

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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OFFICE OF THE
SECRETARY

2005 AUG 10 P 4: 55

FEDERAL ENERGY
REGULATORY COMMISSION

Project No. 1855-030

USGen New England, Inc.
TransCanada Hydro Northeast, Inc.
Town of Rockingham, Vermont
Bellows Falls Power Company, LLC
Vermont Hydro-electric Power Authority

**MOTION TO SUBSTITUTE
VERMONT HYDRO-ELECTRIC POWER AUTHORITY
AS CO-APPLICANT TRANSFEREE**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,¹ the Town of Rockingham, Vermont ("Town"), and Bellows Falls Power Company, LLC ("BFPC"), co-applicant transferees for the transfer of license pending in the above-referenced proceeding, and the Vermont Hydro-electric Power Authority ("VHPA" and collectively, the "Parties"), respectfully move that VHPA be substituted for the Town as an applicant for co-licensee status for the 49 MW Bellows Falls Hydroelectric Project ("Project").

The Parties seek to substitute VHPA for the Town as a co-licensee in the pending license transfer proceeding because the Town has not yet secured all of the necessary authorizations to demonstrate that it has the legal competence, as required by Section 9(b)(2) of the Federal Power Act ("FPA"),² to become a co-licensee of the Project. In support thereof, the Parties respectfully submit the following:

¹ 18 C.F.R. § 385.212 (2004).

² 16 U.S.C. § 802(b)(2).

I. BACKGROUND

A. History of This Proceeding

On January 26, 2005, USGen New England, Inc. ("USGenNE"), the Town, BFPC and VHPA filed an application for transfer of the Project license from USGenNE to BFPC and the Town as joint licensees, and for approval of VHPA's plan to take title to the property and transfer it to the Town as part of the closing on the acquisition from USGenNE ("*January 26 Application*").³

TransCanada Hydro Northeast, Inc. ("TC Hydro NE") was not an applicant on the *January 26 Application*. Until April 1, 2005, when USGenNE closed on the sale of several hydroelectric facilities to TC Hydro NE ("TC Hydro Transaction"), USGenNE was the owner, operator, and licensee of the Project.⁴ TC Hydro NE acquired the Project from USGenNE subject to an Option to Purchase ("Option") held by the Town. On May 24, 2005, USGenNE and the parties filed a motion to substitute TC Hydro NE for USGenNE as the transferor of the Project.⁵

The *January 26 Application* is still pending before the Commission, with TC Hydro NE as the proposed transferor of the Project.

³ *USGen New England, Inc., et al.*, "Application for Transfer of License and Approval of Financing Arrangement," Project No. 1855-030 (January 26, 2005).

⁴ The transfer of the license for the Project from USGenNE to TC Hydro NE was approved by the Commission in *USGen New England, Inc., et al.*, 110 FERC ¶ 62,052 (January 24, 2005).

⁵ *USGen New England, Inc., et al.*, "Motion to Substitute TransCanada Hydro Northeast Inc. as Transferor," Project No. 1855-030 (May 24, 2005). On June 1, 2005, the Commission issued a public notice of the TC Hydro NE motion to substitute and no comments, protests or motions to intervene were filed in response.

B. Status of the Pending Transaction

On December 7, 2004, the Town assigned the Option to VHPA, as described in the *January 26 Application*,⁶ and the Option was properly exercised, including the purchase price of \$72,046,000 being deposited into an escrow account. Upon closing on the purchase of the Project pursuant to the Option, VHPA will take title to the Project and the escrow will be released to TC Hydro NE (the "Option Transaction"). The Option provides a condition precedent for this governmental approval to be in place by September 11, 2005.

