

# APPENDIX B

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7047

Petitions of: (1) TransCanada Hydro Northeast Inc. for )  
consent to transfer its Bellows Falls Project to the )  
Vermont Hydroelectric Power Authority; (2) Town of )  
Rockingham and Vermont Hydroelectric Power )  
Authority for certificates of public good and consent to )  
purchase, own, and lease the Bellows Falls Hydroelectric )  
Generating Station; and (3) Bellows Falls Power )  
Company for approval to operate the Bellows Falls )  
Hydroelectric Generating Station in Bellows Falls, )  
Vermont, and for *de minimus* regulation )

Hearings at  
Montpelier, Vermont  
May 2 & 3, 2005

Order entered: 6/6/2005

PRESENT: David C. Coen, Board Member  
John D. Burke, Board Member

APPEARANCES: *See Appendix A*

## I. BACKGROUND

This Docket concerns Public Service Board ("Board") review of proposed transactions in which TransCanada Hydro Northeast Inc. ("TC HydroNE") will ultimately transfer to the Town of Rockingham ("Rockingham" or "Town") the Bellows Falls Hydroelectric Generating Station (the "Dam") owned by TC HydroNE, and located on the Connecticut River, both in Rockingham, Vermont, and Walpole, New Hampshire.<sup>1</sup> In addition, in this Docket the Board has reviewed a petition by the Bellows Falls Power Company ("BFPC") for approval to operate the Dam, and for *de minimus* regulation.

In this Order, we approve the transfers of the Dam from TC HydroNE to the Vermont Hydroelectric Power Authority ("VHPA"), and from the VHPA to Rockingham. We grant TC HydroNE a Certificate of Consent ("COC") to transfer the Dam to VHPA. We grant VHPA a Certificate of Public Good ("CPG") to acquire the Dam, and a COC to transfer the Dam to the Town of Rockingham. We grant Rockingham a CPG to acquire and own the Dam and a COC to lease the Dam to BFPC. We also grant BFPC a CPG to operate the Dam under the terms of the lease. Furthermore, because neither VHPA nor BFPC will sell electricity at retail or operate as public utility companies in Vermont, they will not be required to make any filings with the Board or the Department of Public Service ("Department" or "DPS") regarding financings. Finally, in this Order we also approve a Stipulation and Agreement submitted by a number of the parties that seeks to resolve all remaining issues in the Docket.

## II.

### III. PROCEDURAL HISTORY

#### **Filing and Opening Investigation**

On February 8, 2005, USGenNE filed a petition for consent to transfer its Bellows Falls Project to the VHPA. On February 11, 2005, the Town of Rockingham and VHPA filed for certificates of public good and consent to purchase, own, and lease the Dam. Similarly, BFPC filed for approval to operate the Dam in Bellows Falls, Vermont, and for *de minimus* regulation.

---

1. On April 26, 2005, the Board approved a motion by USGen New England, Inc. ("USGenNE") to substitute TC HydroNE as a petitioner in this Docket. Order of April 26, 2005.

On February 28, 2005, the Board issued a notice for a prehearing conference, and subsequently conducted that hearing on March 9, 2005, setting a schedule for this Docket.

### **Interventions**

At the March 9, 2005, prehearing conference in this case, the Board also granted two requests to intervene, one to BFPC, and the other to TC HydroNE.

Subsequently, the Board received four additional motions to intervene in this Docket: from The Island Corporation ("Island"); Ms. Laurie A Rowell, Esq.; the Bellows Falls Village Corporation ("the Village"); and Green Mountain Power Corporation ("Green Mountain"). No party opposed the motions by Island, the Village or Green Mountain. Rockingham filed comments in opposition to the intervention by Ms. Rowell.

In our Order of March 31, 2005, we concluded that Island, the Village, and Green Mountain had established a basis for their request and granted their motions. However, with regard to Ms. Rowell, the Board concluded that she had not provided a basis in her motion or its supplement for her request, and therefore denied her motion.

### **Other Motions**

During the prehearing conference of March 9, 2005, BFPC moved to consolidate its petition with the petitions filed by USGenNE and Rockingham in this Docket. No party objected, and the Board, in its Order of March 14, 2005, granted the motion.

On March 29, 2005, BFPC filed a motion to amend its petition to include a request for a certificate of public good under 30 V.S.A. § 231. On April 13, 2005, the Department filed a letter recommending that the Board grant BFPC's motion to amend its petition to seek a CPG under § 231. No party objected.

On April 6, 2005, USGen filed a motion to substitute TC HydroNE as petitioner in this docket. The following day TC HydroNE filed a letter with the Board indicating its consent to be substituted as petitioner in this Docket. On April 26, 2005, the Board approved the substitution of TC HydroNE for USGenNE and dismissed USGenNE as a party in this Docket.

**Hearings**

On April 29, 2005, the Board convened a final prehearing conference by telephone during which Island indicated that it had reached an agreement with BFPC on all of Island's issues. Island also indicated that it would neither be offering the prefiled testimony of its witness, Stewart Read, into evidence, nor conducting any cross-examination during the technical hearings.

The Board conducted technical hearings as duly noticed and scheduled on May 2 and 3, 2005, in the Board Hearing Room in Montpelier, Vermont.

In addition to hearing from formal parties in this Docket, the Board also conducted a public hearing in order to gather information and opinion from the public at large. The public hearing took place on Tuesday, April 12, 2005, at the Rockingham Town Hall, in Bellows Falls, Vermont. Numerous members of the public attended the hearing, and twenty-two members of the public addressed questions to the Board. We also received correspondence from over a dozen members of the public. For a discussion of the issues raised by the public during the public hearing, see section III, below, entitled, "Concerns of the Public."

**Stipulation**

On May 13, 2005, the Department filed a Stipulation and Agreement ("Stipulation") with the Board in which the signatories indicated that the Stipulation is a full and final resolution of all issues in this proceeding. The signatories to the Stipulation include VHPA, the Department, Rockingham, BFPC, the Village and TC HydroNE. By letter submitted on May 17, 2005, Green Mountain indicated that it did not have any objection to the Stipulation.

**IV. CONCERNS OF THE PUBLIC AND THE BOARD'S RESPONSE**

Under Vermont law, we must base our decision on evidence presented by parties in the formal hearings. However, public comments play an important role, by raising new issues or offering different perspectives that we should consider. For example, in her cross examination during the technical hearing, Counsel for the Department relied heavily upon questions raised by

members of the public during the April 12, 2005, public hearing.<sup>2</sup> The many thoughtful comments helped us to identify and explore questions during the hearings and to think about the factual evidence presented by the parties. Here we address the major concerns raised by the public is addressed by the evidence presented during the hearings:

- The purpose of switching from a fixed payment figure to a percentage payment figure in year 15 of the lease is to account for the fact that neither party can be certain at this time what conditions, if any, the Federal Energy Regulatory Commission ("FERC") may choose to impose in the next license for the Dam in 2018. Such conditions could have an impact on the revenue generated by the Dam at that time, which, in turn, is a significant consideration in determining the amount of revenue due to the Town. Tr. 5/2/05 at p. 47-48 (Silkman).
- The non-disturbance agreement between the Town and BFPC is necessary to give BFPC assurance that it will have full use and control of the Dam in exchange for the up-front \$72 million payment it will make under the transactions, and no eminent domain proceedings by Rockingham. Such agreements are not unusual in commercial transactions. *Id.* at 53-54 (Silkman).
- Rockingham did not perform an engineering study of the Dam in connection with these transactions, nor is the Town aware of whether any divers have examined the Dam under water. *Id.* at 54-55 (Silkman).
- There will be no need for the Town to hire additional staff (e.g., a tax collector) to administer the lease with BFPC, nor does the Town expect to incur sizeable legal fees going forward. *Id.* at 69-71 (Silkman).
- The Town has no general right of entry to the Dam under the lease as a landlord. However, in its regulatory capacity as a co-licensee, the Town is entitled to enter on the premises. The Town is entitled under the lease to enter the Dam to inspect damage and BFPC's progress in fixing any damage. Furthermore, based on an informal agreement, the Town will have access to the Dam for purposes of inspection and giving tours. *Id.* at 71-73 (Silkman).
- The Town will continue to have access to Herrick's Cove as a result of the transfer of the FERC license to Rockingham and BFPC. It is therefore not necessary to secure such access through the lease. *Id.* at 73-74 (Silkman).
- Under the lease, the Town is entitled to receive certain specific notices concerning damage, construction, assignment, insurance and FERC enforcement proceedings.

---

2. See tr. 5/2/05 at 46-163 (Tierney).

Additionally, as a result of the FERC license, the Town will receive copies of all correspondence and notices relevant to the regulation of the Dam. Rockingham exh. 13 at Articles 5, 6, 9, 11, and 15; tr. 5/2/05 at 74-75 (Silkman).

- The equipment on the premises of the Dam that is required under the FERC license will be transferred to the Town. Tr. 5/2/05 at 76-77 (Silkman).
- Any personal property on the premises of the Dam at this time that is not tied to the FERC license is not secured to the Town as a result of the lease. *Id.* at 77 (Silkman).
- At the end of the lease, all personal property in possession of BFPC on the premises of the Dam is to be transferred to the Town. To the extent that there is personal property on the premises of the Dam at this time that is necessary for operational purposes and which is not there at the end of the lease, it is possible that it will fall to the Town to bear the cost of replacing those items. Tr. 5/3/05 at 39 (Silkman); tr. 5/2/05 at 77-78 (Silkman).
- Rockingham's consultant for the transactions considers it beneficial for a little town of 5000 residents to acquire a \$72 million dam where the Town does not have to provide any capital to make the purchase. *Id.* at 87 (Silkman).
- Rockingham could have pursued a series of tax stabilization agreements instead of these transactions, but then it would not obtain the additional benefits of these transactions, such as ultimate, exclusive control and title to the income stream from the dam. *Id.* at 88, 159 (Silkman).
- The Town could not rely on open bidding as an alternative path to securing the economic benefits of these transactions because, without BFPC's willingness to advance the \$72 million purchase price in the first instance, the Town could not have achieved the legal control necessary to dispose of the economic advantages of the Dam to the highest bidder. *Id.* at 91-94 (Silkman).
- These transactions do not afford Rockingham's residents any special electricity rates, even though the Town originally thought such a term would be a part of the deal. *Id.* at 94-95 (Silkman).
- From the start to the finish of the process of acquiring the Dam, the primary change to the deal was that the Town originally expected to take out debt to finance the purchase. The Town originally expected to enjoy all benefits of ownership, especially the income stream. Instead, the Town now stands to acquire legal title to the Dam without any debt load. However, the Town will not begin to receive the full benefit of the income stream from the Dam until, at the latest, 74 years from now. The direct impact, therefore, on tax payers of this change is that they will bear no costs that would have otherwise been associated with debt financing. *Id.* at 98-100 (Silkman).

