

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7081

Investigation into Least-Cost Integrated Resource)
Planning for Vermont Electric Power Company, Inc.'s)
Transmission System)

Order entered: 1/30/2012

ORDER RE: AMENDMENT OF MEMORANDUM OF UNDERSTANDING

I. INTRODUCTION

On June 20, 2007, the Public Service Board ("Board") approved a Memorandum of Understanding ("MOU") filed by most parties to the Docket.¹ The MOU provided for the creation of the Vermont System Planning Committee ("VSPC") to facilitate least-cost integrated resource planning for Vermont's transmission system. The Board's June 20 Order also provided that the Board could modify the MOU "upon reasonable notice to the parties and opportunity to request a hearing"²

On November 22, 2011, Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively, "VELCO") filed a petition, prefiled testimony and exhibits with the Board seeking approval of ten proposed changes to the MOU. VELCO represented that the VSPC supports the proposed changes.

The Board established a deadline of December 13, 2011, for parties to file comments and to request a hearing on the proposed changes.

On December 13, 2011, the Department of Public Service ("Department") filed a letter stating that it generally supports the proposed changes to the MOU, but requests two conditions

1. The MOU is available on the Board's web site at <http://psb.vermont.gov/docketsandprojects/electric/7081/memorandumofunderstanding>.

2. Order of 6/20/07 at 38.

be included in any Board approval of the MOU. The Department does not believe that a hearing is necessary.

On December 13, 2011, Conservation Law Foundation ("CLF") filed a letter stating that it supports the proposed changes, supports one of the Department's proposed conditions, and does not request a hearing.

On December 13, 2011, the Vermont Public Power Supply Authority filed a letter stating that it and its twelve member systems³ support the proposed changes to the MOU.

Based on the petition, the prefiled testimony and exhibits, and the parties' comments, we conclude that a hearing on the proposed changes is not necessary and that we should approve the changes to the MOU with four modifications and with the conditions proposed by the Department.

II. FINDINGS

1. The MOU sets forth a least-cost integrated resource planning process for Vermont's transmission system. This process involves many different entities, including VELCO, the Vermont distribution utilities, the Energy Efficiency Utility ("EEU"), the Department, representatives of residential consumers, commercial and industrial consumers, and environmental protection interests, and members of the public, generally. The MOU is a lengthy document that provides considerable detail regarding the roles and responsibilities of these parties, the steps in the transmission planning process, various analytical issues related to consideration of non-transmission alternatives, and cost allocation issues, among other items. Order of 6/20/2007 at 9 (Findings 1 and 2); exh. MOU-1, *generally*.

2. The MOU has improved the planning process for Vermont's bulk transmission system by establishing a clear set of standards, processes, institutional arrangements, and rules for a more coherent, timely, and meaningful transmission planning and implementation process. The

3. The twelve member systems are: Barton Village Inc. Electric Department; Village of Enosburg Falls Water & Light Department; Town of Hardwick Electric Department; Village of Hyde Park Electric Department; Village of Jacksonville Electric Department; Village of Johnson Water & Light Department; Village of Ludlow Electric Light Department; Village of Lyndonville Electric Department; Village of Morrisville Water & Light Department; Village of Northfield Electric Department; Village of Orleans Electric Department; and Swanton Village, Inc. Electric Department.

MOU thus created a planning environment that ensures that cost-effective non-transmission alternatives are given full, fair, and timely consideration relative to requirements for transmission service and reliability concerns. Order of 6/20/2007 at 12 (Finding 13).

3. The Independent System Operator–New England ("ISO–NE") is responsible for regional planning of the New England transmission system. Frankel pf. at 5, 7; *see also Order Granting RTO Status Subject to Fulfillment of Requirements and Establishing Hearing and Settlement Judge Procedures*, 106 FERC ¶ 61,280 (March 24, 2004).

4. The VSPC has now completed nearly one full planning cycle under the MOU. This experience has revealed the need for greater flexibility in the MOU planning process, which would allow more meaningful and up-to-date information to be considered in evaluating non-transmission alternatives. Frankel pf. at 5–7.