Also on December 7, 2004, the Town, VHPA and BFPC entered into a Master Agreement governing the arrangements among them both before and after VHPA acquires the Project from TC Hydro NE under the Option Transaction. In one of the contemplated transactions under the Master Agreement (a copy of which was provided in the *January 26 Application*), upon closing of the Option Transaction, VHPA would transfer title to the Project to the Town. The Town entered into a lease with BFPC under which BFPC would operate and maintain the Project (the "Lease"). On December 7, 2004, the Town assigned the Lease to VHPA. Once VHPA obtains title to the Project, a second transaction would be consummated under which the Town would acquire the Project from VHPA and VHPA would reassign the Lease to the Town. The Town would then lease the Project to BFPC, which would operate and maintain it ("Master Agreement Transaction"). TC Hydro NE is not a party to the Master Agreement Transaction.

⁶ As noted in the *January 26 Application* at p. 4, by order of the USGenNE Bankruptcy Court dated November 23, 2004, the Town was granted the right to assign the Option to VHPA rather than to the Vermont Public Power Supply Authority, as originally contemplated in the Option.

The Master Agreement also provides that, in the event that the Town is unable to assume VHPA's interests in the Project, VHPA and BFPC could consummate the Master Agreement Transaction. Section 2.12(a) of the Master Agreement states:

In the event that the Town does not for any reason, within one Business Day of the Closing, assume all of the VHPA's interest in the Facility Lease and accept a transfer of all VHPA's interest in the Property (provided that the VHPA has provided written notice to the Town at least ten days prior to the Closing), the VHPA shall have the right to sell to the Company, and the Company shall have the right to Purchase from the VHPA, for one dollar, all of the VHPA's interest in the Facility Lease and the Property by following the procedures specified in Section 2.12(c).

Section 2.12(a) was included in the Master Agreement to ensure that VHPA could close the Option Transaction if the Town did not for any reason close on the Project by the closing date established in the Option. However, the *January 26 Application* contemplated the transfer of the Project from VHPA to the Town immediately or soon after closing of the Option Transaction. As a consequence, VHPA only sought approval of its overall role in such an arrangement. The Town was included as a co-applicant to the *January 26 Application* because some of the rights it retains under the Lease are 'necessary for project purposes' and thus it was necessary and appropriate for the Town to be a co-licensee with BFPC. The Parties now propose that VHPA be substituted for the Town as a co-licensee transfer applicant because VHPA will retain the rights as Lessor under the Lease that the Town would have assumed with the Lease's reassignment to the Town.

II. MOTION TO SUBSTITUTE

The Parties respectfully move to substitute VHPA for the Town as a co-transferee applicant because the date for ensuring that the Option Transaction can be consummated is rapidly approaching and the Town has not obtained all of the approvals

necessary to show that it has the legal competence to be a licensee as required by Section 9(b)(2) of the FPA for the transfer of the Project to it.

Section 5 of the Option contains a "Governmental Approval Condition Precedent" which requires that:

In the event that the Optionor [TC Hydro NE] has not received all governmental approvals in final nonappealable form within two hundred seventy (270) days from the Application Date ("Governmental Approval Condition Precedent"), Optionor shall have the right to terminate this Agreement by written notice to Optionee [VHPA] in which event the Deposit shall be returned to Optionee, all obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto;

The 270-day period will expire on September 11, 2005.

In its Certificate of Public Good issued to the Town,⁷ the VPSB conditioned its approval of the Town's participation in the Master Agreement Transaction with a condition that the Town hold a vote to decide whether to consummate the purchase of the Project:

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 30, 2005.

It should be noted that the VPSB's October 30, 2005 closing date is a minor error. The Option Agreement provides for a closing date not later than October 3, 2005.

⁷ See *Certificate of Public Good Issued Pursuant to 30 V.S.A. § 231* issued to the Town ("Town Certificate of Public Good") as part of the Vermont Public Service Board's ("VPSB") order and certificates issued in "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 minimis regulation," Docket No. 7047, Order entered June 6, 2005, attached as Exhibit A.