• Should BFPC choose not to renew the lease at year 14, the Town will have three options:

(1) Rockingham can take back the operation of the Dam and pay BFPC an amount representing the balance of the economic value of the remaining term of the lease as if BFPC had continued its tenancy for the full 74 years;

(2) In lieu of making the payment described in option 1, the Town could deed the facility to BFPC; or

(3) the Town could sell the Dam and use the proceeds to make the payment to BFPC described in option 1.

Exercising option 2 would be only at the Town's discretion, and would only make sense if it were the cheapest option for the Town. *Id.* at 109-111 (Silkman).

• The Town has not pursued a "leave alone" property tax agreement with Vermont's Tax Department. *Id.* at 114 (Barnett).

• A valuation appraisal of the Dam was done by Dr. Silkman in November 2003 using the methodology approved by the Vermont Supreme Court. This study produced the conclusion that the Dam was worth \$72 million. *Id.* at 121 (Silkman).

• The Town does not believe it has undervalued the future value of energy in entering into these transactions. *Id.* at 128 (Silkman).

• The state has expressly disavowed any liability for negligent and wrongful acts or omissions by the Town in conjunction with owning the Dam. *Id.* at 134-135 (Silkman).

• While these transactions give Rockingham the option to purchase up to fifteen percent of the Dam's output, these transactions do not allow Rockingham to control whether the power it generates will flow directly to local residents and business. *Id.* at 144 (Silkman).

• The Town entertained an alternative proposal from TC HydroNE but determined that the transaction with BFPC was preferable for Rockingham. *Id.* at 147-149 (Silkman).

#### IV. FINDINGS OF FACT

##### A. General Findings

1. Based on the Board's Order and CPG in Docket 7038, USGenNE transferred and sold the Dam to TC HydroNE on April 1, 2005, subject to the Town's and VHPA's rights under the Option to Purchase Agreement (the "Option Agreement"). Docket 7038, Order of 3/25/05.

2. TC Hydro NE currently owns the Dam subject to the rights and obligations of VHPA to acquire and own the Dam. Order of 4/26/05.
3. On July 8, 2003, USGenNE voluntarily filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maryland (Greenbelt Division) (Case No. 03-30465). Utt pf. at 2.
4. On July 13, 2004, USGenNE and the Town entered into the Option Agreement providing to the Town the option to purchase the Dam from USGenNE. Rockingham exh.-8.
5. On September 29, 2004, as part of USGenNE's effort to divest itself of certain assets, USGenNE (and its affiliate USG Services Company, LLC) entered into a Hydro Asset Purchase and Sale Agreement (the "PSA") with TC HydroNE for the sale of certain hydroelectric facilities located in Vermont (including the Dam) that are presently owned by TC HydroNE (the "Hydro Facilities"), as well as other USGenNE generation assets. Docket 7038, Order of 3/25/05.
6. USGenNE and TC HydroNE agreed that, if the sale of the Hydro Facilities to TC HydroNE were to precede the consummation of USGen NE's sale of the Dam to VHPA (as the Town's assignee), then TC HydroNE would assume the obligations of USGenNE under the Option Agreement. USGen pet. at 3.
7. On November 23, 2004, Rockingham voters held a vote at a Special Town Meeting to decide whether Rockingham would ratify the Option Agreement and purchase the Dam under the terms of the Option Agreement. More than sixty percent of those voting cast their votes in favor of ratifying the Option Agreement and the purchase of the Dam. Rockingham exh. 4 at 12-13.
8. The terms of the Option Agreement, as modified by Order entered November 23, 2004, by the United States Bankruptcy Court, allowed the Town to assign its rights under the Option Agreement to VHPA. Rockingham exh. 8.
9. The Town exercised its option. On December 7, 2004 it assigned its rights under the Option Agreement to VHPA, and notified USGen NE of the assignment. Rockingham exhs. 6, 9.
10. On December 7, 2004, the Town, VHPA and BFPC executed a Master Agreement that provides that, upon the conveyance of the Dam to VHPA, the Town will accept conveyance of the Dam from VHPA, and VHPA will convey the Dam to the Town. Rockingham exh. 10.

11. On December 7, 2004, VHPA caused to be placed in escrow \$72,046,000.00, as required by, and subject to, the terms of the Option Agreement. Sayles pf. 2/10/05 at 9.

12. On December 7, 2004, the Town entered into a lease with BFPC pursuant to which BFPC will lease the Dam for up to 74 years. Rockingham exh. 13.

13. On December 7, 2004, the Town assigned the lease to VHPA pursuant to the Master Agreement, which provides that VHPA's interest will be assigned back to the Town when ownership is transferred. Rockingham exh. 15.

14. By petition dated February 4, 2005, USGenNE requested the Board's consent to transfer its Dam to VHPA. In its petition, USGenNE represented that, in the event the sale of the Dam to VHPA pursuant to the Option Agreement did not close before the transactions contemplated in the PSA with TC HydroNE, TC HydroNE would (1) own the Dam, (2) take an assignment of the Option Agreement from USGenNE, and (3) assume the related obligations under the Option Agreement. USGen pet. at 3.

15. On April 1, 2005, USGenNE completed the sale of its hydroelectric facilities, including the Dam, to TC HydroNE. TC HydroNE was substituted for USGenNE. Order of 4/26/05.

16. In Docket 7038, this Board found that, if the transactions contemplated under the Option Agreement between USGenNE and the Town were not closed prior to the closing between TC HydroNE and USGenNE, then under the Purchase and Sale Agreement entered into between TC HydroNE and USGenNE, TC HydroNE would also assume obligations under the Amended and Restated Lease Indenture dated June 1, 1998, by and among Island, USGenNE, and New England Power Company ("NEP") (the "Island Corporation Lease"). Pursuant to that indenture, TC HydroNE would sell up to 300 kW's a day of electricity at wholesale to NEP for resale by NEP to Island. Island's rights to receive power under the Island Corporation Lease would be undisturbed by the transfer of the Bellows Falls Project to TC HydroNE. Docket 7038, Order of 3/25/05.

17. At the hearing in this matter, Counsel for BFPC and Island stipulated that they had agreed that BFPC will take an assignment of the TC HydroNE - NEP Wholesale Supply Agreement Related to Island Corporation Indenture, dated April 1, 2005. Tr. 5/2/05, at 11-12 (Tarrant, Hayden); BFPC exh. E.

18. The purpose of the BFPC and Island agreement is to provide Island additional assurance that the rights and obligations accepted by TC HydroNE on April 1, 2005, would be accepted by BFPC. *Id.*

19. As a result of this agreement, Island's current rights to receive power under the Island Corporation Lease from NEP will be undisturbed by the transfer of the Dam to VHPA and subsequently to Rockingham. *Id.*; BFPC exh. E.

20. VHPA is a body corporate and politic and a public instrumentality of the State of Vermont created in 30 V.S.A. Chapter 90 that may be subject to the Public Service Board jurisdiction pursuant to 30 V.S.A. § 201(a), to the extent not inconsistent with 30 V.S.A. Ch. 90. Rockingham pet. at 1.

21. The Town is a municipal corporation of the State of Vermont and, to the extent and for the purposes set forth in 30 V.S.A. §§ 108, 109 and 604(d), is subject to the jurisdiction of the Public Service Board. Rockingham pet. at 1; 30 V.S.A. §§ 108, 109, 604(d).

**B. The petition of VHPA for consent to acquire and transfer the Bellows Falls Hydroelectric Generating Station**

**Findings**

22. The Vermont General Assembly determined that there was potential to purchase an interest in hydroelectric power stations along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts. To this end it created the VHPA establishing it as a public instrumentality of the state. The VHPA has authority to, among other things, borrow money, make and issue negotiable bonds, notes, and commercial paper; and give other evidences of indebtedness or obligations, and give security therefor. Such evidences of indebtedness or obligations may be incurred for any of the authority's corporate purposes. However, VHPA cannot sell electric power at retail to any ultimate customer in Vermont, or require any electric utility to purchase electric power in a wholesale transaction. 30 V.S.A. §§ 8051, 8053(a), 8055(1), and 8056.

23. Under Vermont law, VHPA is authorized to acquire facilities such as the Dam. 30 V.S.A. §§ 8051-8059; Behrns pf. at 4.

24. VHPA's acquisition of the Dam will, in turn, facilitate Rockingham's ultimate purchase of the Dam. Sayles pf. at 9.

25. Under the proposal before the Board, VHPA acts in a financing capacity by putting itself in Rockingham's place until closing occurs, at which time ownership is transferred to the Town, along with reassignment of the option and lease agreements. *Id.* at 7.

26. Rockingham exercised its option agreement with USGenNE by notifying USGenNE on November 30, 2004, that it intended to purchase the Dam. The option required that the Optionee (Rockingham) deposit the purchase price (\$72,046,000) in an escrow account within seven days after the exercise of the option. *Id.* at 8.

27. On December 7, 2004, Rockingham, VHPA, BFPC, Brascan and Emera executed agreements, including an assignment of the Option from Rockingham to VHPA, and an assignment of the lease between Rockingham and BFPC to the VHPA. BFPC provided \$72,046,000 as prepaid rent on a 74-year lease between Rockingham and BFPC. *Id.*

28. VHPA, acting now as optionee, received the funds and placed them in an escrow account as a deposit for the purchase price pending closing. At closing, VHPA will transfer title to Rockingham and reassign the Option and the Lease Agreement to Rockingham. *Id.*

29. It will promote the general good of the state for VHPA to acquire the Dam. Behrns pf. at 5.

#### **Discussion – VHPA Approvals**

We have reviewed the Stipulation and the evidence in support of it. The stipulating parties specifically request that the Board issue a CPG pursuant to § 248 authorizing VHPA to acquire and own the Dam. They agree that the proposed transfer of the Dam, and VHPA's role in these transactions, will promote the general good of the State of Vermont.

Based on our review of the evidence, we reach the same conclusions. We note that the record reflects that VHPA, in spite of its mandate, has little in the way of experience and background to operate a hydroelectric generation facility and to successfully participate in a competitive wholesale energy market. That expertise, as we recognize below, is possessed by BFPC. However, because VHPA's role in this process has essentially been a financing facilitator, we consider its temporary acquisition of the Dam to be a reasonable proposal

particularly since it is only a temporary ownership of the Dam. Moreover, because VHPA is a necessary link in Rockingham's ultimate acquisition of the Dam – we conclude that its acquisition is in the good of the state.

We conclude, therefore, that granting VHPA a CPG pursuant to 30 V.S.A. § 248 to acquire and transfer the Dam will promote the general good of the State of Vermont. We further conclude that VHPA is not required to make any filings with the Board and Department pursuant to 30 V.S.A. § 108 for these transactions, since we are fully reviewing them at the present time. VHPA's CPG shall reflect this condition. Furthermore, because it will promote the general good of the state, we approve the proposed transfer of the Dam by VHPA to Rockingham pursuant to § 109, and will issue a COC.

