

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7038

Petition of USGen New England, Inc., for authority to)
transfer its hydroelectric facilities located in Vermont to)
TransCanada Hydro Northeast, Inc.; AND petition of)
TransCanada Hydro Northeast, Inc. for a certificate of)
public good to own and operate hydroelectric generation)
facilities in Vermont, and for de minimis regulation)

Order entered: 3/25/2005

**ORDER RE: TRANSFER OF FACILITIES, DE MINIMIS REGULATION, AND
CERTIFICATE OF PUBLIC GOOD**

I. BACKGROUND

This docket concerns various Public Service Board ("Board") approvals related to a proposed transaction in which USGen New England, Inc. ("USGenNE" or "Company") will transfer its hydroelectric generation facilities all or partially in Vermont ("Hydro Facilities") to TransCanada Hydro Northeast Inc. ("TC Hydro NE"). USGenNE requests that the Board consent to the transfer of USGenNE's Vermont hydroelectric facilities to TC Hydro NE, and upon such transfer, allow USGenNE to curtail service, and revoke its Certificate of Public Good ("CPG"). TC Hydro NE requests that the Board grant it a CPG to own and operate the hydroelectric facilities currently owned by USGenNE in Vermont, and agree to subject TC Hydro NE to *de minimus* regulation with regard to financings.

In this Proposal for Decision, I recommend that the Board grant both USGenNE and TC Hydro NE's petitions, and also that the Board approve the stipulated settlements submitted by the Vermont Department of Public Service ("Department") with each company. This Proposal for Decision resolves all remaining issues in the Docket.

II. PROCEDURAL HISTORY

USGenNE filed a petition in this docket on December 20, 2004. TC Hydro NE also filed a petition on December 20, 2004.

On January 19, 2005, I conducted a prehearing conference, during which I granted intervention to two entities: the Town of Rockingham ("Rockingham"); and Bellows Falls

Power Company, LLC ("Bellows Falls"). The Island Corporation ("Island.") later filed a motion to intervene.¹

On March 9, 2005, the Department submitted two stipulated settlements on all issues in this investigation, one with USGenNE and the other with TC Hydro NE. The Department recommends that, under certain conditions, the Board find that the proposed sale by USGenNE of the Hydro Facilities to TC Hydro NE will promote the general good of the State of Vermont.

I conducted a status conference on March 9, 2005. In light of the commitments made by USGenNE and TC Hydro NE, parties have indicated no objection to the stipulated resolution of the matters in this docket. Parties have agreed that the record in this investigation shall consist of all testimony, exhibits and data filed by TC Hydro NE and USGenNE, and other filings and documents filed by the Parties in this proceeding. Parties have also agreed that the stipulated settlements resolve all remaining issues in this Docket.

Based upon the Stipulations submitted and the evidence of record, I hereby report the following Findings to the Board in accordance with 30 V.S.A. § 8.

III. FINDINGS

1. USGenNE is a Delaware corporation authorized to do business in the State of Vermont. It has an address and principal place of business at 7600 Wisconsin Ave., Bethesda, Maryland 20814-6161. USGenNE Petition at 1.

2. USGenNE holds a CPG to own and operate hydroelectric facilities in Vermont. Docket 6039, Order of 6/29/98.

3. USGenNE's Connecticut River System is a hydroelectric system located along the Connecticut River in New Hampshire and Vermont. Its total capacity is 476 MW. The net capabilities of each dam are expressed as the summer maximum net claimed capability as reported to the New England Power Exchange in the summer of 2004. The system consists of four projects licensed by the Federal Energy Regulatory Commission:

Fifteen Mile Falls Project, FERC² License No. 2077. Fifteen Mile Falls Project consists of Moore, Comerford, and McIndoes Stations located on the Connecticut

1. January 28, 2005. No party objected to Island's intervention. I hereby grant Island's intervention, limited to the issues set forth in its motion. I also note that, on January 27, 2005, Mount Snow Ltd., and later on January 31, 2005, the Town of Wilmington requested a modification to the schedule in this Docket in order to be allowed time to consider whether to file a motion to intervene in this Docket. Their requests were granted although neither submitted any further filings.