On July 12, 2005, the Town held the required vote and its voters decided against the Town consummating the purchase of the Project. The Town has scheduled a revote on the issue for August 22, 2005, but this filing is made to ensure that the condition precedent for this governmental approval to be in place by September 11, 2005 is achieved in order for VHPA to acquire and hold title to the Project to consummate the Option Transaction.

Consequently, in order to ensure that VHPA has this governmental approval in place by September 11, 2005, the Parties seek to substitute VHPA for the Town as a co-applicant transferee on the *January 26 Application*.

Upon Commission approval of the pending transfer application, as amended, VHPA would take title to the Project at closing of the Option Transaction as contemplated in the *January 26 Application*. However, pursuant to the Master Agreement Transaction, VHPA would hold title for the near future and lease the Project to BFPC. BFPC would remain the lessee under the Lease and operate and maintain the Project.⁸ Under this new arrangement, VHPA would need to become a co-licensee of the Project.

III. STATEMENTS OF VHPA REGARDING ITS QUALIFICATIONS TO BE A CO-LICENSEE

VHPA submits the following to show its qualifications to be a co-licensee with BFPC.⁹

⁸ The applicants are not seeking, at this time, regulatory approval for any potential subsequent transfer of title to the Project by VHPA.

⁹ As discussed in the *January 26 Application*, BFPC, which will operate and maintain the Project pursuant to the Lease, has the legal authority and access to the requisite expertise necessary to operate and maintain the Project. BFPC is affiliated with companies involved in the operation and maintenance of numerous Commission-licensed hydroelectric projects, and personnel and
(Footnote Continued...)

1. VHPA is a body corporate and politic and a public instrumentality of the State of Vermont. The State statute creating VHPA provides it with the authority to finance, purchase, lease, sell, operate and maintain the Project and other hydroelectric power stations along the Connecticut and Deerfield Rivers in Vermont, New Hampshire and Massachusetts, and to sell the Project's electric power at wholesale within or without the State of Vermont. See Title 30 V.S.A. Chapter 90, a copy of which is attached as **Exhibit B**.
2. The VPSB has issued a "Certificate of Public Good Issued Pursuant to 30 V.S.A. § 248," that finds that the issuance of the certificate to VHPA "will promote the general good of the State of Vermont" and authorizes VHPA to "acquire and transfer" the Project. Consequently, VHPA is fully qualified under § 4(e) of the FPA¹⁰ to hold the hydroelectric license for the Project issued under Part I of the FPA. A copy of this certificate is included in **Exhibit A**.
3. VHPA is the process of seeking authorization to conduct business in the State of New Hampshire, where the Project is partially located, and expects to have the authorization shortly. VHPA will submit a copy of this authorization to the Commission as soon as VHPA receives it.
4. Upon conveyance of the Project to VHPA, VHPA will submit to the Commission certified copies of all instruments showing conveyance whereby title to the Project's properties is conveyed to it.
5. Upon completion of the conveyance of the Project's properties to VHPA, VHPA and BFPC will accept and permanently retain, all license instruments and all maps, plans, specifications, contracts, reports of engineers, accounts, books, records and all other papers and documents relating to the Project and to all additions thereto and betterments thereof.

(Footnote Continued...)

managers from one or more of those companies will be responsible for the day-to-day operations of the Project.

¹⁰ 16 U.S.C. § 797(e).

6. Upon completion of the conveyance of the Project's properties to VHPA, VHPA will lease the Project to BFPC under the Lease, which will operate the Project.
7. Contingent upon the final written approval of the Commission of the transfer of the license, VHPA accepts all of the terms and conditions of the license, as amended, and the FPA, and agrees to be bound thereby to the same extent as though it were the original licensee thereunder.

IV. COMMUNICATIONS

The name, title, address, and telephone number of the persons to whom correspondence with respect to this Motion should be addressed are as follows:

For VHPA:

John Sayles
Interim Manager
**Vermont Hydro-electric Power
Authority**
c/o Department of Public Service
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For the Town:

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Officer
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E-mail: jeffrey.martin@brascanpower.com

V. REQUEST FOR SHORTENED COMMENT PERIOD AND EXPEDITED CONSIDERATION

This governmental approval is required to be in place by **September 11, 2005**.

For this reason, the Parties respectfully request that the Commission provide for a shortened comment period of ten (10) days and approve the pending license transfer application as soon as possible after the comment period expires, but no later than **September 9, 2005**.

The Parties note that TC Hydro NE has been apprised that this motion to substitute would be submitted to the Commission.

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the Town of Rockingham, Vermont, the Vermont Hydro-electric Power Authority and Bellows Falls Power Company, LLC

respectfully move that (1) the Vermont Hydro-electric Power Authority be substituted for the Town of Rockingham, Vermont, as a co-licensee applicant with Bellows Falls Power Company, LLC to the January 26, 2005 "Joint Application for Approval of Transfer of License and Approval of Financing Arrangement" submitted in this proceeding; (2) the Commission grant the request for a shortened comment period of ten (10) days; and (3) the Commission act on the application for transfer of license no later than September 9, 2005.

Respectfully submitted,

By: Molly K. Lebowitz
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Jeffrey J. McMahan, Esq.
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For The Town of Rockingham, Vermont

By:



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**Attorneys for
Bellows Falls Power Company, LLC**

Dated: August 10, 2005

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

USGen New England, Inc.
TransCanada Hydro Northeast, Inc.
Town of Rockingham, Vermont
Bellows Falls Power Company, LLC
Vermont Hydro-electric Power Authority

Project No. 1855-030

ATTESTATION

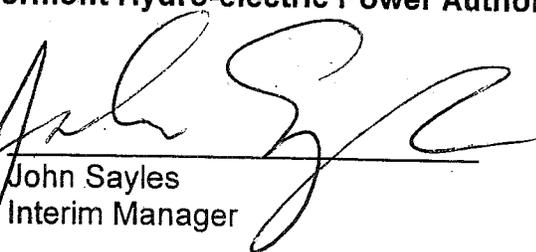
In witness whereof, the Vermont Hydro-electric Power Authority has caused its name to be hereunto signed by John Sayles, its Interim Manager, and its corporate seal to be affixed to this **MOTION TO SUBSTITUTE VERMONT HYDRO-ELECTRIC POWER AUTHORITY AS CO-APPLICANT TRANSFEREE** by David O'Brien, its Corporate Secretary, thereunto duly authorized.

The Vermont Hydro-electric Power Authority

Date:

August 4 2005

By:


John Sayles
Interim Manager

Attest:

Helen M. Weed

Corporate SEAL

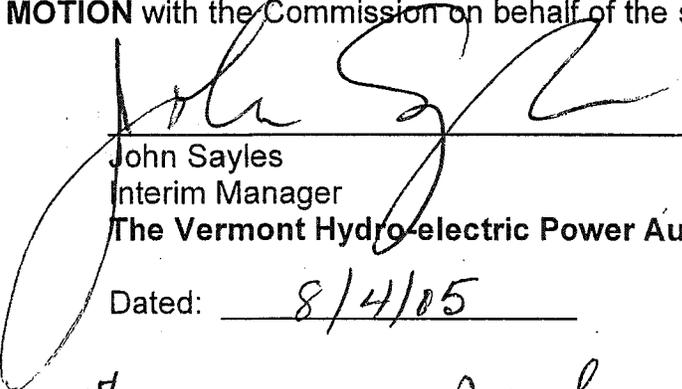
UNITED STATES OF AMERICA
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USGen New England, Inc.
TransCanada Hydro Northeast, Inc.
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Vermont Hydro-electric Power Authority

Project No. 1855-030

VERIFICATION

John Sayles, being duly sworn under oath, states: (1) that he is the Interim Manager of the Vermont Hydro-electric Power Authority; (2) that he has read the **MOTION TO SUBSTITUTE VERMONT HYDRO-ELECTRIC POWER AUTHORITY AS CO-APPLICANT TRANSFEREE ("MOTION")**; (3) that the statements made therein with respect to the Vermont Hydro-electric Power Authority are true and accurate to the best of his knowledge and belief; (4) that he has full power and authority to execute this **MOTION** on behalf of the Vermont Hydro-electric Power Authority; and (5) that he authorizes the submission of this **MOTION** with the Commission on behalf of the same.