5. The first proposed amendment would modify step 9 of the flowchart "Transmission Planning Process Including Non-Transmission Alternatives" in MOU Paragraph 1 as follows:

- Original text: Step 9: Solution Selection and Determine Cost Allocation (Affected Utilities/VELCO w/ VSPC and Public Involvement Process).
- Proposed amendment: Step 9: Develop project-specific action plan with critical path and milestones (affected utilities/VELCO w/ VSPC and public involvement).

The purpose of this amendment is to modify Step 9 of the flowchart to reflect two of VELCO's other proposed amendments (the third and fifth amendments, discussed below). Frankel pf. at 10–11.

6. The second proposed amendment would modify MOU Paragraph 4 as follows (new text underlined, deleted text marked by strikethrough):

VELCO will take the lead in performing an analysis of Transmission related needs and create a draft Plan ~~document~~ and shall incorporate relevant analyses by ISO-NE into the draft plan. VELCO's analysis in preparing the draft Plan will include identification of potential Reliability Deficiencies for the Bulk Transmission System and Subsystem.

The second amendment would also modify the title of "Step 1" of the MOU to reflect the change to paragraph 4; as amended, the title of Step 1 would read, "VELCO Performs Required 20-Year Transmission Plan Analysis and Creates Draft Document." Frankel pf. at 11; exh. VELCO-dlf-2 at 4.

7. The third proposed amendment would modify MOU Paragraph 6 as follows:

In preparing the plan, VELCO will be responsible, to the extent not incorporated into ISO-NE's analyses, for assessing forecasted demand, supply conditions, system configurations, and usage levels of the Bulk system and Subsystem in determining whether Reliability Deficiencies exist or will arise, accounting for local or regional changes in load with implications for the assessment. In preparing its own forecast to use in making the assessment, VELCO will use the best data reasonably available, and may utilize demand and supply forecasts and related information, prepared by other entities, such as DPS, DUs, and ISO-NE, as well as demand-side savings projected by the EEU.

Frankel pf. at 13-14; exh. VELCO-dlf-2 at 5.

8. VELCO's purpose in proposing the second and third amendments is to recognize ISO-NE's responsibility, with the participation of transmission owners including VELCO, for analyzing Vermont's transmission system, and to incorporate ISO-NE's analysis into VELCO's Long-Range Transmission Plan in order to promote regional coordination and to avoid duplication of effort. VELCO acknowledges that VELCO would remain responsible for a 20-year planning horizon for the Vermont system (compared to ISO-NE's typical 10-year planning horizon), for analyzing Vermont's subtransmission system, and for preliminary non-transmission alternative ("NTA") analysis. VELCO will also continue to conduct its own demand forecasting, even though ISO-NE routinely conducts demand forecasting for Vermont and New England.

Frankel pf. at 11-13.

9. VELCO's fourth proposed amendment adds a section (a) to MOU Paragraph 6 to establish two categories of reliability deficiencies:

- i. Projects for which need dates are imminent or have passed, or for which non-transmission alternatives are clearly impracticable and/or uneconomic;
- ii. All other projects.

Although existing Paragraph 21 of the MOU allows an exemption from further NTA analysis for "those projects that have no reasonable likelihood of being cost-effectively addressed by NTAs," the proposed new Paragraph 6(a), in conjunction with proposed amendment 6 (discussed below), would help better focus the VSPC's efforts in addressing deficiencies through cost-effective NTAs. VELCO acknowledges that, with this amendment, it must ensure that category 6(a)(i) is not applied excessively, and consequently the VSPC has discussed the need to revisit and

possibly revise the NTA Screening Tool. If the VSPC concludes that the screening tool needs to be revised, it will file the revised tool with the Board. Frankel pf. at 14–15.

10. VELCO's fifth proposed amendment would modify MOU Paragraph 28 by removing the list of required elements for VELCO's Long-Range Transmission Plan and replace it with cross-references to the required elements. The amendment would also delete elements to reflect proposed amendment 6 (discussed below). According to VELCO, this amendment would simplify the MOU without removing core, substantive requirements for the Long-Range Transmission Plan. Frankel pf. at 15–16.

11. MOU Paragraph 51 currently calls for the VSPC to create a project priority list of the reliability deficiencies identified in VELCO's Long-Range Transmission Plan, and requires the same set of milestones and process for every project. VELCO's proposed amendment 6 would delete the entirety of MOU Paragraph 51 and replace it with the following language:

Following the filing of the Plan, the VSPC shall, for each identified reliability deficiency or group of deficiencies categorized under Paragraph 6(a)(ii):

- a. Develop a project-specific action plan that describes a non-generic critical path from identification to resolution, including, but not limited to, dates for key milestones and coordination with anticipated regulatory and stakeholder processes;
- b. Subject to the rights and obligations of the DUs and all other parties to this MOU, select areas for focused NTA consideration and draft specific plans for moving that development forward; and
- c. Report progress in relation to the project action plan to the VSPC quarterly and to the Board and Department not less than annually. Where milestones have been modified, progress reports shall state in reasonable detail the reason for such modification.

Frankel pf. at 16–17; exh. VELCO-dlf-2 at 22–23.

12. The purpose behind VELCO's proposed sixth amendment is to provide greater flexibility through project-specific action plans with non-generic critical paths. The amended process retains accountability through quarterly reporting to the VSPC and annual reporting to the Board and Department. Frankel pf. at 16–17.

13. The seventh proposed amendment to the MOU would create a new VSPC voting sector for supply and demand resources by designating as voting members the state's EEU's and

Sustainably Priced Energy Enterprise Development ("SPEED") Facilitator.⁴ This would be accomplished by modifying MOU Paragraph 71 to convert the EEU's and SPEED Facilitator's status from non-voting to voting. The proposed amendment would also specify that for an entity that is both an EEU and a distribution utility, the entity is entitled to be a voting VSPC participant in each capacity, with the representative to the new sector required to be a person primarily engaged in energy efficiency activities. Frankel pf. at 17; exh. VELCO-dlf-2 at 35.

14. The eighth proposed amendment would add language to MOU Paragraph 75 that explicitly authorizes the VSPC and its subcommittees to enter executive session when considering Critical Energy Infrastructure Information ("CEII").⁵ Frankel pf. at 18; exh. VELCO-dlf-2 at 37.

15. The ninth proposed amendment would modify the voting procedures in MOU Paragraph 88 to reflect the addition of a new voting sector established by the seventh amendment. Specifically, Paragraph 88 would be modified to provide that (a) a majority vote of the VSPC would constitute four of the six sectors (currently, a majority vote is three of five sectors), and (b) adoption or modification of VSPC rules of procedure would require a vote of five of the six sectors (compared to four of five sectors currently required). Frankel pf. at 19; exh. VELCO-dlf-2 at 40.

16. The tenth proposed amendment would modify MOU Paragraph 89 to change the deadline from January 15 to February 15 for the VSPC to file its annual report with the Board and Department. This change is designed to better coordinate the filing date with the timing of VSPC meetings and to recognize seasonal holiday considerations. Frankel pf. at 19; exh. VELCO-dlf-2 at 40.

4. The Facilitator is appointed by the Board and is responsible, pursuant to 30 V.S.A. § 8005, for administering the SPEED program under the direction of the Board. The current SPEED Facilitator performs its duties pursuant to a contract with the Board.

5. The Federal Energy Regulatory Commission ("FERC") defines CEII as:
Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure. 18 C.F.R. § 388.113(c)(1).

17. The ten proposed amendments to the MOU were developed over the course of a year-long collaborative process that included a broadly representative ad hoc committee of the VSPC as well as the full VSPC. Frankel pf. at 19–21.