2. I.e., the "Federal Energy Regulatory Commission."

River. All are conventional hydroelectric facilities, virtually all of which are located in Grafton and Coos Counties in New Hampshire, and a small portion of the facilities in Caledonia and Essex Counties in Vermont. The Moore Station (four hydroelectric generating units ("units")) has a net capability of 191 MW. The Comerford Station (four units) has a net capability of 161 MW. The McIndoes Station (four units) has a net capability of 13 MW.

Bellows Falls Station, FERC License No. 1855. The Bellows Falls Station (three units) is located on the Connecticut River in Windham and Windsor Counties in Vermont, and Cheshire and Sullivan Counties in New Hampshire. It is a conventional hydroelectric facility with a net capability of 49 MW.

Wilder Station, FERC License No. 1892. The Wilder Station (three units) is located on the Connecticut River in Windsor and Orange Counties in Vermont, and Grafton County in New Hampshire. It is a conventional hydroelectric facility with a net capability of 41 MW.

Vernon Station, FERC License No. 1804. The Vernon Station (eight units, six of which are in service) is located on the Connecticut River in Windham County in Vermont and Cheshire County in New Hampshire. It is a conventional hydroelectric facility with a net capability of 21 MW.

USGenNE petition at 2, 6; Kapala pf. at 2-7; Taylor pf. at 3-4.

4. USGenNE's Deerfield River System (FERC License No. 2323) is a conventional hydroelectric system located along the Deerfield River in Massachusetts and Vermont. Its total capacity is 83 MW, consisting of seven stations (all located at dams along the river) and 15 generating units. Part of the Sherman Reservoir, Harriman and Searsburg Stations, and the Somerset and Harriman Reservoirs are located in Vermont. Harriman Station has a net capability of 40 MW. Searsburg has a net capability of 5 MW. *Id.*

5. In order to ensure their safe operation, USGen's dams have been subject to periodic inspections and analysis by FERC engineering staff and by independent dam-safety consultants retained by USGenNE. The Company has filed a comprehensive safety plan with FERC, and has coordinated emergency response plans with host communities. USGenNE also coordinates its operations with the Army Corps of Engineers for flood-control and safety purposes. Kapala supp. pf. at 1-4.

6. On July 8, 2003, USGenNE 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). Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, USGenNE has continued to operate its business and manage its properties as a debtor in possession. Kapala pf. at 2; Utt pf. at 2-3.

7. Pursuant to a Bankruptcy Court-sanctioned process, USGenNE sought a qualified buyer for the Hydro Facilities and the Company's other hydroelectric generation facilities in New England. On September 29, 2004, USGenNE executed a Purchase and Sale Agreement ("PSA") with TC Hydro NE, pursuant to which USGenNE agreed to sell, and TC Hydro NE agreed to buy, the Hydro Facilities and, among other things, related equipment, contracts, leases, and FERC licenses. Utt pf. at 4; Taylor pf. at 5.

8. The sale and transfer of the above-mentioned hydro assets were subject to Bankruptcy Court approval. The final Bankruptcy Court approval of the sale to TC Hydro NE was obtained on December 15, 2004. Utt pf. at 3.

9. The Bellows Falls Station is subject to an Option Agreement between USGenNE and Rockingham. On December 1, 2004, Rockingham exercised its option to purchase the 49 MW Bellows Falls Station. In the event that the transactions contemplated under the Option Agreement with USGenNE are completed in accordance with the terms of the Option Agreement prior to the time TC Hydro NE completes the transactions under the PSA, then the Bellows Falls Station will not be included in the Hydro Facilities purchased by TC Hydro NE. Alternatively, if TC Hydro NE closes its purchase under the PSA first, then TC Hydro NE will own the Bellows Falls Station but will take an assignment of the Option Agreement from USGenNE and assume the related obligations under the Option Agreement. Utt pf. at 5-6.

10. In the event that the transactions contemplated under the Option Agreement between USGenNE and Rockingham are not closed prior to the closing between TC Hydro NE and USGenNE under the PSA, TC Hydro NE will also assume USGenNE's 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 which TC Hydro NE will sell up to "300 kW per hour of electricity" [sic] at wholesale to NEP for resale by NEP to Island. Island's current rights to receive power under the Island Corporation Lease will be undisturbed by the transfer of the Bellows Falls Project to TC Hydro NE. Utt supp. pf. at 1-2.

