

Exhibit CS-BW-85

*MOU and Letter to PUC from
Town of Bennington in support of
Bennington Substation Project*



2011 SEP 23 AM 9:03

TOWN OF BENNINGTON

September 22, 2011

Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701

Re: Bennington Substation Relocation and Upgrade - PSB Docket # 7763

Dear Mrs. Hudson:

The Town of Bennington Select Board supports the proposed upgrade and relocation of the Bennington substation as described in the petition filed with the Public Service Board dated August 16, 2011, provided the terms and conditions of the attached Memorandum of Understanding between the Town of Bennington and VELCO are fulfilled by VELCO.

The Town appreciates VELCO's efforts to mitigate the concerns of the Bennington Planning Commission regarding aesthetics in the Memorandum of Understanding between the Town and VELCO.

Sincerely,

Stuart A. Hurd
Town Manager

Enclosures

cc: Jerry Ostrander

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**MEMORANDUM OF UNDERSTANDING AMONG
VERMONT ELECTRIC POWER COMPANY, INC. and VERMONT TRANSCO LLC,
AND THE TOWN OF BENNINGTON, VERMONT**

Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively referred to as "VELCO") and the Town of Bennington, Vermont ("Bennington"), (collectively the "Parties") hereby agree and stipulate as follows:

WHEREAS, VELCO and Central Vermont Public Service Corporation ("CVPS"), (together, the "Petitioners") are seeking authority from the Vermont Public Service Board ("PSB") to construct electric transmission facilities in Bennington (the "Project"), at a location shown on Exhibit A to Attachment 1 hereto (the "Site");

WHEREAS, Title 30, Vermont Statutes Annotated, requires that the PSB give due consideration to recommendations of the municipal and regional planning commissions;

WHEREAS, the Bennington Planning Commission and VELCO have had active discussions and negotiations regarding the proposed Project; and

WHEREAS, the Parties have reached certain agreements as set forth herein.

NOW THEREFORE, in consideration of the mutual undertakings herein set forth, the Parties agree as follows:

1. Petitioners will file a petition, testimony and exhibits with the PSB to construct and operate the Project, consistent with the documents delivered to Bennington, dated August 16, 2011.
2. Bennington will indicate to the PSB, either through correspondence or full intervention in the proceedings, its acceptance of the proposed Project.

3. Upon receipt of a Certificate of Public Good and acquisition of the Site, VELCO will execute and record the attached "Declaration of Restrictive Covenants" (Attachment 1) in the Bennington land records. (NOTE: Attachment 1 is subject to revision as a result of review by the U.S. Army Corp. of Engineers.)
4. Upon recording of the attached Declaration of Restrictive Covenants, this Memorandum of Agreement shall terminate.

Dated at Rutland, Vermont, this 20th day of September, 2011.

VERMONT ELECTRIC POWER COMPANY, INC.
VERMONT TRANSCO LLC

By:


Thomas Dunn,

Vice President for Transmission Services

Dated at Bennington, Vermont, this 21 day of September, 2011.

TOWN OF BENNINGTON, VERMONT

By:


Stuart Hurd
Town Manager

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ATTACHMENT 1

[NOTE: CONTENTS SUBJECT TO REVIEW BY U.S. ARMY CORP. OF ENGINEERS]

DECLARATION OF RESTRICTIVE COVENANTS

RECITALS

WHEREAS, VERMONT TRANSCO LLC (hereinafter referred to as the "Declarant") with an address of 366 Pinnacle Ridge Road, Rutland, Vermont, is the owner in fee simple of certain real property located in the Town of Bennington, in the County of Bennington and State of Vermont, recorded at Book ____ and Page ____, and Book ____ and Page ____ in the Bennington town land records (hereinafter "Property"), and

WHEREAS, Declarant is in the process of constructing new transmission lines and a substation in connection with a project known as the Bennington Substation Project (hereinafter "Project"). In consideration of the Town of Bennington's approval of the location of said Project, the Declarant will maintain, conserve and preserve a portion of the Property as depicted on the map attached as Exhibit "A" (hereinafter "Conservation Area") as open space, in its natural state, and encumber the Property with the restrictive covenants (hereinafter, "Covenants") hereinafter set forth in this Declaration;

NOW THEREFORE, be it known that on this ____, day of _____ 2011, Declarant does hereby restrict and encumber the Property with the Covenants (described in this Declaration) in perpetuity over the Conservation Area.

1. PURPOSE

The Covenants are hereby established exclusively for the purpose of maintaining the Conservation Area in a natural, undeveloped condition.

2. USE LIMITATIONS

Declarant intends that these Covenants will confine the use of the Conservation Area to such activities as are consistent with the purposes of this Declaration. Any activity on or use of the Conservation Area inconsistent with the purposes of this Declaration is prohibited. The following limitations/conditions shall apply:

- (a) The Conservation Area shall not be subdivided.
- (b) The Conservation Area shall be maintained in perpetuity as open space without there being conducted thereon any residential, industrial, commercial, agricultural or forestry activities, except as provided elsewhere in this document. Agricultural and forestry shall include animal husbandry, floricultural, horticultural activities, the production of plant and animal products for domestic or commercial purposes, the growing, stocking, cutting and sale of forest trees of any size capable of producing timber or other forest products and the processing and sale of products produced on the Property (e.g., maple syrup).
- (c) No structures, improvements or alterations, including but not limited to, a dwelling, any portion of a subsurface wastewater treatment and disposal system, mobile home, etc., shall be constructed, placed or introduced onto the Conservation Area.