John Sayles
Interim Manager
The Vermont Hydro-electric Power Authority

Dated: 8/4/05

I do hereby certify that on the 4th day of August, 2005, John Sayles personally appeared before the undersigned Notary Public and made oath to the foregoing.

Aileen M. Weed
Notary Public

**NOTICE SUITABLE FOR PUBLICATION
IN THE FEDERAL REGISTER**

(Insert Date)

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. Type of Application: Motion to Substitute Vermont Hydro-electric Power Authority as Co-Applicant Transferee
- b. Project No.: P-1855-030
- c. Date Filed: August 10, 2005
- d. Applicants: Town of Rockingham, Vermont
Bellows Falls Power Company, LLC
Vermont Hydro-electric Power Authority
- e. Name of Project: Bellows Falls
- f. Location: On the Connecticut River in Windham and Windsor Counties, Vermont, and Cheshire and Sullivan Counties, New Hampshire
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).
- h. Applicants' Contact: Molly K. Lebowitz, Esq.
Jeffrey J. McMahan, Esq.
Dinse, Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT 05402-0988
Tel: (802) 864-5751
- i. FERC Contact: (insert)
- j. All documents (original and eight copies) should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

- k. The Town of Rockingham, Vermont ("Town"), Bellows Falls Power Company, LLC and the Vermont Hydro-electric Power Authority ("VHPA") (collectively, the "Applicants") tendered for filing a motion to substitute VHPA for the Town as a co-licensee applicant in the pending license transfer application in this proceeding.
- l. Location of the Motion: A copy of the motion is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426 or by calling (202) 208-1371.
- j. This filing is accessible on-line at <http://www.ferc.gov> using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.
- k. Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicants. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Comment Date: 5:00 pm Eastern Standard Time on (insert date).

Magalie R. Salas
Secretary

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this day by first class United States mail, postage prepaid, or electronically, as designated on the official service list, to all parties listed on the official service list compiled by the Secretary for this proceeding and on the Vermont Public Service Board.

Dated at Washington, D.C., this 10th day of August, 2005.


Jennifer Lokenvitz Schwitzer

EXHIBIT A

[Exhibit A is the Public Service Board 6/6/2005 Order and Certificates
found in VHPA Report Exhibit B]

EXHIBIT B

The Vermont Statutes Online

Title 30: Public Service

Chapter 90: VERMONT HYDRO-ELECTRIC POWER AUTHORITY

§ 8051. Findings, purpose, and goals

(a) The general assembly of the state of Vermont finds:

(1) Potential exists to purchase an interest in hydroelectric power stations along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts.

(2) The general assembly created the Vermont Renewable Power Supply Acquisition Authority (VRPSAA) in Sec. 38 of No. 63 of the Acts of 2003 to investigate such a purchase and the VRPSAA has taken actions towards that goal.