**C. Petition of Bellows Falls Power Company, LLC to operate the Bellows Falls Hydroelectric Generating Station and for de minimus regulation**

**Findings**

30. BFPC is a limited liability company created under the laws of the State of Delaware and authorized to do business in the State of Vermont. Petition of BFPC at 1.

31. BFPC is affiliated with Bellows Falls Holding Company, LLC, a subsidiary of Brascan Corporation, a Canadian asset management company, and Emera Energy U.S. Subsidiary No. 1, Inc., a subsidiary of Emera, Inc., a Canadian holding company. Emera, Inc. also owns Bangor Hydro-Electric Company and Nova Scotia Power, Inc. *Id.* at 2-3.

32. With substantial experience in wholesale marketing, and an understanding of New England power markets, BFPC and its affiliates have the experience and capabilities necessary to operate the Dam safely and efficiently. *Id.* at 4; Silkman pf. at 13; Martin pf. at 4; Martin reb. pf. at 7.

33. BFPC does not own any generating or transmission facilities other than the Dam. BFP pet. at 3.

34. BFPC's activities in Vermont will be limited to leasing, operating and overseeing the Dam and to selling its output at wholesale as a FERC-regulated utility. *Id.*

35. The operation of the Dam will be fully regulated by FERC. *Id.*

36. This transaction will result in the operation of the Dam by BFPC, an entity that has the appropriate expertise and resources for this project. Behrns pf. at 5-6.

37. The public interest and good will be served by the Dam being operated by BFPC. *Id.*

#### Discussion – BFPC Approvals

30 V.S.A. § 231 requires a person desiring to "own or operate a business over which the [Board] has jurisdiction" to obtain a CPG. The Board may issue a CPG only if it finds that issuance of a CPG will promote the general good of the State. The Board has established a set of criteria that it examines to determine whether an entity should be granted a CPG:

1. Technical expertise;
2. Adequate service;
3. Facility maintenance;
4. Balance between customers and shareholders;
5. Financial stability;
6. Company's ability to obtain financing;
7. Business reputation; and
8. Relationship with customers.<sup>3</sup>

These criteria are guidelines only intended to aid us in our determination of whether a proposal promotes the public good, and the Board may deviate from them as the circumstances require.<sup>4</sup> In addressing whether and upon what conditions to issue a CPG, the Board may under Title 30 apply its regulatory authority over BFPC to reflect the limited activities BFPC plans to undertake in Vermont and to craft a CPG reflecting these limited activities.

We find that granting BFPC a CPG to own and operate the Dam promotes the general good of the state, because the evidence demonstrates that BFPC meets each of the criteria that are applicable to a competitive supplier that sells electricity exclusively at wholesale pursuant to FERC-approved, market-based rates.

Based on the findings we set out above, the evidence in the record demonstrates that BFPC meets the criteria that are applicable to its circumstances, which we deem in this case to be

---

3. See *Petition of Quechee Service Company*, Docket No. 5699, Order of 11/15/94 at 47.

4. 30 V.S.A. § 203; see also Docket 6039, Order of 6/29/98 at 16. In fact, section 203 of Title 30 permits the Board and the Department to exercise their jurisdiction "so far as may be necessary to enable them to perform their duties and exercise the powers conferred upon them by law." 30 V.S.A. § 203.

criteria (1), (3), (5), (6) and (7). We are satisfied that BFPC meets the business reputation standard. BFPC is affiliated with Bellows Falls Holding Company, LLC, a subsidiary of Brascan Corporation, a Canadian asset management company, and Emera Energy U.S. Subsidiary No. 1, Inc., a subsidiary of Emera, Inc., a Canadian holding company that also owns other hydro generation facilities in the region. These parent corporations have well-established reputations as large operators of hydroelectric generation plants. BFPC can also be expected to have technical expertise to operate the Dam, and the requisite qualifications to ensure it is maintained reliably and efficiently. BFPC has also demonstrated that it satisfies the financial stability standards for issuance of a CPG. Given its affiliation with Brascan and Emera, it is reasonable to conclude that BFPC is able to obtain financing and carry on its business activities.

With respect to the following factors, adequate service, balance between customers and shareholders, and relationship with customers – criteria (2), (4) and (8) – we agree with the stipulating parties that these criteria need not be addressed here. We do not think these criteria apply because BFPC's activities in Vermont will be limited to those of a wholesale, FERC-regulated utility. These criteria were designed for and apply to public utility companies whose services are regulated by the Board and that have retail customers. Given the circumstances presented here, those particular criteria need not be reviewed.

In this docket, the Department and BFPC contend that *de minimus* regulation, *i.e.*, excusing BFPC from making financing filings under section 108, is appropriate. BFPC, the Department and other signatories have stipulated that requiring such filings would be consistent with the general good of the State of Vermont. We conclude that, under these specific circumstances, the use of the *de minimus* regulatory oversight for purposes of financing approval is warranted for the reasons set out below.

First, as the findings of fact indicate, BFPC is undertaking two activities in the State of Vermont; it plans to lease and operate the Dam, and to make wholesale sales, both of which are federally-regulated activities. BFPC is not a traditional, integrated public utility; it will be a competitive electricity supplier that will be competing against other competitive electricity suppliers. BFPC will have no retail customers in Vermont, nor will BFPC be able to look to Vermont ratepayers to receive any recovery of its costs.

Second, in similar cases in the past, the only State interest that the Board has identified with respect to a company like BFPC is whether the ultimate financing plan to be adopted by a company such as BFPC might somehow impair its ability to operate the Dam safely and in compliance with all applicable requirements.<sup>5</sup> In this regard, we recognize that the operation of the hydroelectric projects are subject to extensive environmental and safety regulations by FERC, and that FERC has the authority to require BFPC to take action in the event of its failure to comply with FERC regulations. Thus, the existing federal regulatory oversight would support the Board taking a *de minimus* approach under these circumstances.

Third, BFPC will be a competitive energy supplier and as such will require the flexibility to respond to market conditions. The Board has in the past recognized the appropriateness of imposing only *de minimus* regulation to competitive entities subject to its jurisdiction.<sup>6</sup>

In short, we conclude that a degree of discretion similar to that which we have applied in prior dockets should be applied here to BFPC. We further find that, on the basis of the evidence provided here, the proposed *de minimus* regulation of BFPC with regard to financing approval is consistent with the general good of the State of Vermont. We thus conclude that under these circumstances, *de minimus* regulation and blanket approval for purposes of financing is consistent with the general good of the State of Vermont, and that BFPC is not required to make any filings with the Board and Department pursuant to 30 V.S.A. § 108 for this transaction.

Furthermore, for the reasons set out above, we approve BFPC's petition pursuant to 30 V.S.A. § 231 for consent to lease and operate the Dam and for *de minimus* regulation during the term of the lease because it will promote the general good of the state. We, therefore, will issue a CPG to BFPC to lease and operate the Bellows Falls Dam, in the form attached hereto, appropriately limited to reflect the facts in this proceeding.

Because we find no valid state interest that warrants extensive state regulation, and furthermore, because the stipulation contains a similar proposal, BFPC's CPG shall contain the following requirements:

---

5. See e.g., Docket 7038, Order of 3/25/05; see also Docket 6039, Order of 6/29/98 at 19.

6. *Id.*

- (a) Any amendments of BFPC's FERC hydro license shall be filed with the Board and the Department;
- (b) Any FERC filings related to BFPC's market-based rates that are subject to FERC's jurisdiction under section 203 of the Federal Power Act shall be filed with the Board and the Department;
- (c) Any filings with respect to BFPC's Exempt Wholesale Generator status shall be filed with the Board and the Department;
- (d) BFPC shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081 et seq., to the extent that such requirements are not inconsistent with requirements imposed by FERC in connection with its regulation of the Hydro Facilities; and
- (e) BFPC is not required to make any filings with the Board or the Department pursuant to 30 V.S.A. § 108 governing financings.

**D. Petition of the Town of Rockingham and VHPA for a CPG and consent to purchase, own and lease the Bellows Falls Hydroelectric Generating Station**

**Analysis of Rockingham's Petition under the 30 V.S.A. § 248(b) Criteria**

In order to grant a CPG pursuant to 30 V.S.A. § 248, this Board is statutorily required to make findings based on the ten criteria enumerated in § 248(b).

**30 V.S.A. § 248(b)(1) - Orderly Development of Region**

**Findings**

38. The Dam is an existing facility; a change in ownership will not alter its impact on the region. Lamont pf. at 2; Barnett pf. at 3.

39. Operation of the Dam will not interfere with the orderly development of the region as it has been in place for over 70 years. Rockingham pet. at ¶ 9.

**Discussion**

Section 248(b)(1) requires (in relevant part) that this Board find, with regard to an in-state facility, that it:

will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.

Signatory parties to the stipulation maintain that the operation of the Dam meets the standard in this subsection of section 248. We agree. The Dam is an existing facility. Therefore, the impact it has on the region should not change if it continues to run as it has for many years. We also note that the Executive Director of the Windham Regional Commission, by letter of March 23, 2005, indicated that "the operation of the facilities as proposed will not interfere with the orderly development of the region."<sup>7</sup> We thus conclude that these transactions will not unduly interfere with the orderly development of the region.

### **30 V.S.A. § 248(b)(2) - Need for Present and Future Demand**

#### **Findings**

40. Renewable energy is an important part of Vermont's supply mix going into the future. Lamont pf. at 2.

41. The proposed transactions support the State's effort to meet the need for present and future demand for energy from environmentally sound, sustainable and renewable energy sources. Sayles pf. at 13.

42. The Dam is currently supplying a product that energy efficiency cannot supply. The Dam is a renewable resource priced in a stable manner. Lamont pf. at 2.

43. Renewable energy, such as that produced by the Dam, is by its very nature immune to fuel price volatility associated with fossil fuels. Renewable energy, to the degree it helps Vermont avoid purchases of fossil fuel, contributes to the state's energy independence and resource diversity. Tr. 5/3/05 at 36 (Silkman); *id.* at 86 (Behrns).

44. Efficiency improvements at the Dam will result in generation output exceeding historical output and will make available more power for sale to the market. *Id.* at 71-73 (Martin).

---

7. Letter of James P. Matteau, 3/23/05.

45. The investment in the facility is essentially a sunk cost and therefore demand in the future cannot be met by more cost-effective means. *Id.*; Rockingham pet. at ¶ 10.

### Discussion

Section 248(b)(2) of Title 30 requires that the Board find that the proposed project:

is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including but not limited to those developed pursuant to the provisions of sections 209(d), 218c, and 218(b) of this title.

The parties assert that the proposed transactions promote that the State's collective effort to meet the need for present and future demand for electric power from an environmentally sound source. The Dam has been meeting the demand for energy for over 70 years. Looking at the world around us now and into the future, we only see an increasing need for the kind of renewable energy produced by generation facilities such as this Dam. Its current output cannot be provided more cost-effectively or efficiently by other measures, including conservation, efficiency and load management. BFPC may also invest in efficiencies at the Dam that could result in the generation of incremental power.