11. Rockingham, Island, and Bellows Falls have indicated that they have no objection to the proposed transfer of the Hydro Facilities from USGenNE to TC Hydro. *See, respectively*, March 15, 2005, letter of Richard Saudek, counsel for Rockingham; March 11, 2005, letter from Kimberly Hayden, counsel for Island; March 11, 2005, letter of Gerald Tarrant, counsel for Bellows Falls.

12. The Department and USGenNE have submitted a Stipulation ("USGenNE Stipulation") in which they agree that granting consent to transfer the Hydro Facilities to TC Hydro NE will promote the general good of the State of Vermont. USGenNE Stipulation, 3/9/05 at 2.

13. In the USGenNE Stipulation, USGenNE and the Department agree that the Board should consent to the transfer of the Hydro Facilities to TC Hydro NE pursuant to 30 V.S.A. §109. *Id.*

14. Upon such transfer, the USGenNE and the Department agree that the Board should allow USGenNE to curtail service and, pursuant to 30 V.S.A. § 231(b), that the Board should revoke USGenNE's CPG. *Id.*

15. The Department and TC Hydro NE have submitted a Stipulation ("TC Hydro NE Stipulation") in which they agree that granting TC Hydro NE a CPG to own and operate the Hydro Facilities will promote the general good of the State of Vermont. TC Hydro NE Stipulation, 3/9/05 at 3.

16. TC Hydro NE is an Exempt Wholesale Generator. *See id.* at 2, citing to 109 FERC ¶ 62, 235, 12/23/04.

17. The Department indicates that, due to the limited activities to be undertaken by TC Hydro NE in Vermont, *de minimus* regulation is appropriate. *Id.*; *see also* Docket 6039, Order of 6/29/98 at 17-20.

18. The Department also states that, since TC Hydro NE will not be engaged in retail sales or otherwise operating as a public service company in Vermont, TC Hydro NE's CPG should contain only the following requirements:

- a. Any amendments of TC Hydro NE's FERC license are to be filed with the Board and the Department;
- b. Any FERC filings related to TC Hydro NE's market-based rates that are subject to FERC jurisdiction under Section 203 of the Federal Power Act are to be filed with the Board and the Department;
- c. Any filings with respect to TC Hydro NE's "exempt wholesale generator" status are to be filed with the Board and the Department;
- d. TC Hydro NE 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. TC Hydro NE shall not be required to make any filings with the Board or the Department pursuant to 30 V.S.A. § 108 governing financings.

Id.

19. TransCanada PipeLines Limited ("TCPL"), TC Hydro NE's parent corporation, is a Canadian corporation and a wholly-owned subsidiary of TransCanada Corporation, a publicly-traded Canadian Corporation. TCPL is an energy company focused upon natural gas transmission and power generation. TC Hydro NE petition at 1; Taylor pf. at 6-7.

20. The power segment of TCPL's business acquires, operates, and owns interests in power plants located in Canada and in the United States. *Id.*

21. TCPL, through its subsidiaries, owns a 30.6 percent partnership interest in TransCanada Power, L.P., a publicly-held limited partnership that indirectly owns eleven power plants in Ontario, British Columbia, Colorado, and New York. *Id.* at 8.

22. Another affiliate of TCPL, TransCanada Power Marketing Ltd. ("TCPM"), markets electric power at the retail level throughout New England. It also manages TCPL's interest in the Ocean State Power facility in Rhode Island. TCPM is also a member of the New England Power Pool ("NEPOOL"). *Id.*

23. TC Hydro NE's management has substantial experience in the field of power generation, and is knowledgeable about the power markets in New England. *Id.* at 9.

24. Under the terms of the PSA, TC Hydro NE is required to unconditionally offer employment to all employees of the Hydro Facilities who are represented by a labor organization, in this case the International Brotherhood of Electrical Workers ("IBEW"). TC Hydro NE recognizes the IBEW as the exclusive bargaining representatives of those represented employees, and fully assumes the IBEW collective bargaining agreement. *Id.* at 9-10.

25. TC Hydro NE will also make offers of employment to non-represented plant employees. These "qualifying offers" will include base salary and benefits that, on the aggregate, will be "generally similar to" those offered by USGenNE. The offers will not require an employee to change his or her "location of employment more than 50 driving miles." *Id.*

26. TransCanada Corporation, TC Hydro NE's ultimate parent, has a market capitalization of approximately \$11.6 billion. *Id.*

27. The senior unsecured debt of TransCanada Corporation's wholly-owned subsidiary and principle financing entity, TCPL, is rated A2 and A- by Moody's Investors Service and Standard & Poor's, respectively. *Id.* at 11.