(b) Therefore, it is the purpose of this chapter to create an entity with the authority to finance, purchase, own, operate, or manage any interest in the hydroelectric power facilities along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire and Massachusetts, and to sell the electric energy under the control of the authority from those facilities at wholesale to authorized wholesale purchasers. The purchase and operation of an interest shall be pursued with the following goals:

(1) To promote the general good of the state;

(2) To stimulate the development of the Vermont economy;

(3) To increase the degree to which Vermont's energy needs are met through environmentally-sound sustainable and renewable in-state energy sources;

(4) To lessen electricity price risk and volatility for Vermont ratepayers and increase system reliability;

(5) Not to compete with Vermont utilities;

(6) To ensure that the credit rating of the state will not be adversely affected and Vermont taxpayers will not be liable should the project fail because of the failure to produce sufficient revenue to service the debt, the failure of a partner, or for any other reason; and

(7) To cause the project to be operated in an environmentally sound manner consistent with federal licenses and purposes. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8052. Definitions

As used in this chapter:

(1) "Authority" means the Vermont Hydro-electric Power Authority established by this chapter.

(2) "Project" means the right to the sale at wholesale, exchange, or interchange of the hydroelectric energy, capacity or output produced by or at the hydroelectric power stations along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts.

(3) "Facilities" means the hydroelectric power stations and related assets along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts in which the authority has acquired an equity interest. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8053. Authority; creation and organization

(a) The Vermont Hydro-electric Power Authority is created and established as a body corporate and politic and a public instrumentality of the state. The exercise by the authority of the powers conferred upon it constitutes the performance of essential governmental functions.

(b) The powers of the authority shall be exercised by seven directors appointed as follows:

(1) Five directors shall be appointed by the governor with the advice and consent of the senate, at least one of whom shall represent retail customers. No director appointed by the governor, while serving as a director, shall be an employee, board member or director, or have a substantial ownership interest in an electric company regulated by the public service board or the department of public service under this title. The directors appointed by the governor shall be appointed for terms of five years and until their successors are appointed and confirmed, except that the first directors shall be appointed in the following manner: one for a term of two years, two for a term of three years, and two for a term of five years. The governor for cause may remove a director appointed by a governor. The governor may fill any vacancy occurring among the directors appointed by a governor for the balance of the unexpired term. A director may be reappointed.

(2) The state treasurer, who shall serve ex officio; and

(3) One director shall be a representative of the department of public service, appointed by the commissioner, who shall serve at the pleasure of the commissioner.

(c) The authority shall elect a chair, a vice chair, and a treasurer from among its directors. A quorum shall consist of four directors. No action of the authority shall be considered valid unless the action is supported by a majority vote of the directors present and voting and then only if at least four directors vote in favor of the action.

(d) Directors shall be compensated for necessary expenses incurred in the performance of their duties in the manner provided by section 1010 of Title 32.

(e) The governor or the governor's designee shall have the power to appoint an interim manager upon enactment of this chapter, who shall serve at the governor's pleasure, under the governor's direction, and for compensation established by the governor. The interim

manager, with the approval of the governor or the governor's designee, shall have full authority to take all actions authorized under this chapter to protect and advance the interests of the state of Vermont until such time as a manager employed pursuant to section 8054 of this chapter has assumed office.

(f) The authority shall continue so long as it shall have any obligations or indebtedness outstanding and until its existence is terminated by law. Upon termination of the authority, title to all of the property owned by the authority shall vest in the state. The state reserves the right to change or terminate the authority and any structure, organization, program, or activity of the authority, subject to constitutional limitations.

(g) The authority's board of directors shall adopt bylaws or other rules and regulations for the management of the affairs of the authority and carrying out the purposes of this chapter.

(h) The net earnings of the authority, beyond those necessary for retirement of its notes, bonds, or other obligations or indebtedness or to implement the public purposes and programs authorized in this chapter, shall not inure to the benefit of any person other than the state.