BFPC will sell the existing power generated by the Dam, and any additional power that is generated through any additional efficiencies it realizes. This power will be sold to any purchaser within New England either through bilateral contractual arrangements or through spot sales in the wholesale power market. At the present time, BFPC has not committed to sell any of the power to Vermont utilities, although BFPC has indicated that it is interested in doing so. Thus there is no record evidence that the power to ultimately be generated by BFPC is needed to serve additional load in the state of Vermont.

As we explained in Docket 6545, however, this Board has also recognized that regional needs can meet the statutory test. We stated at that time:

The "general good of the state" standard includes a recognition of the value to Vermont of the benefits to the entire New England Power Pool, from which

Vermont purchases much of its power and upon which Vermont depends for reliability.<sup>8</sup>

Similarly, the Board concluded in Dockets 4622/4724 that the construction of a transmission interconnection between Hydro-Québec and the New England Power Pool met the criteria of section 248(b)(2), noting that "[a]s a state, we must bear a reasonable proportion of the region's responsibility in the provision of power."<sup>9</sup> We reach the same conclusion here. BFPC will sell its existing power and any additionally generated power to serve regional needs for electrical service. We conclude the transactions meet the requirements of section 248(b)(2). There is also nothing in the record that would suggest that the demand that the Dam's output power will serve can be met more cost effectively through demand-side management measures.

### **30 V.S.A. § 248(b)(3) - Stability and Reliability**

#### **Findings**

46. The electrical infrastructure in the region has evolved with this facility as an integral part of that infrastructure supplying stability and reliability benefits. Lamont pf. at 2.

47. As a wholly-owned subsidiary of Emera and Brascan, BFPC will have the financial resources to maintain the facility and to ensure continued operation on a daily basis. Change of ownership should not alter that contribution. *Id*; Martin pf. at 6; Martin reb. pf. at 8.

48. The Dam adds to system stability and reliability in the region. Rockingham pet. at ¶ 11.

49. BFPC is able to provide the expertise and working capital necessary to properly operate and maintain a FERC-licensed facility such as the Dam. Silkman pf. at 13; BFPC pet. at 4; Martin pf. at 4; Martin reb. pf. at 7.

#### **Discussion**

Section 248(b)(3) requires that we find that the transactions "will not adversely affect system stability and reliability." We conclude that the transactions will promote system stability and reliability in the region, as it ensures the Dam will be operated by capable, experienced

---

8. Docket 6545, Order of 6/13/02 at 106.

9. Dockets 4622/4724, Order of 2/25/83 at 18 (discussing HV/DC transmission line across northeastern Vermont).

operators. BFPC management has experience in operating FERC-licensed hydro-electric facilities. In addition, BFPC has the financial support of two large multi-national corporations with the resources to ensure the smooth operation of the facility.<sup>10</sup> The transactions will not adversely affect system stability and reliability.

### **30 V.S.A. § 248(b) 4 - Economic Benefit**

#### **Findings**

50. Continued operation of the Dam under the proposed terms and conditions will result in an economic benefit to the state and its residents. Findings 51-63, below.

51. The proposed transactions allow the town of Rockingham to acquire, at a minimal risk to Vermont residents, a reliable source of renewable energy generation. DPS exh. Cross 2 at 13.

52. Under existing law that requires the facility to remain listed and assessed for education property tax purposes, even if the facility is under municipal ownership, the State is held harmless by the proposed transactions. Tr. 5/2/05 at 19 (O'Keefe); 32 V.S.A. § 5404b(3).

53. The term of the lease is for an initial period of 14 years. At its option, BFPC has the right to extend the lease for four consecutive periods of 15 years each. In each case, the term of the lease shall be automatically extended unless BFPC provides written notice to Rockingham stating that it does not wish to extend the term of the lease. BFPC must provide this written notice no less than six months prior to the commencement date of the subsequent term. Upon notification, the lease shall expire on the day immediately preceding the commencement date of the subsequent term. Rockingham exh. 13 at Article 1.02.

54. Under the terms of the proposed transactions, BFPC will prepay rent in the amount of \$72,046,000. This amount represents the present value of the estimated net cash flow from the facility over the next 74 years. Tr. 5/2/05 at 129-131 (Silkman); Silkman pf. at 13.

55. In addition to the payment of approximately \$72 million, BFPC will pay on an annual basis the following amounts:

---

10. Martin pf. at 6.

Years 1-10	\$3.000 million
Year 11	\$3.030 million
Year 12	\$3.060 million
Year 13	\$3.091 million
Year 14	\$3.122 million
Years 15-74	An amount equal to 24% of the average annual revenues received by BFPC from the sale of the energy. <sup>11</sup>

Silkman pf. at 13.

56. Brascan and Emera, BFPC's owners, unconditionally guarantee the due, prompt and complete payment of the annual lease payments to the town of Rockingham. Rockingham exh.11 at 1.

57. The annual payments provide Rockingham and its residents with some certainty about the amount of funds that will be generated from the Dam's operation over the next 14 years. Barnett pf. at 9-10.

58. The proposed transactions will reduce the cost of future litigation over the property tax values of the facility, during the first fourteen years of the lease, potentially saving Rockingham approximately \$250,000 to \$300,000 every three years. Barnett pf. at 10; Behrns pf. at 10.

59. BFPC intends to make a long-term commitment to Vermont by hiring local residents, increasing capital investment in the Dam, and actively participating in civic duties in the Town. Tr. 5/3/05 at 50 (Martin); Martin pf. at 5.

60. The amount of the annual payments is subject to downward adjustments in the event the Dam experiences a short-term outage or reduction in output. Tr. 5/3/05 at 48-49 (Martin); Rockingham exh. 13, § 4.01, vii at 5.

61. During years 1 through 10, Rockingham's operational expenses such as funding schools and libraries, maintaining roads and fire and police services can be expected to increase. Tr. 5/2/05 at 218-220 (Silkman and Barnett).

---

11. The amount of the annual payment to the Town of Rockingham is to be computed according to the following formula: for each three-year period after year 14 of the term of the lease, the payment for each year during that three-year period will be equal to 24 percent of the product of the average annual generation at the Dam over the prior 10 years, multiplied by the average energy clearing price for the Vermont zone as published by the ISO-NE web site for the prior three-year period.

62. Due to the effects of inflation, the purchasing power of the \$3 million annual payment (2005 dollars) will deteriorate during years 1 through 10 of the proposed transactions. Tr. 5/02/05 at 219. (Silkman).

63. The proposed transactions contribute to the diversification of the ownership of the Connecticut River hydro-electric system among TC HydroNE, Rockingham and BFPC which may foster additional competition in the wholesale market for electricity and promote lower retail electric rates for Vermont consumers. DPS exh. Cross-2 at 13-14.

### **Discussion**

Section 248 criterion (b)(4) requires this Board to find that the proposed transactions will result in an economic benefit to the State and its residents. The parties contend that the proposed transactions will result in such an economic benefit, and we agree.

Ownership of the facility by the Town provides for the continued and safe operation of a large hydro-electric facility by BFPC which is backed by two financially strong Canadian corporations, Brascan and Emera, with established records in the electric power generation industry. Their active involvement in the region also has the potential to attract additional capital to the State. Through their jointly owned subsidiary, BFPC, these corporations have expressed their interest in making additional investments in the Dam as well as hiring local residents. BFPC has committed to actively participate in local civic organizations. These contributions should result in positive economic benefits to the State and ensure Vermonters that they will continue to enjoy the benefits of reliable energy generation from an environmentally sound resource.

The proposed transactions also help to stabilize an important source of funding to help pay for Rockingham's municipal services and its contribution to the statewide education fund. Although there is no evidence on the record of an explicit challenge to the current valuation, these transactions can be expected to help avoid the risk of such a challenge. If TC HydroNE were successful in reducing the property tax value of the Dam, Rockingham's tax revenue would decline substantially. Rather than incur the cost of defending its property tax values in Court, and risk losing a substantial portion of its tax revenue, Rockingham negotiated for a payment

schedule with the intention of stabilizing its revenue stream. The proposed transactions result in Rockingham receiving annual payments that are roughly equal to what it had been receiving in property taxes from USGenNE.

Having two other corporations, besides TC HydroNE, involved in the generation of electric power in the region will also diversify the ownership of a vital public resource. If TC HydroNE were successful in owning the Bellows Falls facility along with the other Connecticut River system dams, a significant amount of the region's electric power generating assets would remain concentrated in one company. Diversification of ownership of these assets will encourage competition in the wholesale markets, which may result in benefits to retail customers in the form of lower electricity rates.

The facet of the transaction that requires BFPC to prepay the entire lease, produces another benefit: Rockingham can avoid costs associated with financing these transactions. Had Rockingham or the State attempted to independently raise the capital necessary to purchase the Dam, it would have incurred substantial financing costs. In these proposed transactions, all of the additional costs of financing are incurred by BFPC.

We note here that some residents at the public hearing expressed concerns that the annual payments from BFPC during the first ten years of the lease agreement could potentially result in higher tax bills in the future due to the rising cost of providing municipal services. Although we share the concern that the annual payments will be worth less in the future years as a result of inflation, we are not in the position to compare alternative transactions. Our task is to rule only on the merits of the proposed transactions before us and not to determine if there could have been another proposal that would have been superior to the one which has been presented in this investigation.

Based on the record evidence, we conclude that the proposed transactions result in an economic benefit to the state and its residents. They also reduce the risk that Rockingham could become responsible for a substantial amount of funding to pay for town services and to pay into the statewide education fund if the property tax value of the facility were to be successfully challenged.

**30 V.S.A. § 248(b) 5 - Aesthetics****Findings**

64. A change in the ownership of the facility should have no material impact on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. Berhns pf. at 9; Rockingham pet. at 4.

**Discussion**

Under the Quechee analysis we must consider whether the transactions being proposed here will adversely impact the aesthetics of the Dam and if so whether that impact is undue.

We find that the proposed project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision.<sup>12</sup>

As required by this decision, it is first appropriate to determine if the impact of the project will be adverse. The project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine that such an impact would be "undue." Such a finding would be required if the project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if it would offend the sensibilities of the average person, or if generally available mitigating steps would not be taken to improve the harmony of the project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these standards should be significantly informed by the overall societal benefits of the project.<sup>13</sup>

The Dam has been in operation for over 70 years. Under these transactions there are no modifications being proposed to the Dam. The parties, including BFPC, also contend that a change in ownership will not have a material impact on the considerations provided in section 248(b)(5).

---

12. Quechee Lakes Corporation, #3W0411-EB and 3W0439-EB, dated January 13, 1986.

13. Docket 6884, Order of 4/21/04 at 20-21.

Based on the representations that the Dam will continue to operate without any material modifications, we conclude that the proposed transactions will have no undue adverse impact on the regions's aesthetics, historic sites, air and water purity, the natural environment and the public health and safety.