28. TCPL is supported by CDN\$1.5 billion of syndicated committed credit facilities, CDN\$500 million of which matures in 2005, and the balance of which matures in 2009. *Id.*

29. In order to meet its ongoing expenses, TC Hydro NE will sell the electricity it produces with the Hydro Facilities into the NEPOOL wholesale power market. *Id.*

30. Since TC Hydro NE will not have any assets until it acquires the Hydro Facilities from USGenNE, TCPL and TransCanada PipeLine USA Ltd. have provided a joint and several guarantee to USGenNE of TC Hydro NE's payment and performance obligations under the PSA. Financing is not a condition to closing the transaction under the PSA, and none of the assets to be acquired under the PSA will be pledged to any lender or third party. *Id.*

31. TC Hydro NE will be the operator of the Hydro Facilities, and will rely heavily on the proven operational experience and technical expertise of TransCanada, its parent company. *Id.* at 12.

32. In order to maintain high plant availability and low forced outage rates for its generation assets, TransCanada follows a best practices process at its plants that it calls "Operational Excellence." In addition, TransCanada will utilize an employee development and management system to ensure that the Hydro Facilities' staff are trained in operations and safety. *Id.* at 12-13.

33. TC Hydro NE will conduct no business in Vermont other than electricity generation for wholesale consumption. Besides the Hydro Facilities at issue in this Docket, TC Hydro NE will not:

- own or operate any other generating facilities;
- own or operate any facilities used for the transmission or distribution of electricity except for the equipment required to interconnect with intrastrate transmission facilities;
- sell the output of the Hydro Facilities directly to end-users in Vermont or elsewhere; or
- have any right or entitlement to recover directly from Vermont ratepayers the costs to own, operate and upgrade the acquired facilities.

Id. at 13-14.

34. The transfer of the Hydro Facilities to TC Hydro NE pursuant to the terms of the PSA provides many benefits to the State of Vermont, including the continued safe and reliable operation of the Hydro Facilities by experienced personnel and a financially sound company. In addition to providing for the continued generation of renewable energy at market-based rates, the transfer will also provide for the continued payment of tax revenues to the State of Vermont and local communities. *Id.*

35. TC Hydro NE has made additional commitments in connection with its purchase of the USGenNE's hydro facilities that will promote the general good of Vermont. These include the continued recognition of the rights and obligations under certain assigned contracts, including

settlements associated with the Fifteen Miles Falls Project and the Deerfield River Project. *Id.* at 15-17; *see also generally* Docket 6039, Order of 6/29/98 at findings 13-18.

36. The settlement in the Fifteen Mile Falls Project resulted in (i) conservation easements being placed on approximately 11,000 acres of undeveloped land and shoreline located in the State of Vermont, (ii) the creation of an enhancement fund for mitigation activities (including such measures as river restoration, protection and enhancement of wetlands and adjacent protective buffer areas located in part in the state of Vermont), requiring annual contributions until a total of \$13.5 million (in 1997 dollars) has been contributed and (iii) the undertaking of water management activities such as minimum flows and reservoir stabilization. *Id.*

37. The Deerfield River Project settlement included permanent conservation restrictions being placed on approximately 15,000 acres in Vermont to preserve recreational opportunities on the Deerfield River. The conservation restrictions encompass a block of wild and undeveloped lands adjoining Green Mountain National Forest property and the undeveloped shores of Harriman and Somerset Reservoirs. *Id.*

38. TC Hydro NE has also been assigned agreements with various Vermont recreational groups, including the Vermont Association of Snow Travelers, Windham Sailing Club, and the Catamount Trail Association. TC Hydro NE will honor these agreements and thereby ensure continued benefit to the State of Vermont. Taylor pf. at 17.

39. FERC has authorized the transfer of the hydroelectric licenses associated with the Hydro Facilities to TC Hydro NE by Order issued January 24, 2005, for Project Nos. 1855-028, 1892-018, 1904-038, 2077-045, and 2323-144. TC Hydro NE Stipulation at 2.

