELCO officer in question denying that he ever made disparaging remarks about Mr. Clynes to town officials. On August 6, 2008, VELCO submitted draft minutes of the Town of Brookline Select Board as additional support for the VELCO Response. CVPS filed comments on the Request for Investigation on July 16, 2008, and the Department of Public Service ("Department") filed comments on July 22, 2008, both of which were highly critical of Mr. Clynes and largely supportive of the VELCO Response.

On July 22, 2008, Mr. Clynes filed the "Town of Brookline's Reply" to the VELCO Response ("Brookline Reply"). In the Brookline Reply, Mr. Clynes conceded that VELCO had "satisfactorily demonstrated that there was no improper attempt to influence a municipal official" and withdrew any request for investigation or other Board action with respect to this matter. There was a subsequent communication to the Board by Mr. Clynes on July 29, 2008, seeking to suspend the Town of Brookline's participation in this proceeding, a letter from the Chair of the Town of Brookline Select Board filed on August 11, 2008, temporarily suspending Mr. Clynes from his appointment as representative, and then an e-mail from the Chair of the Select Board submitted on August 14, 2008, transmitting the resignation of Mr. Clynes as the Town's designated representative in this proceeding. In the interim, the Department filed a letter on August 8, 2008, requesting a hearing to determine the authority of Mr. Clynes to represent the

1. VELCO Response at 2-3 and 5.

Town of Brookline in this proceeding (as well as the authority of the representative of the Town of Dummerston).

On August 27, 2008, we entered a procedural Order regarding the various motions, requests and comments the Board received involving the Towns of Brookline and Dummerston in this docket. Among other things, we noted that the Brookline Reply and Mr. Clynes' subsequent resignation as representative of the Town of Brookline appeared to moot VELCO's request to strike the Request for Investigation and VELCO's request to disqualify Mr. Clynes. We also ordered VELCO to advise us by September 5, 2008, if it intended to continue to pursue any of its requests for relief in the VELCO Response.

The Petitioners filed "VELCO's Renewed Motion to Strike Thomas Clynes' July 3, 2008 Notice and Request for Sanctions, and Request for Ruling regarding Pro Se Representation" on September 5, 2008. The Petitioners renewed their motion to strike the Request for Investigation and requested that the Board expressly rule that *pro se* representatives must meet the standards for representation in Board Rule 2.201(B) and under the decision in *Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 129 Vt. 454, 458 (1992) and quoted the standards from that case as follows:

> 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.

No party has opposed the Petitioners' motion to strike the Request for Investigation or objected to the Board's enforcement of the standards for *pro se* representation under Rule 2.201(B). However, both the Windham Regional Commission ("Windham"), on September 9, 2008, and the Town of Dummerston ("Dummerston"), on September 16, 2008, filed responses in which they objected to any proposal that would strictly enforce the above-quoted standards in proceedings before the Board. Windham and Dummerston each point out that the Vermont

Supreme Court also stated in *Upper Valley Regional Landfill* that the lawyer-representation rule "should not be rigidly enforced" in all cases.

We take the obligations of *pro se* representatives under Board Rule 2.201(B) seriously and remind all *pro se* representatives of their obligations under this Rule. Among other obligations, with one minor exception, "anyone appearing as a pro se representative is under all the obligations of an attorney admitted to practice in this state with respect to the matter in which such person appears." We note, in the example of Mr. Clynes, that substantial time and effort on behalf of the parties as well as the potential for damage to reputation might have been avoided if he had made appropriate inquiries before filing the Request for Investigation.

It is the general policy of the Board, as set forth in Rule 2.201(B), to permit appearances by pro se representatives "in all proceedings unless, because of their factual or legal complexity or because of the number of parties, the Board is of the opinion that there is a substantial possibility that the participation of a pro se representative will unnecessarily prolong such proceeding or will result in inadequate exposition of factual or legal matters." In this proceeding, none of the factors that would preclude *pro se* representation under our rule are present at this time. Accordingly, we reject Petitioners' request that we strictly apply the four quoted standards from *Upper Valley Regional Landfill* in this proceeding.

Under Rule 12(f) of the Vermont Rules of Civil Procedure, a party can move to strike a pleading, and we have the authority to issue an order striking "from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." There being no opposition from any party to the Petitioners' renewed motion to strike the Request for Investigation, we grant the Petitioners motion under VRCP 12(f).[2]

SO ORDERED.

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2. We note, however, that an order to strike does not have the effect of expunging the struck pleading or motion from the records of the Board, even if it is no longer part of the record for evidentiary or other purposes in this proceeding.

Dated at Montpelier, Vermont, this 1st day of October, 2008.

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

OFFICE OF THE CLERK

FILED: October 1, 2008

ATTEST: s/Judith C. Whitney
Deputy 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)