### **30 V.S.A. § 248(b) 6 - Least-Cost Planning**

#### **Findings**

65. Because BFPC is a wholesale utility that does not distribute electricity to the public, BFPC is not required to prepare or submit for approval an integrated resource plan. Likewise, because Rockingham will acquire and own the Dam, but not become a distribution utility, Rockingham is not required to prepare or submit for approval an integrated resource plan. Consequently, this criterion is not applicable. Rockingham pet. at ¶ 14; Lamont pf. at 2.

### **30 V.S.A. § 248(b)7 -Energy Plan**

#### **Findings**

66. The Twenty-Year Energy Plan encourages the development and use of renewable power and recognizes the benefits of owning the Connecticut River dams. *Id.* at 3.

67. The proposed transactions are consistent with the state's Twenty-year Energy Plan. *Id.*; Rockingham pet. at ¶ 15.

#### **Discussion**

Under section 248(b)7, the Board must conclude that the proposed transactions comply with the State's Twenty-Year Energy Plan.

The state electric energy plan recognizes the advantages of renewable power sources and the benefits to Vermont of ownership of this Dam. The parties state that the town's purchase of the facility is consistent with the State's energy plan. We agree, and thus conclude that these transactions are consistent with the current Twenty-Year Energy Plan.

**30 V.S.A. § 248(b) 8 - Facility Involving Resource Waters**

**Findings**

68. Because the Dam is located on the Connecticut River which has not been designated an outstanding resource water by the Vermont Water Resources Board, this criterion is not applicable. Behrns pf. at 9.

**30 V.S.A § 248(b) 9 - Solid Waste Management Plan**

69. Waste to energy facilities must demonstrate that they are included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a. Because the Dam is not a waste to energy facility, this criterion is not applicable. *Id.*

**30 V.S.A. § 248(b)10 - Existing Transmission Facilities**

**Findings**

70. The Dam has been in place for 70 years and is currently being economically served by transmission facilities. *Id.*; Rockingham pet. at 4.

**Discussion**

We conclude this criterion is met because the Dam has been in place for 70 years and is currently being economically served by transmission facilities. A change in ownership will not create any undue adverse effect on Vermont utilities or customers.

**Discussion – Rockingham Section 248 and Other Approvals**

In order to grant a CPG pursuant to 30 V.S.A. § 248, the Board is required to make findings based on the ten criteria enumerated in section 248(b). On the basis of the findings above, we conclude that the approval of these transactions will result in significant benefits to Rockingham and the State. They include: (1) tax stabilization; (2) avoidance of future litigation costs; (3) prepaid purchase price of a valuable asset without attendant financing costs; (4) procurement of a future income stream; (5) avoidance of power market participant risk; (6) avoidance of operational and capital risks; (7) guarantee of payments under the agreement; (8)

the potential to procure locally-generated power; (9) added diversification of generation ownership in the region; (10) minimal costs; and (11) no change in environmental impacts.

We note that Rockingham's witness, Mr. Silkman, stated that in discussions with BFPC, BFPC indicated that they would make the Dam available to the Town for inspections:

There is no right of entry in the lease that's provided for the town. Discussions with Bellows Falls Power Company have indicated that they would make the facility available for inspection and for tours and those kinds of activities.<sup>14</sup>

This testimony was unopposed. In our decision to grant the petition before us, we have relied upon this testimony, and the representation that Rockingham will, in fact, be able to conduct inspections of its property. Therefore, one of the conditions that we will impose on these transactions will be that Rockingham shall have the authority to, at its own expense, cause an inspection of the Dam at any time during the term of the Lease.

We thus conclude, based upon our review of the Stipulation and the evidence in support of it, that it would promote the general good of the State of Vermont to grant Rockingham a CPG pursuant to 30 V.S.A. §248, subject to the terms and conditions contained therein, including Rockingham's compliance with the voting requirement contained in 30 V.S.A. § 248( c).<sup>15</sup>

Rockingham is also seeking several other approvals. Under 30 V.S.A. § 108, for the Board to consent to any financing undertaken by a domestic corporation, the Board must determine that the financing is consistent with the general good of the state. Similarly, under 30 V.S.A. § 109, the Board may approve a proposed sale or lease of the assets of a company subject to Board jurisdiction only if it finds that the acquisition or sale of assets will promote the general good of the state.

With regard to section 108, in its stipulation with the parties, Rockingham has agreed to make all filings subject to section 108 with the Board. We accept the resolution and grant approval under section 108 subject to the condition that Rockingham will make all filings with the Board and Department pursuant to 30 V.S.A. § 108 for these transactions.

We also conclude that granting Rockingham a certificate of consent pursuant to

---

14. Tr. 5/2/05 at 71 (Silkman).

15. See discussion of section 248(c) below.

30 V.S.A. § 109 to lease the Dam to BFPC will promote the general good of the State of Vermont.

### Discussion Island Corporation

On May 13, 2005, Island filed Proposed Findings and a Brief in which it, among other things, asserts that the lease arrangement between Rockingham and BFPC does not adequately address potential physical risks of operating, maintaining and managing the Dam.<sup>16</sup> Island urges us, therefore, to impose several conditions upon approval of the transactions proposed in this Docket. According to Island, we should require:

Rockingham to enter into contractual arrangements with BFPC that provide the Town with proper and adequate management oversight of the facility and its operations.<sup>17</sup>

Rockingham, BFPC and TC HydroNE to enter into adequate arrangements to protect against these risks, including an operating and management agreement with the Town granting the Town auditing rights and oversight, as well as insurance or other instruments designed to secure operational performance and financial protection against such risks.<sup>18</sup>

According to Island, "given the nature and severity of the operating risks and the potential adverse impacts associated with them, the Board should not grant petitioners' request for *de minimus* regulation."<sup>19</sup>

No other party supports Island's position. Not only do other parties disagree with Island's characterization of the physical risks,<sup>20</sup> parties also indicate that there are a number of procedural flaws with Island's claims, including (a) Island has exceeded the scope of its intervention in this Docket, (b) Island had the opportunity to provide testimony on these issues, but failed to do so, (c) Island represented that it had reached agreement with (and received assurances from) BFPC concerning BFPC's willingness to take an assignment of the TC HydroNE - NEP Wholesale Supply Agreement Related to the Island Corporation Indenture.

---

16. Island Proposed Findings and Brief at 3.

17. *Id.*

18. *Id.*

19. *Id.* at 4.

20. See, e.g., DPS Reply to Island Corporation Proposed Findings, 5/13/05; Memorandum In Opposition to Proposed Findings and Brief of The Island Corporation, 5/13/05; Letter of Bellows Falls Power Company, 5/13/05.

Because we are not convinced by the merits of Island's arguments here, we do not address the parties' various procedural claims. As to the substance of Island's concerns, as we explain below, we do not find that there is sufficient evidence to justify imposing additional conditions upon these transactions.

We agree with the stipulating parties that, on balance, the risks have been fairly apportioned among the participants in these transactions, and that these address, in large part, the concerns raised by Island. For example, the lease between Rockingham and BFPC affords Rockingham notice rights as well as the rights of entry and inspection in the case of damage to the Dam. Specifically, Article 6.01 of the lease states that:

in case of damage to or destruction of the Property or any part thereof . . . Lessee will promptly give written notice thereof to Lessor . . . .<sup>21</sup>

Where subsequent restoration of damage to the Dam is undertaken, the lease also provides that the:

Lessor, its agents and permitted mortgagees, may, from time to time, inspect the restoration without notice in the event of an emergency or, in other cases, upon reasonable advance notice to Lessee during normal business hours.<sup>22</sup>

Rockingham, as co-licensee, also enjoys certain notice rights under the FERC license for the Dam.<sup>23</sup>

The record also indicates that operational performance is secured by BFPC's business incentive and also by FERC oversight:

Q. From a businessman's perspective it certainly wouldn't make sense to go to all the trouble to acquire a lease to operate this facility as a hydroelectric station only to let it sit idle; is that correct?

A. Well that's true, and it's very possible that letting it sit idle would put us in conflict with the terms and conditions of the FERC license thus putting us in non-compliance with FERC license.<sup>24</sup>

---

21. Rockingham exh. 13 at Article 6.01. *See also* Article 15.01(c) (notice rights in case of assignment of Lease).

22. *Id.*

23. Tr. 5/2/05 at 71-75 (Silkman); tr. 5/3/05 81 (Martin).

24. Tr. 5/3/05 at 50. (Martin).

Bellows Falls Power Company as the licensee is bound and responsible to maintain the operation in compliance with the FERC license terms and conditions, and it means that we simply cannot walk away from the dam site under those conditions. A lot of factors. If we want to decommission the facility, then it's  
(continued...)

Furthermore, we note that the physical risk to which Island refers is also addressed by provisions of the lease in Article 5.01 that require casualty and liability insurance.<sup>25</sup> Although Island filed proposed findings, we did not find them sufficiently supported by the record. Therefore, we conclude that because Island has provided us with no basis upon which to alter the conclusions that BFPC's activities are sufficiently regulated as a FERC-regulated wholesale utility, we deny Island's request with regard to *de minimus* regulation of BFPC.<sup>26</sup>

### 30 V.S.A. § 248(c) - Required Vote and Assessment of Risks and Benefits

In addition to demonstrating that its proposed transactions meet the standards set out in section 248(b), Rockingham is required by section 248(c) to conduct a municipal vote on these transactions, and to provide its voters with a written assessment of associated risks and benefits as found by the Board. The plain language of section 248(c) states in pertinent part:

In the case of a municipal plant . . . any proposed investment, construction or contract which is subject to this section shall be approved by a majority of the voters of a municipality . . .<sup>27</sup>

In a stipulation filed with the Board on May 13, 2005, Rockingham agreed to hold a vote pursuant to § 248(c).

In addition to requiring a vote, the statute also plainly says that voters must be provided a "written assessment of the risks and benefits . . . which were identified by the public service board in the certificate issued under this section . . ."<sup>28</sup>

While not endeavoring to identify every conceivable risk or benefit, our analysis proceeds from the assumption that in discharging its obligation to Rockingham's voters under § 248(c), the Board may legitimately exercise its discretion to focus on those risks and benefits that we

---

24. (...continued)

a very lengthy process taking two to four years and generally you need to petition the FERC to surrender your license before that occurs. The town since it's a co-licensee would need to be signatory to that petition to decommission the facility if you will and surrender the license. It is very costly.

*Id.* at 81 (Martin).

25. *Id.* at Article 5.01.

26. *Id.* at 4.

27. 30 V.S.A. § 248(c).

28. *Id.* Additionally, the statute states that the "municipal department or cooperative also may provide to the voters an assessment of any other risks and benefits." *Id.*

conclude are material and could reasonably be expected to be weighed in the deliberations of Rockingham's voters.