IV. DISCUSSION

Transfer of the Hydro Facilities

Under 30 V.S.A. § 109, the Board may approve a proposed sale 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. The stipulating parties have agreed that the proposed transfer of the Hydro Facilities of USGenNE to TC Hydro NE will promote the general good of the State of Vermont. I have reviewed both the USGenNE Stipulation, the TC Hydro NE Stipulation, and the evidence in support of both. Based on my review of the evidence, I reach the same conclusions.

The transfer of the Hydro Facilities to TC Hydro NE pursuant to the terms of the PSA provides many benefits to the State of Vermont, including the continued safe and reliable

operation of the Hydro Facilities by experienced personnel and a financially sound company. In addition to providing for the continued generation of renewable energy at market-based rates, the transfer can be expected to provide for the continued payment of tax revenues to the State of Vermont and local communities. Furthermore, TC Hydro NE has made commitments in connection with its purchase of the Hydro Facilities that include the continued recognition of the rights and obligations under certain assigned contracts, including settlements associated with the Fifteen Miles Falls Project and the Deerfield River Project. The conservation and environmental benefits associated with these settlement agreements are significant.

Consequently, I find that the transfer of the Hydro Facilities to USGenNE will promote the general good of the State of Vermont. I recommend that the Board accept both the USGenNE Stipulation and the TC Hydro NE Stipulation. I recommend that the Board issue a certificate of consent to the transfer. I also recommend that, upon such transfer, the Board allow USGenNE to curtail service, and that the Board revoke USGenNE's CPG.

Issuance of Certificate of Public Good to TC Hydro NE

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. The criteria are:

- (1) technical expertise;
- (2) adequate service;
- (3) facility maintenance;
- (4) balance between customers and shareholders;
- (5) financial stability;
- (6) company's ability to obtain finance;
- (7) business reputation; and
- (8) relationship with customers.³

The above criteria are guidelines only, and the Board may deviate from them as the circumstances require. 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." The Board has authority, therefore, under Title 30 to apply its regulatory authority over TC Hydro NE to reflect the limited activities TC Hydro NE plans to undertake in Vermont and to craft a CPG reflecting these limited activities.

³ See *Petition of New England Power Company*, Docket 6039, Order of June 29, 1998, at 17; see also *Petition of Quechee Service Company*, Docket 5699, Order of November 15, 1994, at 47.

As noted above, in determining whether to issue a CPG, the Board must find that it will promote the general good of the State of Vermont. Under the criteria that the Board has previously set forth, I find that granting TC Hydro NE a CPG to own and operate the Hydro Facilities will promote the general good of the state, because the evidence demonstrates that TC Hydro NE meets each of the criteria that is applicable to a competitive supplier that sells electricity exclusively at wholesale pursuant to market-based rates approved by FERC under the Federal Power Act.⁴

I am satisfied that TC Hydro NE, as an affiliate of TCPL and TransCanada Corporation, meets the business reputation standard. TC Hydro NE will be responsible for the day-to-day management and operation of the plants, and its parent corporations have a well-established reputation as significant participants in the North American energy industry. TC Hydro NE should also possess sufficient technical expertise to operate the Hydro Facilities, and have the requisite qualifications to ensure the facilities are maintained reliably and efficiently. I note in this regard that on January 24, 2005, FERC issued orders approving the transfer of the hydroelectric licenses from USGenNE to TC Hydro NE, and found that TC Hydro NE is qualified to operate the Hydro Facilities. TC Hydro NE has also demonstrated that it satisfies the financial stability standards for issuance of a CPG. Given TC Hydro NE's affiliation with TCPL and TransCanada Corporation, it is clear that the Company is able to obtain financing and carry on its business activities. Moreover, as William C. Taylor, Vice-President of TC Hydro NE testified:

[f]inancing is not a condition to closing the transaction under the PSA and none of the assets acquired under the PSA will be pledged to any lender or third party.⁵

With respect to the "adequate service," "balance between customers and shareholders," and "relationship with customers" factors, I conclude that these criteria need not be addressed here. These criteria were designed for and apply to public utility companies whose services are regulated by the Board and that have retail customers. I conclude that given the circumstances presented here – with an Exempt Wholesale Generator incorporated outside Vermont that will

4. See, TC Hydro Stipulation at 2, "Whereas TC Hydro NE will make only wholesale sales of electricity . . . ;" *see also New England Power Company, et al.*, 82 FERC 61,179 (1998).