(i) Despite any law or charter provision to the contrary, a director or officer of the authority who is also an officer, employee, or member of a legislative body of a municipality or other public body or of the state shall not thereby be precluded from voting or acting on behalf of the authority on a matter involving the municipality or public body or the state. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8054. Manager

The authority shall employ and compensate a manager who shall serve under a contract for a specific term or at the pleasure of the authority. The authority, with the governor's approval, shall fix the manager's compensation. The manager shall be the chief executive officer of the authority and shall administer, manage, and direct the affairs and business of the authority, subject to the policies, control, and direction of the directors. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8055. General powers

The authority shall have such powers as are necessary to carry out the purposes of this chapter including those powers provided a corporation under chapter 3 of Title 11A, subject to the limitations in section 8056 of this title, and shall include the power:

(1) To 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. Such evidences of indebtedness or obligations shall be in such form and denominations, and with such terms and provisions, including the maturity date or dates, redemption provisions, and other provisions necessary or desirable. Such evidences of indebtedness or obligations shall be either taxable or tax-exempt and shall be noninterest bearing, or bear interest at such rate or rates, which may be fixed or variable, as may be sufficient or necessary to effect the issuance and sale or resale thereof. The authority is authorized to enter into such agreements with other persons as the authority deems

necessary or appropriate in connection with the issuance, sale, and resale of such evidences of indebtedness or obligations, including, without limitation, trust indentures, bond purchase agreements, disclosure agreements, remarketing agreements, agreements providing liquidity or credit facilities, bond insurance, or other credit enhancements in connection with such evidences of indebtedness or obligations. The authority is authorized to resell or retire any such evidences of indebtedness or obligations prior to the stated maturity thereof. No indebtedness shall be issued by the authority without the written approval of the state treasurer, which approval shall be given if, based upon his or her investigation, the state treasurer has certified that:

(A) none of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont has concluded that such indebtedness will be included as part of the state of Vermont's net tax-supported debt computation, as prepared by such rating agencies; or

(B) the financing structure and flow of funds for such indebtedness will not result in such indebtedness being counted as net tax-supported debt, or its equivalent, on the state of Vermont's debt statement, as prepared by any of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont.

(2) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of property necessary to carry out the purposes of this chapter, real or personal, improved or unimproved, tangible or intangible, including an interest in land of less than fee; to hold and dispose of real and personal property; to enter into all contracts, leases, agreements, and arrangements; and to do all lawful acts and things necessary or incidental to the performance of its duties and the execution of its powers under this chapter.

(3) To pledge or assign any money, fees, charges, or other revenues of the authority and any proceeds derived by the authority from the sale of property or from insurance or condemnation awards.

(4) To sue and be sued in its own name and plead and be impleaded; service of process upon the authority in any action shall be made by service upon the secretary of state, either by hand or by leaving a copy of the process at the office of the secretary.

(5) To adopt and amend bylaws, rules, and regulations for the calling and conduct of its meetings and for the conduct of its affairs.

(6) To employ personnel who, in the discretion of the authority, may be in the classified system under chapter 13 of Title 3, and to employ or contract with agents, consultants, legal advisors, and other persons and entities as may be necessary or desirable for its purposes, upon such terms as the authority may determine.

(7) To contract with the state of Vermont or any agency or political subdivision thereof, public corporations or bodies, private corporations or individuals for any purposes related to the authority.

(8) To apply and contract for and to expend assistance from the United States or other sources, whatever the form.

(9) To administer its own funds and to invest or deposit funds which are not needed currently to meet the obligations of the authority.

(10) To do business inside or outside the state.

(11) To apply to the appropriate agencies of the state, other states, the United States, and to any other proper agency for permits, licenses, certificates, or approvals which may be necessary, and to construct, maintain, and operate the facilities in accordance with these licenses, permits, certificates, or approvals;

(12) To contract with respect to the purchase, sale, delivery, exchange, interchange, wheeling, pooling, transmission, or use of project electric power and energy and to otherwise participate in intrastate, interstate, and international wholesale arrangements with respect to those matters.

(13) Alone or jointly, to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in the facilities or portions of the facilities, the product or service from them, securities or obligations issued or incurred in connection with the financing of them, or research and development relating to them, within or outside the state. The authority may also enter into and perform contracts with any person with respect to the foregoing.