We note that, apart from a clear legislative mandate to conduct a vote and to provide voters with an assessment of risks and benefits, there are several independent and significant reasons for providing Rockingham voters with a written assessment of these transactions. The record in this investigation suggests that there may have been, and still may be, some amount of voter confusion regarding these transactions. Rockingham has acknowledged that the proposition submitted to the voters for approval in November of 2004, was incomplete, and that the terms of the transaction have changed materially since then.<sup>29</sup> We want to emphasize that we have seen nothing to suggest that any voter confusion is due to an oversight by the Town. The record reflects that Rockingham appears to have diligently engaged the public in order to both provide public education and to take public comment on this proposal. The fact remains, however, that this transaction has evolved since its inception, and it is very likely that Rockingham voters who avail themselves of the opportunity to review the Board's Order in this matter will be better able to exercise a more informed decision.

We set out a list of the risks and benefits below. Note also that we include "considerations," *i.e.*, a short description of factors mitigating against each benefit and risk. We include considerations in order to provide a broader context within which to better assess the implications of each benefit and risk.

### **The Benefits to be Derived from the Transactions**

#### ***Benefit #1***

As a result of these transactions Rockingham will achieve the equivalent of a 10-year tax stabilization plan. Lamont pf. at 5-6.

#### **Considerations:**

- The annual fixed payments due to Rockingham for the first 10 years of the Lease (with 1 percent guaranteed annual increases for years 11-14) reflect the current taxes on the

---

29. Tr. 05/02/05 at 100 (Silkman); Barnett pf. at 8. As late as the Board's public hearing in April of 2005, residents of Rockingham were still asking questions about these transactions that reflected expectations related to a different, earlier version of the transaction. *Id.* at 56-57, 95 (Silkman).

Dam, an amount that is derived from the 2001 court-assessed valuation of \$100,419,000. Barnett reb. pf. at 2.

- In view of the \$72 million purchase price negotiated by the parties for these transactions, there is a possibility that in future property tax valuations, the Dam would be valued significantly lower than \$100 million. Barnett reb. pf. at 3; DPS exh. Cross-2 at 14-15.
- If the Dam were to be valued at less than \$100 million and education and municipal spending remains unchanged, then, Rockingham would face the possibility of a steep decline in the property tax revenues it would be able to collect from the Dam's owners. Barnett reb. pf. at 3.
- The amount of the annual payment is subject to downward adjustments in the event that the Dam experiences a short-term outage or reduction in output. Rockingham exh. 13, section 4.01.
- By choosing the fixed payments in lieu of taxes, the Town forecloses the opportunity for the duration of the lease to pursue traditional property tax assessments based on any higher valuations that might be appropriate in the future. The Town has stated that the formula that takes effect in year 15 of the lease is intended to mimic the amount of future property tax assessments that would flow from changes in the wholesale market. Lamont pf. at 4; tr. 5/2/05 at 49 (Silkman).

### ***Benefit #2***

As a result of these transactions, Rockingham will eliminate the future risk of expenses associated with possible recurrent litigation concerning the valuation of the Dam for property tax purposes. Behrns pf. at 10; Silkman pf. at 19; Barnett reb. pf. at 3-4.

### **Considerations:**

- Reducing the risk of future litigation over property values may allow Rockingham to realize substantial savings in administrative costs and litigation expenses. DPS exh. Cross-3 at 3.
- In recent years, the costs of litigations over property valuation have been in the range of six figures for each dispute. Barnett reb. pf. at 3-4.

### ***Benefit #3***

As a result of these transactions, Rockingham will acquire immediate legal ownership of the Dam – an asset presently estimated to be worth at least \$72 million – without having to pay cash or obtain financing from a lender. This is the economic equivalent of the Town receiving \$72 million in hand today instead of waiting to collect \$180 million over 74 years while bearing all operational and capital risks that could arise. Lamont pf. at 5-6. Silkman pf. at 19; tr. 5/2/05 at 132-133 (Silkman).

**Considerations:**

- If Rockingham were to finance the purchase of the Dam, it would need to incur significant interest expenses and transaction costs, e.g., closing fees to finance such a purchase. Lamont pf. at 5.
- If these transactions generate any transfer taxes, these will be defrayed by BFPC. Silkman pf. at 16.

**Benefit #4**

As a result of these transactions, in 74 years, Rockingham will enjoy all rights to the income stream generated by sales of the power output of the Dam. Silkman pf. at 19.

**Considerations:**

- It is not known what the condition of the Dam will be 74 years from now. Tr. 5/2/05 at 56-59 (Silkman).
- Rockingham has reviewed engineering studies that demonstrate the Dam is presently sound, but no engineering opinion has been obtained as to what the condition of the Dam is likely to be 74 years from now. *Id.*
- However, as part of its due diligence review in connection with these transactions, BFPC has examined engineering data concerning the Dam and is satisfied as to its condition. Tr. 5/3/05 at 79 (Martin).
- As a condition of Board approval, Rockingham may, at its own expense, inspect the Dam.
- Finally, the Dam is inspected annually by FERC. *Id.*

**Benefit #5**

As a result of these transactions, Rockingham will have an opportunity to purchase, at the prevailing market rate, up to fifteen percent of the Dam's energy output. Rockingham exh. 10 at § 2.7; Barnett pf. at 9; Behrns pf. at 7; tr. 5/2/05 at 95 (Silkman).

**Considerations:**

- Absent these transactions, Rockingham currently has no agreement providing access for itself to a share of the Dam's clean, renewable energy. Tr. 5/2/05 at 96, 144 (Silkman).
- Additionally, because this power is generated locally, Rockingham may fairly expect to pay minimal transmission charges for the power. Tr. 5/3/05 at 70 (Martin).

**Benefit #6**

As a result of these transactions, Rockingham will be able to own a power producing asset without having to bear the risk of actively participating in the volatile wholesale power markets to realize an income from selling the output of the Dam. Barnett pf. at 9; Lamont pf. at 4; DPS exh. Cross-2 at 8; Martin reb. pf. at 6.

**Considerations:**

- Under the Lease, the Town has a one-time option in year 44 to buy out BFPC. Silkman pf. at 14-15.
- If the town were dissatisfied with BFPC's performance, or if there are drastic changes in the power market that make the terms of the Lease going forward uneconomic, the Town can extricate itself from its undertaking with BFPC. Silkman pf. at 15; DPS exh. Cross-2 at 12-13.

**Benefit #7**

As a result of these transactions, the responsibilities and liabilities associated with operating and maintaining the Dam will be borne by Rockingham's tenant, BFPC. Silkman pf. at 13. Rockingham exh.13; DPS exh. Cross-2 at pp. 2, 9 and 13.

**Considerations:**

- BFPC is able to provide the expertise and working capital necessary to properly operate and maintain a FERC-licensed facility such as the Dam. Silkman pf. at 13; BFPC pet. at 4; Martin pf. at 4; Martin reb. pf. at 7.
- The annual operational expense alone of the Dam is estimated to be approximately \$1.5 million. DPS exh. Cross-2 at p. 9.
- The annual capital expenditures are estimated to be \$500,000. *Id.*
- BFPC will assume financial responsibility for capital expenditures required to operate and maintain the Dam during the term of the Lease, except in the case of capital investments that are expected to have a useful life beyond the term of the Lease. In that case, the cost of such capital investments will be allocated between BFPC and Rockingham according to the terms of Article 17 of the Lease. *Id.* at 9.
- Finally, the cost of proceedings before FERC to relicense the plant in 2018 has been estimated to be \$3 million and will be borne by BFPC unless it chooses not to exercise its option to renew the Lease at that time. *Id.* at 11.

- If BFPC is not the Dam tenant at the time of relicensing in 2018 and assuming no other tenant has been found, then it is possible that the Town would have to bear the estimated \$3 million relicensing costs. DPS exh. Cross-4 at 7-8.
- However, under such a scenario, Rockingham would also have the benefit of the Dam's revenue to defray any relicensing expense. *Id.* at 7.

**Benefit #8**

As a result of these transactions, BFPC's payment obligations are guaranteed in full by its corporate parents, Brascan Power Inc. and Emera Inc. Rockingham exh. 11; tr. 5/2/05 at 164-165 (Silkman).

**Considerations:**

- The payment guaranty included in these transactions ensure that Rockingham will continue to receive the monies it is due in lieu of property taxes from BFPC even in the event BFPC should become bankrupt. *Id.* at 164-166 (Silkman).
- This is an element of direct financial protection Rockingham did not have in relation to USGenNE, the previous owner of the Dam. *Id.* at 167 (Silkman).

**The Risks Associated with these Transactions**

**Risk #1**

As a result of these transactions, it is possible that Rockingham may receive fixed payments in lieu of property taxes from the Dam's owners that amount to less than what the Town might have collected under the traditional property tax system based on Grand List valuations. Lamont pf. at 4- 5.

**Considerations:**

- It is possible that the value of the Dam will increase during the period when it is under lease to BFPC, and that, therefore, this will prevent Rockingham from capturing the benefit of such changes through its property tax base. *Id.* at 6.
- Conversely, these transactions insulate Rockingham from tax revenue reductions in the event the valuation of the Dam goes down, whether due to an adverse litigation outcome or a downward trend in the power market. *Id.* at 4; Barnett reb. pf. at 3.
- This risk is mitigated by the fact that beginning in year 15 of the Lease, the Town is entitled to receive payments derived as a percentage of the average annual revenues received by BFPC from the sale of power generated by the Dam. Silkman pf. at 13.

- This also means that after year 15, the Town will share automatically in any upswings in power market prices without having to incur the expense of conducting a valuation study of the Dam. Tr. 5/2/05 at 48-50 (Silkman).

**Risk #2**

As a result of these transactions, no additional property taxes can be assessed against the Dam to augment the payments due under the Lease to help cover any tax revenue shortfall that may arise during the Lease should Rockingham's revenue requirements increase, whether due to rising administrative costs or taxes imposed by the state. Behrns pf. at 9-10; Barnett reb. pf. at 4; DPS exh. Cross-2 at 12; tr. 5/2/05 at 125-126 (Silkman).

**Considerations:**

- If power markets go up, then the Town will share in that upside as of year 15 of the lease. Rockingham exh.13; tr. 5/2/05 at 48-50 (Silkman).
- Meanwhile, the Town's taxpayers will remain insulated from the adverse effects of any drop in the Dam's value that could occur during a period when the Town's revenue requirements might be on the rise. Barnett reb. pf. at 3; Rockingham exh. 4 at 6.

**Risk #3**

As a result of these transactions, there is no guarantee that BFPC will operate the Dam for the next 74 years because BFPC may choose not to renew the Lease beginning in 2018. Rockingham-13.