- (d) No removal, filling, or other disturbances of soil nor any changes in the topography, surface or subsurface water systems, wetlands or natural habitats shall be allowed.
- (e) No mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, topsoil or other similar materials shall be allowed on the Conservation Area.
- (f) The placement of signs, billboards or other advertising materials or structures of any kind is prohibited.
- (g) There shall be no use of pesticides, poisons, biocides or fertilizers, draining of wetlands, burning of marshland or disturbances or changes in the natural habitat of the premises.
- (h) There shall be no manipulation or alteration of the natural watercourses, lakeshores, marshes or other water bodies, nor shall any uses of or activities upon the property be permitted which could be detrimental to water purity or to any vegetative, wildlife or hydrological function.
- (i) There shall be no operation of vehicles, snowmobiles, dune buggies, motorcycles, mini-bikes, go-cars, all-terrain vehicles, or any other type of motorized vehicle in the Conservation Area, other than all-terrain or other vehicles necessary for the sole purpose of monitoring or inspecting the Conservation Area periodically by Declarant.
- (j) There shall be no storage or placement of equipment, natural or man-made materials or substances in the Conservation Area.
- (k) There shall be no dumping, burning, release, burial, injection, or disposal of any type of material on the Conservation Area.

3. EXCEPTIONS

This Declaration does not restrict the following activities by Declarant provided Declarant obtains written approval from any local or state agencies for which approval is required:

- (a) Pruning and thinning live trees and brush and the removal of debris, dead trees or brush for the purpose of promoting forest health and wildlife habitat, safety and aesthetic quality and to allow for access along the existing trail that crosses the Conservation Area.
- (b) Planting of trees, shrubs, or other vegetation for the purpose of promoting wildlife or aesthetic quality.
- (c) Pesticides and herbicides may be used for the treatment of non-native invasive species in the Conservation Area.
- (d) Maintenance, repair and replacement of utilities, including any necessary vegetation management or clearing to ensure the electrical reliability and operation of the existing or future power lines extending proximate to the Conservation Area.
- (e) The use of machinery or vehicles (including motorized vehicles) for the sole purpose of accomplishing the activities set forth in Section 3(a)-(g).

- (f) The removal and proper disposal of any existing structures on the property.
- (g) Clearing of vegetation and the construction of additional electrical transmission facilities approved by the Vermont Public Service Board (PSB).
- (h) Emergency access through the Conservation Area.
- (i) Forestry practices in accordance with a forest management plan. No clearing shall be performed in wetlands.
- (j) Placement of septic system, well or stormwater control structure if required to comply with regulatory approvals of the Project.

4. RESERVED RIGHTS

It is expressly understood and agreed that this Declaration does not grant or convey to members of the general public any rights of ownership, entry or use of the Conservation Area. This Declaration is created solely for the protection of the Conservation Area and Declarant reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the right to exclude others and to use the Conservation Area for all purposes consistent with this Declaration.

5. MARKING OF PROPERTY

The perimeter of the Conservation Area shall at all times be plainly marked by red painted blazes installed on healthy trees at approximately 50 foot intervals around the boundary of the Conservation Area as shown on the map attached as Exhibit "A". Said markings shall be inspected every five (5) years and blaze markings will be reestablished, as needed.

6. PROPERTY TRANSFERS

Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property. Failure to comply with this paragraph does not impair the validity or enforceability of these Covenants:

NOTICE: This Property is Subject To a Declaration of Restrictive Covenants recorded at
[insert book and page references, county(ies) and date of recording.]

7. BENEFITS AND BURDENS; AMENDMENT

This Declaration shall run with the Property and shall be for the benefit of the Town of Bennington and shall be enforceable by the Town of Bennington against all future owners and tenants in perpetuity. This Declaration may not be amended without the consent of the Declarant and the Town of Bennington Planning Commission and Select Board.

8. SEVERABILITY

If any provision of this Declaration, or the application thereof to any person or circumstances, is

found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Declaration or the application of such provisions to persons of circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

9. MERGER

The provisions of this Declaration set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property shall be deemed to eliminate the Covenants, or any portion thereof, granted under the doctrine of "merger" or any other legal doctrine.

Declarant hereby affirms that it is the sole owner of the Property in fee simple and has the right to grant this Declaration and to encumber the Property by the Covenants. The Property is free and clear of all liens and encumbrances other than those of record, including but not limited to any mortgage not subordinated to this Declaration. Declarant agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities set forth herein, all in the furtherance of the conservation purposes for which this Declaration is established.

IN WITNESS WHEREOF, the Declarant duly executed this Declaration of Restrictive Covenants under seal this _____ day of _____, 2011.

IN THE PRESENCE OF:

DECLARANT:

WITNESS

VERMONT TRANSCO LLC

By: _____
Thomas Dunn
Its: Vice President and Director for
Transmission Services

STATE OF VERMONT
COUNTY OF RUTLAND, SS.

On this _____ day of _____, 2011, personally appeared Thomas Dunn, Duly Authorized Agent of VERMONT TRANSCO LLC, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of VERMONT TRANSCO LLC.

Before me, _____
Notary Public
Notary commission issued in _____ County
My commission expires:

Exhibit "A"
Map of Conservation Area

REG-1001T PUBLIC
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Conservation Area
Bennington Substation Project
Bennington, Vermont
September, 2011

1 inch = 500 feet



- Edge of Tree Clearing
- Proposed Transmission Line
- VELCO Transmission
- CVPS Subtransmission
- Hiking Trail
- Stream
- Wetland
- Public Conserved Lands
- Conservation Area
- Parcel (2008)

Sources:
- LIDAR Imagery background (2009) in the corridor provided by TerraPole;
- Suezans, Roads, Parcels and Public Lands downloaded from VCGI (2010);
- Hiking Trail, Access Roads, Conserved Area derived from LIDAR Data (2009);
- ESRI World Topo (2011) Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, AND, USGS, NRCAN, and the GIS User Community

Map Location:

