

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, 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: 11/24/2004

**ORDER RE REQUEST FOR RECONSIDERATION OF THE BOARD'S ORDER STRIKING TESTIMONY
OF ROBERT BLOHM**

Background and Position of the Parties

On October 8, 2004, in response to a motion filed by Vermont Electric Power Company, Inc. ("VELCO"), the Vermont Public Service Board ("Board") issued an Order striking portions of the prefiled surrebuttal testimony of Robert Blohm. Mr. Blohm's testimony had been filed on behalf of the Conservation Law Foundation ("CLF"), the Town of New Haven ("New Haven"), Vermont Citizens for Safe Energy ("VCSE"), and the Addison County Regional Planning Commission ("ACRPC") (collectively, the "Blohm Sponsors").

Mr. Blohm was cross-examined on the remainder of his testimony on October 20, 2004. During redirect examination, we denied New Haven's request to question Mr. Blohm on a cross-

exhibit introduced by VELCO, on the grounds that such a line of questions would bring in testimony that we had struck.¹

On November 16, 2004, New Haven filed a motion requesting that the Board reconsider our October 8 Order and our bench ruling of October 20.² New Haven argues that the Board had specifically requested that intervenors call a witness familiar with the North American Electric Reliability Council ("NERC") standards. Further, New Haven asserts that it stopped its cross-examination of a VELCO witness with the explicit understanding that it would be able to call a witness familiar with NERC standards. Finally, New Haven argues that it was error for the Board to not allow redirect examination of Mr. Blohm with respect to a cross-exhibit introduced by VELCO.

Responses to New Haven's motion were received on November 22 from VELCO and the Vermont Department of Public Service ("Department"). VELCO argues that New Haven's motion is untimely and presents an "unfair prejudice and undue hardship to the parties." The Department argues that New Haven offers no persuasive grounds for allowing in Mr. Blohm's testimony and states that "if the stricken testimony is not proper surrebuttal, then it should not be allowed in redirect examination." In the alternative the Department recommends that the Board strike all of Mr. Blohm's testimony, and by extension the cross-exhibits related to his testimony. Finally, the Department states that, if the Board does grant the motion to reconsider, the Board should create a schedule that allows for "(a) time to resolve outstanding discovery disputes regarding Mr. Blohm's testimony and (b) opportunity for other parties to file responsive testimony."

Discussion and Conclusion

We have considered the arguments of the parties and (for the reasons stated in our October 8, 2004, Order) we conclude that the testimony of Mr. Blohm was properly stricken. Further, we explicitly reject New Haven's creative reading of the July 27, 2004, transcript to support its motion for reconsideration. Contrary to New Haven's contention, the Board did not

1.
Tr. 10/20/04 at 62-71.

2. New Haven's November 16 motion also requested that the Board delay the briefing schedule in this Docket. In a separate Order, dated November 19, 2004, we rejected that request.

specifically request New Haven to call a witness to discuss NERC standards nor did the Board stop New Haven's cross-examination of a VELCO witness on the grounds that New Haven intended to call a witness to discuss NERC standards. Further, New Haven would still be obligated to follow the procedural requirements set forth by the Board regarding the proper scope of surrebuttal witnesses.³

Nonetheless, we have decided that we will allow the stricken portions of Mr. Blohm's testimony into the record and we will allow New Haven (or the other co-sponsors of Mr. Blohm's testimony) to question Mr. Blohm on the NERC Planning Standards that VELCO introduced as a cross-exhibit. In doing so, we want to make clear our reasoning. VELCO contends that the reliability criteria it relies upon are neither in conflict with, nor specifically required by, *North American Electric Reliability Council* standards. Rather, the criteria upon which VELCO relies are recommended and used by *regional* bodies. Thus, VELCO witnesses justify them as appropriate for Vermont's specific needs and situation, regardless of how we read NERC's more generalized recommendations.⁴ However, an error in VELCO's or our understanding could have adverse effects and Mr. Blohm's testimony provides an opportunity to consider the relevance of NERC standards to this issue in a relatively efficient way. Also, it appears that the current schedule may allow some time for further attention to this question without substantial adverse delay. Thus, we will allow a limited degree of further testimony and cross-examination on this issue within the existing schedule.

Accordingly, we are offering December 6, 2004 (or, if more convenient to all parties, December 3), as an opportunity for Mr. Blohm to appear.⁵ The parties should inform the Board no later than November 30, 2004, if they jointly request that Mr. Blohm appear on December 3.

The Department has indicated that there is a pending discovery dispute concerning Mr. Blohm's testimony. If parties are unable to resolve this dispute, the Board will promptly

3. In our Order of August 9, 2004, we stated: "Prefiled 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.*" Docket 6860, Order of 8/9/04 at 1 (emphasis added).

4. *E.g.*, tr. 7/26/04 at 102 (Technical Panel); tr. 9/21/04 at 52–53 (Whitley).

5. We recognize that this provides a relatively short time period for Mr. Blohm's sponsors to arrange for Mr. Blohm's attendance, but Mr. Blohm's sponsors are responsible for their time constraints, given its delay before filing its November 16 motion for reconsideration.

schedule a hearing to resolve any outstanding issues. Parties must notify the Board by close of business November 30, 2004, whether the discovery dispute remains unresolved.

Since Mr. Blohm's testimony was not within the proper scope of surrebuttal testimony, the Department is correct in its assertion that parties must be given the opportunity to present responsive testimony. Given the remaining schedule in these proceedings, parties will have the opportunity to present live, responsive testimony on the same day that Mr. Blohm appears.

Parties must file estimates of cross-examination times for Mr. Blohm by November 30, 2004. In addition, any party that wishes to present responsive testimony should file the names of such witnesses and a brief summary of the expected testimony by November 30. Supplemental briefs on any issues raised by Mr. Blohm shall be filed on December 17, 2004. Replies to these supplemental briefs must be filed by noon on December 23, 2004.

SO ORDERED.

Dated at Montpelier, Vermont, this 24th day of November, 2004.

s/Michael H. Dworkin)

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PUBLIC

SERVICE

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s/David C. Coen

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BOARD

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OF

VERMONT

s/John D. Burke)

OFFICE OF THE CLERK

FILED: November 24, 2004

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: Clerk@psb.state.vt.us)