**Considerations:**

- BFPC retains the option to not renew the Lease in 2018. It is possible that BFPC will not renew the Lease in the event that FERC declines to relicense the Dam in 2018. *Id.*; tr. 5/3/05 at 52 (Martin).
- If so, it is possible the Town would have to make a payment to BFPC to account for the balance of BFPC's \$72 million advanced rent payment. DPS exh. Cross-2 at 2.
- In no event, however, would this payment exceed the economic value of the Dam that the Town could expect to realize at the time of the buy-out. *Id.* at 3-4, and 6.
- This possibility is remote because FERC is highly likely to relicense the Dam in 2018. Tr. 5/3/05 at 43-44 (Martin).
- Furthermore, BFPC has expressly stated a firm intention to renew the Lease and to initiate the process of relicensing as soon as possible in order to promptly identify and resolve any issues that may arise during the relicensing process. Tr. 5/3/05 at 43-44 and 52 (Martin).

**Risk #4**

As a result of these transactions, there is no guarantee that BFPC will be the tenant for the duration of the lease because BFPC retains the option to assign the Lease to another qualified operator. Rockingham exh.13 at Article 15.01(a)(ii).

**Considerations:**

- If BFPC were to assign the Lease to another operator, its successor would have to be approved by FERC and the Vermont Public Service Board. BFPC exh. D; 30 V.S.A. § 109.
- Moreover, Rockingham has an opportunity under the Lease to object to BFPC's choice of assignee. Rockingham exh.13 at Article 15.01.

**Risk #5**

As a result of these transactions, Rockingham's payments from BFPC could go down should damage occur to the Dam. Tr. 5/3/05 at 49 (Martin).

**Considerations:**

- Outages due to damage to the Dam are likely to be temporary because BFPC has a strong business incentive to restore the facility to full operation as soon as practicable. *Id.* at 50-51 (Martin).
- Furthermore, Rockingham has a specified right under the Lease to inspect the progress of repairs and therefore will be able to monitor the adequacy of BFPC's response to any damage event. Tr. 5/2/05 at 73 (Silkman); Rockingham exh. 13.
- BFPC is not free to simply abandon operation of the plant. It would first be required to petition, and obtain permission to do so from FERC. Tr. 5/3/05 at 81 (Martin).

**Risk #6**

As a result of these transactions, it is possible that Rockingham's payments from BFPC could go down should BFPC decide to keep the Dam idle. Tr. 5/3/05 at 49 (Martin).

**Considerations:**

- BFPC's discretion to keep the Dam idle is limited by its FERC license. *Id.* at 50 (Martin).
- BFPC cannot leave the plant idle without good reason as this would risk a license violation. *Id.*
- Such a violation, in turn, could give rise to a claim for damages by Rockingham for breach of the Lease and could trigger Rockingham's right to terminate the lease. Rockingham exh.13 at Articles 11.01 and 11.06; Silkman pf. at 13.

- BFPC could not receive permission to abandon operation of the Dam without the written consent of the Town as co-licensee of the Dam. Tr. 5/3/05 at 81 (Martin).

**Risk # 7**

As a result of these transactions, Rockingham will become the legal owner of the Dam, which includes legally assuming the physical risks of ownership. Rockingham exh. 10 at 6; DPS exh. Cross-2 at p 8.

**Considerations:**

- The physical risks of ownership of the Dam include: catastrophic failure of the Dam, canal, powerhouse or other physical structure; catastrophic failure of major mechanical components such as generators, transformers, turbines, penstocks or other operational components; risks associated with weather or natural disasters; and, as a result of any of these events, the need for significant capital upgrades. *Id.*
- The risk of ownership will pass to Rockingham as a function of its purchase of the property under the sale agreement. Rockingham exh. 10 at 6; Silkman pf. at 12.
- However, the Lease between Rockingham and BFPC shifts the management and impact of these risks from Rockingham to BFPC for the duration of the lease. DPS exh. Cross-2 at 9; Rockingham exh. 13 at Articles 5.01; 6.01; 8.01 and 14.01; Silkman pf. at 13-14.
- These transactions impose all burden of monitoring, assessing and averting these risks on to BFPC, an entity with the requisite operational expertise and capital resources to manage these risks competently. Rockingham exh.13; Martin pf. at 4; Martin reb. pf. at 7; BFPC pet. at 4; DPS exh. Cross-2 at 9 and 13.

**The Stipulation**

71. On May 13, 2005, the Department, VHPA, Rockingham, the Village, BFPC and TC HydroNE submitted a Stipulation and Agreement ("Stipulation"). Stipulation, May 13, 2005.

72. The Department agrees the sale of the Dam by TC HydroNE to VHPA, and VHPA's acquisition of the Dam will promote the general good of the State of Vermont. *Id.* at 7.

73. The Department agrees that granting VHPA a CPG to acquire and transfer the Dam will promote the general good of the State of Vermont. *Id.*

74. The Department agrees that granting Rockingham a CPG to acquire and own the Dam will promote the general good of the State of Vermont, subject to Rockingham's compliance with the section 248 (c) voting requirements. *Id.* at 8.

75. The Department agrees that granting Rockingham a COC to lease and operate the Dam to BFPC will promote the general good of the State of Vermont. *Id.*

76. The Department agrees that granting BFPC a CPG to operate the Dam will promote the general good of the State. *Id.*

77. The Department agrees that, due to the limited activities to be undertaken by BFPC in Vermont, *de minimus* regulation of BFPC is appropriate. *Id.*

78. The Department agrees that VHPA and BFPC are not required to make any filings with the Board and Department pursuant to 30 V.S.A. § 108 for this transaction. *Id.*

79. The Department agrees that because VHPA, the Town and BFPC will not be engaged in retail sales or otherwise operating as a public service company in Vermont, each of their CPGs should contain the following requirements only:

- (a) Any amendments of Rockingham or BFPC's FERC hydro licenses shall be filed with the Board and the Department.
- (b) Any filings related to BFPC's market-based rates that are subject to the FERC's jurisdiction under the Federal Power Act shall be filed with the Board and the Department.
- (c) Any filings with respect to BFPC's Exempt Wholesale Generator status shall be filed with the Board and the Department.
- (d) BFPC shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081 et. seq., to the extent that such requirements are not inconsistent with requirements imposed by FERC in connection with its regulation of the Dam.
- (e) VHPA and BFPC are not be required to make any filings with the Board or the Department pursuant to 30 V.S.A. § 108 governing financings.
- (f) Rockingham shall be required to make filings with the Board and the Department pursuant to 30 V.S.A. § 108 governing financings.
- (g) The Town agrees to hold a vote pursuant to the requirements of § 248 (c) to allow the Town's voters to decide whether the Town should consummate the sale now due to close no later than October 3, 2005.

*Id.*

80. The signatory parties urge the Board to:

- Find that the sale of the Dam by TC HydroNE to VHPA, and VHPA's acquisition of the Dam, will promote the general good of the State of Vermont.
- Find that the proposed transfer by VHPA of the Dam to Rockingham and the Town's ownership and lease of the Dam to BFPC will promote the general good of the State of Vermont.
- Find that the proposed lease of the Dam by BFPC and its operation will promote the general good of the State of Vermont.
- Determine that, due to the limited activities to be undertaken by BFPC in Vermont, *de minimus* regulation of BFPC is appropriate.
- Approve the transfer of the Dam from TC HydroNE to VHPA.
- Approve the transfer of the Dam by VHPA to Rockingham.
- Issue a CPG pursuant to §248 authorizing VHPA to acquire and own the Dam subject to the conditions set forth herein.
- Issue a CPG pursuant to §§ 248 and 604(d) authorizing Rockingham to acquire and own the Dam subject to the conditions set forth herein.
- Issue a COC pursuant to § 109 authorizing Rockingham to lease the Dam to BFPC subject to the conditions set forth herein.
- Issue a CPG to BFPC pursuant to § 231 authorizing BFPC to operate the Dam pursuant to the lease with Rockingham subject to the conditions set forth herein.

*Id.* at 8-9

81. The parties recommend and request that the Board enter its final order approving this Stipulation in its entirety, without modification, as the full and final resolution of all issues in this proceeding. *Id.* at 9.

82. If the Board does not approve the Stipulation and Agreement in its entirety, without modification, the Stipulation shall be null and void, or no further force and effect and all negotiations and proceedings connected therewith shall be without prejudice to the rights of the Department, the Town, VHPA, BFPC and TC HydroNE. *Id.*

83. The parties deem the Stipulation to be fair and reasonable as a compromise and have arrived at the Stipulation in arms length negotiations taking into account all relevant factors. The parties agree that the Stipulation relates only to the parties and shall not be construed by any party or tribunal as having precedential or any other impact on any other proceedings involving a different project, different subject matter, other utilities, regulated entities or parties. *Id.*

84. Notwithstanding anything to the contrary herein, TC HydroNE as the owner of the Dam, has substituted itself for USGenNE as the petitioner in connection with USGenNE's pending February 4, 2005, petition in this docket and agrees that it will continue to conduct itself in good faith in relation to the performance of the terms of the Option Agreement to transfer the Dam to VHPA, as set forth and subject to the Option Agreement. The Stipulation shall not alter in any way the obligations of the parties and their successors under the Option Agreement, the PSA, or under any other contract or agreement. *Id.* at 9-10.

85. The Department will support issuance of the orders and findings of the Board specified in the stipulation subject to its obligations under Title 30 of the Vermont Statutes Annotated. *Id.* at 10.

#### **Discussion Stipulation**

We have reviewed the Stipulation and the evidence in support of it. We hereby approve it in its entirety.

#### **IV. DISCUSSION AND CONCLUSIONS**

We thus conclude, based on the findings set forth above, that the transactions we have reviewed here will promote the public good. It is important now that Rockingham voters have an opportunity to decide for themselves whether to proceed with the acquisition of the Dam

VI. ORDER

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

1. TransCanada Hydro Northeast Inc. is hereby authorized pursuant to 30 V.S.A. § 109 to transfer the Bellows Falls Project to the Vermont Hydroelectric Power Authority.
2. The sale of the Bellows Falls Hydroelectric Generating Station by TransCanada Hydro Northeast Inc. to the Vermont Hydroelectric Power Authority will promote the general good of the state of Vermont and, therefore, a Certificate of Consent shall be issued pursuant to 30 V.S.A. §109.
3. The Vermont Hydroelectric Power Authority is hereby authorized pursuant to 30 V.S.A. §§ 248, 8055(2) and (13) to accept transfer from TransCanada Hydro Northeast Inc. of the Bellows Falls Project.
4. The transfer of the Bellows Falls Hydroelectric Generating Station by the Vermont Hydroelectric Power Authority to the Town of Rockingham will promote the general good of the state of Vermont; Vermont Hydroelectric Power Authority is hereby authorized pursuant to 30 V.S.A. §§ 109, 8055(2) and (13) to undertake the transfer and, therefore, a Certificate of Consent shall be issued pursuant to 30 V.S.A. § 109.
5. The Town of Rockingham is hereby granted a Certificate of Public Good pursuant to 30 V.S.A. § 248 subject to the terms and conditions contained therein to acquire, own and operate by lease the Bellows Falls Project.
6. The Town of Rockingham is hereby ordered to submit the proposed acquisition and lease of the Bellows Falls Project for approval by its voters pursuant to 30 V.S.A. §2 48(c), and shall provide these voters with a written assessment of the risks and benefits of the agreements to acquire and lease the Dam which were identified by this Board in this Order and which will be incorporated in the Town's § 248 Certificate of Public Good.
7. Subject to the approval of the voters of the Town of Rockingham, the transfer of the Bellows Falls Hydroelectric Generating Station by the Town of Rockingham to the Bellows Falls Power Corporation will promote the general good of the state of Vermont, and the Town of

Rockingham is hereby authorized pursuant to 30 V.S.A. § 109 to undertake the transfer and, therefore, a Certificate of Consent shall be issued pursuant to 30 V.S.A. §109.