5. Taylor pf. at 11; *see also* Finding No. 30, "TCPL, and TransCanada PipeLine USA Ltd. have provided a joint and several guarantee to USGenNE of TC Hydro NE's payment and performance obligations under the PSA."

sell power competitively and only at wholesale pursuant to a FERC-approved tariff – those particular criteria need not be reviewed.

I recommend, therefore, that the Board issue a CPG to TC Hydro NE to own and operate the Hydro Facilities, subject to the following conditions:

- (a) Any amendments of TC Hydro NE's FERC license are to be filed with the Board and the Department;
- (b) Any FERC filings related to TC Hydro NE's market-based rates that are subject to FERC jurisdiction under Section 203 of the Federal Power Act are to be filed with the Board and the Department;
- (c) Any filings with respect to TC Hydro NE's "exempt wholesale generator" status are to be filed with the Board and the Department;
- (d) TC Hydro NE 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) TC Hydro NE shall not be required to make any filings with the Board or the Department pursuant to 30 V.S.A. § 108 governing financings (discussed below).

De Minimus Regulation of Financings

30 V.S.A. § 108 requires entities subject to the jurisdiction of the Board to obtain the consent of the Board to various kinds of financing events. Section 108 does not, however, mandate a specific level of review of a financing petition. In cases involving a provider of long distance telephone services, the Board has determined that it had discretion under 30 V.S.A. § 108 to conduct an abbreviated financial review resulting in "blanket" financing approval.⁶ Such approval, as previously applied by the Board, would allow a company broad flexibility in funding without the need to justify the merits of the particular expenditures required of each funding effort.

6. Petition of Burlington Telephone Company for Authorization to Obtain up to Ten Million Dollars in Financing, and to Mortgage or Pledge its Corporate Property and Issue Notes or Other Evidences of Indebtedness in Connection with such Financing, Docket 5276, Order of 5/3/88 at 5; and Petition of Burlington Telephone Company for Authorization to Issue up to 10,000,000 Shares of Common Stock, to be Issued for Consideration up to \$20 Million, and to be Used for Expanding its Operations, Docket 5316, Order of 2/7/89 at 6. In 1992, the Board expanded "blanket" financing approval to the cellular industry for the same reasons as applied in the long distance cases. See Generic Investigation Into the Regulation of Cellular Telecommunications Services in the State of Vermont, Docket 5454, Order of 1/8/92 at 45-46, 50.

In this docket, the Department and TC Hydro NE contend that *de minimus* regulation, i.e., excusing TC Hydro from making financing filings under Section 108, is appropriate. TC Hydro NE and the Department have stipulated that this would be consistent with the general good of the State of Vermont. I 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, TC Hydro NE is undertaking two activities in the State of Vermont; it plans to own and operate hydroelectric projects, and to make wholesale sales, both of which are federally-regulated activities. TC Hydro NE is not a traditional, integrated public utility; it will be a competitive electricity supplier that will be competing against other competitive electricity suppliers. TC Hydro NE will have no retail customers in Vermont, nor will TC Hydro NE look to Vermont ratepayers to receive any recovery of its costs. "The primary purpose for reviewing financings is to ensure that utilities do not incur unnecessary expenses which can later be collected from customers."⁷ That purpose does not exist here and it is, therefore, appropriate that the extent of the Board's review of TC Hydro NE's financings reflects this.

Second, the only State interest that the Board has identified with respect to a company like TC Hydro NE in the past concerns whether the ultimate financing plan to be adopted by a company such as TC Hydro NE might somehow impair its ability to operate the Hydro Facilities safely and in compliance with all applicable requirements.⁸ I note in this regard 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 TC Hydro NE to take action in the event of its failure to comply with these regulations. Thus, the existing federal regulatory oversight would support the Board taking a *de minimus* approach under these circumstances.

Third, TC Hydro NE 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 granting blanket approvals to competitive entities subject to its jurisdiction.⁹

7. *Generic Investigation Into Regulation of Cellular Telecommunications Services in the State of Vermont*, Docket No. 5454, Order of 1/8/92 at 45.

8. *See* Docket 6039, Order of 6/29/98 at 19.

9. *See* Docket 5454, Order of 1/8/92 at 46-47.