(14) To exercise all powers necessary or incidental to affect any or all of the purposes for which the authority is created.

(15) To sell project electric power at wholesale within or outside the state.

(16) To purchase, maintain, and operate the facilities.

(17) To contract for the use of transmission and distribution facilities owned by others solely for the purpose of engaging in wholesale transactions. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8056. Limitations on powers

(a) The authority shall not sell electric power at retail to any ultimate customer in Vermont, or require any electric utility to purchase electric power in a wholesale transaction.

(b) The authority shall not seek or obtain treatment for any facility as a "qualifying facility" in Vermont under 18 C.F.R. § 292.201-207 or subdivision 209(a)(8) of this title.

(c) Electric power provided by the authority shall not be sold to the department of public service for ultimate sale at retail to Vermont consumers under sections 211 or 212a of this title.

(d) The authority shall take no action to cause, nor shall any provision of this chapter be construed to impose, any obligation upon the state as a result of the insolvency of a partner. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8057. Obligations not obligations of the state

The authority shall have the benefit of sovereign immunity to the same extent as the state of Vermont. Notwithstanding the foregoing, obligations of the authority under a contract authorized by this chapter shall not be deemed to constitute an obligation, indebtedness or a lending of credit of the state. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8058. Bonds

(a) In addition to any other statute affecting the authority, the authority may issue bonds to pay the costs of purchasing the facilities on the Connecticut and Deerfield Rivers, or property related to such facilities, to pay the costs of repairs, replacements or expansions of the facilities, or to pay capitalized interest and costs of issuance, which have been approved by the authority or to refund bonds previously issued.

(b) In addition to any other statute affecting the authority, no bonds shall be issued under this section without the prior approval of the governor or designee.

(c) Bonds issued under this section shall bear the manual or facsimile signature of the manager of the authority and the manual or facsimile signature of the chair or vice chair of the authority. Bonds shall be sold by the signing officers at public or private sale, and the proceeds thereof shall be paid to the trustee under the security document that secures the bonds.

(d) No financing or security document, bond, or other instrument issued or entered into in the name and on behalf of the authority under this chapter shall in any way obligate the state to raise any money by taxation or use other funds for any purpose to pay any debt or meet any financial obligation to any person at any time in relation to a facility, project, or program financed in whole or in part by the issue of the authority's bonds under this chapter, except from monies received or to be received under a financing or security document entered into under this chapter or except as may be required by any other provision of law. Notwithstanding the provisions of this subsection, the authority may accept and expend with respect to a facility, project, or program any gifts or grants received from any source in accordance with the terms of the gifts or grants.

(e) The authority may undertake a joint financing of the project.

(f) A state or national chartered bank, Vermont bank, or Vermont trust company may serve as trustee for the benefit of bondholders under a security document; and the trustee may at any time own all or any part of the bonds issued under that security document, unless otherwise provided therein. All monies received or held by the authority or by a trustee pursuant to a financing or security document, other than funds received or held by the authority for its own use, shall be deemed to be trust funds and shall be held and applied solely in accordance with the applicable document.

(g) Except as provided in any financing or security document entered into or any bond issued under this chapter, each of the parties to the financing or security document or any bondholder may enforce the obligation of any other person to the party or bondholder under the bond or instrument by appropriate legal proceedings.

(h) Bonds issued under this chapter shall be legal investments for all persons without limit as to the amount held, regardless of whether they are acting for their own account or in a

fiduciary capacity. Such bonds shall likewise be legal investments for all public officials authorized to invest public funds. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)

§ 8059. Records; annual report; audit

(a) The authority shall keep an accurate account of all its activities and of all its receipts and expenditures.

(b) Each year, prior to February 1, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by a certified public accountant. The cost of the audit shall be considered an expense of the authority, and a copy of the audit shall be filed with the state treasurer. (Added 2003, No. 121 (Adj. Sess.), § 101, eff. June 8, 2004.)