8. The Bellows Falls Power Corporation shall be granted a Certificate of Public Good pursuant to 30 V.S.A. § 231 subject to the terms and conditions contained therein to lease and operate the Bellows Falls Project.

9. The Stipulation between the Vermont Department of Public Service, the Vermont Hydroelectric Power Authority, the Town of Rockingham, the Bellows Falls Village Corporation, Bellows Falls Power Company, LLC, and TransCanada Hydro Northeast Inc., is approved, with the understanding that Rockingham, as Lessor, may, at its expense, cause an inspection of the Dam to occur at any time during the term of the lease.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of June, 2005.

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

OFFICE OF THE CLERK

FILED: June 6, 2005

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: Clerk@psb.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.*

**Appendix A — Parties**

Vermont Department of Public Service  
represented by: June Tierney, Esq.

Vermont Agency of Natural Resources  
represented by: David Englander, Esq.

The Town of Rockingham  
represented by: Richard H. Saudek, Esq.  
Cheney, Brock & Saudek, P.C.

Bellows Falls Power Company, L.L.C.  
represented by: Gerald R. Tarrant, Esq.  
Tarrant Marks & Gillies

Vermont Hydroelectric Power Authority  
represented by: Jeffrey J. McMahan, Esq.  
Molly K. Lebowitz, Esq.  
Dinse, Knapp & McAndrew, P.C.

Bellows Falls Village Corporation  
represented by: L. Raymond Massucco, Esq.  
Massucco Law Offices, P.C.

TransCanada Hydro Northeast Inc.  
represented by: Nancy S. Malmquist, Esq.  
Matthew K. Phillippo, Esq.  
Downs Rachlin Martin, PLLC

The Island Corporation  
represented by: Kimberly K. Hayden, Esq.  
Primmer & Piper, P.C.

Green Mountain Power Corporation  
represented by: Peter H. Zamore, Esq.  
Benjamin Marks, Esq.  
Sheehey Furlong & Brehm, P.C.

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7047

Petitions of: (1) TransCanada Hydro Northeast )  
Inc. for consent to transfer its Bellows Falls )  
Project to the Vermont Hydroelectric Power )  
Authority; (2) Town of Rockingham and )  
Vermont Hydroelectric Power Authority for )  
certificates of public good and consent to )  
purchase, own, and lease the Bellows Falls )  
Hydroelectric Generating station; and (3) )  
Bellows Falls Power Company for approval to )  
operate the Bellows Falls Hydroelectric )  
Generating Station in Bellows Falls, Vermont, )  
and for *de minimus* regulation )

Entered: 6/6/2005

**CERTIFICATE OF PUBLIC GOOD**  
**ISSUED PURSUANT TO 30 V.S.A. §§ 231 & 248**

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont on this date finds and adjudges that the issuance of a Certificate of Public Good ("Certificate") to the Town of Rockingham, Vermont ("Rockingham") to acquire and own the Bellows Falls Hydroelectric Generating Station (the "Dam") in Vermont will promote the general good of the State of Vermont. This Certificate is subject to the following conditions:

1. Any amendments of Rockingham and Bellows Falls Power Company's ("BFPC") Federal Energy Regulatory Commission ("FERC") license for the Dam shall be filed with the Board and the Vermont Department of Public Service ("Department");
2. Rockingham and BFPC shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081 *et seq.*, to the extent that such requirements are not inconsistent

with requirements imposed by FERC in connection with its regulation of the hydro facilities;

3. Rockingham shall make filings with the Board and the Department pursuant to 30 V.S.A. § 108 governing financings associated with the Dam;

4. Neither this Certificate nor the Dam may be transferred without the prior consent of the Public Service Board;

5. Rockingham shall hold a vote pursuant to the requirements of 30 V.S.A. § 248 (c) to allow Rockingham's voters to decide whether Rockingham should consummate the sale now due to close no later than October 3, 2005.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of June, 2005.

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

OFFICE OF THE CLERK

FILED: June 6, 2005

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: Clerk@psb.state.vt.us)*

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7047

Petitions of: (1) TransCanada Hydro Northeast )  
Inc. for consent to transfer its Bellows Falls )  
Project to the Vermont Hydroelectric Power )  
Authority; (2) Town of Rockingham and )  
Vermont Hydroelectric Power Authority for )  
certificates of public good and consent to )  
purchase, own, and lease the Bellows Falls )  
Hydroelectric Generating station; and (3) )  
Bellows Falls Power Company for approval to )  
operate the Bellows Falls Hydroelectric )  
Generating Station in Bellows Falls, Vermont, )  
and for *de minimus* regulation )  
)

Entered: 6/6/2005

**CERTIFICATE OF PUBLIC GOOD**  
**ISSUED PURSUANT TO 30 V.S.A. § 231**

IT IS HEREBY CERTIFIED that the Public Service Board of the State of Vermont on this date finds and adjudges that the issuance of a Certificate of Public Good ("Certificate") to the Vermont Hydroelectric Power Authority ("VHPA") to acquire the Bellows Falls Hydroelectric Generating Station (the "Dam") in Vermont will promote the general good of the State of Vermont. This Certificate is subject to the following conditions:

1. VHPA is not required to make any filings with the Public Service Board or the Vermont Department of Public Service pursuant to 30 V.S.A. § 108 governing financings; and
2. Neither this Certificate nor the Dam may be transferred without the prior consent of the Public Service Board.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of June, 2005.

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

OFFICE OF THE CLERK

FILED: June 6, 2005

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: Clerk@psb.state.vt.us)*

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7047

Petitions of: (1) TransCanada Hydro Northeast )  
Inc. for consent to transfer its Bellows Falls )  
Project to the Vermont Hydroelectric Power )  
Authority; (2) Town of Rockingham and )  
Vermont Hydroelectric Power Authority for )  
certificates of public good and consent to )  
purchase, own, and lease the Bellows Falls )  
Hydroelectric Generating station; and (3) )  
Bellows Falls Power Company for approval to )  
operate the Bellows Falls Hydroelectric )  
Generating Station in Bellows Falls, Vermont, )  
and for *de minimus* regulation )

Entered: 6/6/2005

**CERTIFICATE OF PUBLIC GOOD**  
**ISSUED PURSUANT TO 30 V.S.A. § 231**

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont on this date finds and adjudges that the issuance of a Certificate of Public Good ("Certificate") to Bellows Falls Power Company ("BFPC") to lease and operate the Bellows Falls Hydroelectric Generating Station (the "Dam") in Vermont will promote the general good of the State of Vermont. This Certificate is subject to the following conditions:

1. Any amendments of the Town of Rockingham and BFPC's Federal Energy Regulatory Commission ("FERC") license for the Dam shall be filed with the Board and the Vermont Department of Public Service ("Department");
2. Any FERC filings related to BFPC's market-based rates that are subject to FERC's jurisdiction under Section 203 of the Federal Power Act shall be filed with the Board and the Department;

3. Any filings with respect to BFPC's Exempt Wholesale Generator status shall be filed with the Board and the Department;

4. BFPC shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081 *et seq.*, to the extent that such requirements are not inconsistent with requirements imposed by FERC in connection with its regulation of the hydro facilities;

5. BFPC is not required to make any filings with the Board or the Department pursuant to 30 V.S.A. § 108 governing financings;

6. The Town of Rockingham, as Lessor, may, at its expense, cause an inspection of the Dam to occur at any time during the term of the lease;

7. Neither this Certificate nor the Dam may be transferred without the prior consent of the Public Service Board.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of June, 2005.

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

OFFICE OF THE CLERK

FILED: June 6, 2005

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: Clerk@psb.state.vt.us)*

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7047

Petitions of: (1) TransCanada Hydro Northeast )  
Inc. for consent to transfer its Bellows Falls )  
Project to the Vermont Hydroelectric Power )  
Authority; (2) Town of Rockingham and )  
Vermont Hydroelectric Power Authority for )  
certificates of public good and consent to )  
purchase, own, and lease the Bellows Falls )  
Hydroelectric Generating station; and (3) )  
Bellows Falls Power Company for approval to )  
operate the Bellows Falls Hydroelectric )  
Generating Station in Bellows Falls, Vermont, )  
and for *de minimus* regulation )

**CERTIFICATE OF CONSENT FOR LEASE OF ASSETS**  
**ISSUED PURSUANT TO 30 V.S.A. § 109**

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont has this date found and adjudged that the lease of the Bellows Falls Hydroelectric Generating Station (the "Dam") of the Town of Rockingham, Vermont, to Bellows Falls Power Company, LLC, will promote the general good of the State of Vermont, and the Board hereby consents to said lease.

Petitioners shall file this Certificate of Consent with the Vermont Secretary of State, pursuant to 30 V.S.A. § 109.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of June, 2005.

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

OFFICE OF THE CLERK

FILED: June 6, 2005

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: Clerk@psb.state.vt.us)*

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7047

Petitions of: (1) TransCanada Hydro Northeast Inc. )  
for consent to transfer its Bellows Falls Project to )  
the Vermont Hydroelectric Power Authority; (2) )  
Town of Rockingham and Vermont Hydroelectric )  
Power Authority for certificates of public good and )  
consent to purchase, own, and lease the Bellows )  
Falls Hydroelectric Generating station; and (3) )  
Bellows Falls Power Company for approval to )  
operate the Bellows Falls Hydroelectric Generating )  
Station in Bellows Falls, Vermont, and for *de* )  
*minimus* regulation )

**CERTIFICATE OF CONSENT FOR SALE OF ASSETS**  
**ISSUED PURSUANT TO 30 V.S.A. § 109**

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont has this date found and adjudged that the sale of the Bellows Falls Hydroelectric Generating Station of TransCanada Hydro Northeast Inc. to Vermont Hydroelectric Power Authority, will promote the general good of the State of Vermont, and the Board hereby consents to said sale.

Petitioners shall file this Certificate of Consent with the Vermont Secretary of State, pursuant to 30 V.S.A. § 109.

Dated at Montpelier, Vermont, this 8th day of June, 2005.

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

OFFICE OF THE CLERK

FILED: June 8, 2005

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: Clerk@psb.state.vt.us)*