In short, I conclude that a degree of discretion similar to that applied in previous dockets should be applied here to TC Hydro NE. I further find that, on the basis of the evidence provided here, the proposed *de minimus* regulation of TC Hydro NE with regard to financing approval is consistent with the general good of the State of Vermont. Accordingly, I recommend that the Board find that, under these specific circumstances, *de minimus* regulation and blanket approval for purposes of financing is consistent with the general good of the State of Vermont and issue an order to that effect.

The Bellows Falls Station is subject to an Option Agreement between USGenNE and Rockingham. According to the Option Agreement, in the event that the transactions contemplated between Rockingham and USGenNE are not completed by Rockingham in accordance with the terms of the Option Agreement prior to the time TC Hydro NE completes the transactions under the PSA with USGenNE, then the Bellows Falls Station will be included in the Hydro Facilities purchased by TC Hydro NE.

On December 1, 2004, Rockingham exercised its option to purchase the Bellows Falls Station, although it has not completed the transfer contemplated under that agreement.¹⁰ Thus, upon the issuance of this Order, TC Hydro NE not only acquires the Bellows Falls Station, TC Hydro NE also assumes all related obligations under the Option Agreement.

TC Hydro NE has indicated that financing is not a condition to closing the transaction under the PSA, and that none of the assets to be acquired under the PSA will be pledged to any lender or third party. In granting the request for *de minimus* regulation of TC Hydro NE with regard to financing, I relied on the representation that none of the Hydro Facilities would be mortgaged or encumbered as part of the transactions I am reviewing here. I consequently conclude that TC Hydro NE should not be allowed to mortgage or encumber the Bellows Falls Station between now and the time that Rockingham either completes the transactions contemplated under the Option Agreement, relinquishes its rights to do so, or its rights are extinguished.

I also recommend that the Board conclude that a CPG authorizing TC Hydro NE to own and operate the Hydro Facilities, subject to the conditions set out below, will promote the general good of the state. I recommend that the Board issue TC Hydro NE a CPG and an order to that effect.

10. See Docket 7047, Order of 3/14/05.

All parties to this proceeding have waived the opportunity to comment on this Proposal for Decision in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 25th day of March, 2005.

s/David Farnsworth
David Farnsworth, Esq.
Hearing Officer

V. ORDER

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

1. The findings and conclusions of the Hearing Officer are adopted.
2. The Stipulation between the Vermont Department of Public Service and USGen New England, Inc., filed with the Public Service Board on March 9, 2005, is approved.
3. The Stipulation between the Vermont Department of Public Service and TC Hydro NE, filed with the Public Service Board on March 9, 2005, is approved.
4. The transfer by USGen New England, Inc., of the Hydro Facilities to TransCanada Hydro Northeast Inc. will promote the general good of the State of Vermont, and therefore, a Certificate of Consent under 30 V.S.A. § 109 shall be issued.
5. Upon such transfer, USGen New England, Inc., shall be authorized to curtail service and the Certificate of Public Good dated June 29, 1998, shall be revoked without further order of this Board.
6. Pursuant to 30 V.S.A. § 231, a certificate of public good shall be issued to TC Hydro NE for the ownership and operation of the Hydro Facilities as described in the Findings, above.
7. TC Hydro NE shall file a letter notifying the Board of the date of the closing within ten days following said closing.
8. For each of its facilities, TC Hydro NE shall file a copy of the most recent dam safety inspection report (either developed by FERC or an independent consultant) with the Board and the Department within 30 days of the issuance date of this Order.
9. For each of its facilities, TC Hydro NE shall file a copy with the Board and the Department, within 30 days of the issuance date of this Order, of the most recent FERC letter approving that facility's Emergency Action Plan ("EAP"), or a status report for any EAPs for which FERC approval is currently pending.
10. Until the time that the Town of Rockingham either completes the transactions contemplated under the Option Agreement, relinquishes its rights to do so, or its rights are extinguished, TC Hydro NE shall not mortgage or encumber, in any way, the Bellows Falls Station.
11. The Board hereby consents to and approves financings to be undertaken by TC Hydro NE in connection with its ownership of the Hydro Facilities.

Dated at Montpelier, Vermont, this 25th day of March, 2005.

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

OFFICE OF THE CLERK

FILED: March 25, 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.