III. DISCUSSION AND CONCLUSIONS

No parties have opposed the proposed amendments to the MOU, although the Department has requested that two conditions be included in any Board order approving the amendments. Specifically, the Department requests:

1. The Board in approving the MOU should include in its order a condition that the Parties through the VSPC process outlined in Paragraph 21 of the MOU, further define the terms "impracticable" and "uneconomic" in the context of revising the NTA screening tool.
2. The Board in approving the MOU, should require that the NTA screening tool be updated and filed with the Board, as per the process set forth in paragraph 21 of the MOU, within six months of the date of an order approving the MOU modifications. If the VSPC despite good faith efforts has not completed the revisions to the NTA screening tool, the Parties must file a status report on the actions and efforts to date on completing revisions to the NTA screening tool and estimate when the revisions will be completed and final.⁶

CLF was the only party to respond to the Department's proposed conditions. CLF supports the Department's first proposed condition, and does not state a position on the second condition.

We have carefully considered the ten proposed amendments, and conclude that we should approve them with the following four modifications: (1) in the third proposed amendment, we modify the language to clarify that under the MOU VELCO remains responsible for the Vermont-system planning functions identified in MOU Paragraph 6; (2) with respect to the fifth proposed amendment, we retain the requirement currently in MOU Paragraph 28(i) that the Draft Transmission Plan must identify the Lead Distribution Utility, absent adequate justification for its elimination;(3) in the seventh proposed amendment, we do not designate the SPEED Facilitator as a voting member of the VSPC; and (4) MOU Paragraph 73 is modified to clarify that the EEU voting participants do not include an entity appointed to deliver natural-gas efficiency services. We explain each of these modifications below.

6. Department letter filed December 13, 2011, at 1.

The third amendment proposes to modify Paragraph 6 as follows:

In preparing the plan, VELCO will be responsible, to the extent not incorporated into ISO-NE's analyses, for assessing forecasted demand, supply conditions, system configurations, and usage levels of the Bulk system and Subsystem in determining whether Reliability Deficiencies exist or will arise, accounting for local or regional changes in load with implications for the assessment. In preparing its own forecast to use in making the assessment, VELCO will use the best data reasonably available, and may utilize demand and supply forecasts and related information, prepared by other entities, such as DPS, DUs, and ISO-NE, as well as demand-side savings projected by the EEU.

We acknowledge that it is sensible to avoid unnecessary duplication of effort by VELCO, so that to the extent that ISO-NE has conducted sufficient analyses of these factors, VELCO may rely on ISO-NE's work. However, the specific text that VELCO proposes suggests that VELCO would no longer be responsible for these assessments, which we find incompatible with VELCO's system-planning responsibilities under 30 V.S.A. § 218c(d) and the Board's final Order in this Docket issued on June 20, 2007. While part of VELCO's justification for its proposed amendment is "to recognize the central role of ISO-NE's analysis of the Vermont system while retaining VELCO's responsibility to create and update Vermont's plan,"⁷ we are concerned that VELCO's specific proposed language improperly implies that ISO-NE has supplanted VELCO's responsibility under state law for least-cost integrated resource planning for Vermont's transmission system. We therefore approve a modified version of VELCO's proposed language, as follows:

In preparing the plan, VELCO will be responsible for assessing forecasted demand, supply conditions, system configurations, and usage levels of the Bulk system and Subsystem in determining whether Reliability Deficiencies exist or will arise, accounting for local or regional changes in load with implications for the assessment. In preparing its own forecast to use in making the assessment, VELCO will use the best data reasonably available, and may utilize demand and supply forecasts and related information, prepared by other entities, such as DPS, DUs, and ISO-NE, as well as demand-side savings projected by the EEU. In performing these actions, VELCO may utilize, to the extent appropriate, any relevant ISO-NE analyses.

7. Frankel pf. at 12.

VELCO's fifth proposed amendment would replace the existing list of specific requirements for the Long-Range Transmission Plan with cross-references to other sources in which the requirements are described. Under the current language of MOU Paragraph 28, one of the specific requirements for the Plan is the identification of the lead Distribution Utility that is assigned to oversee and coordinate Step 8 of the MOU planning process. This requirement does not appear to be captured in the cross-referenced requirements in amended Paragraph 28. VELCO has not explained why this requirement should be eliminated from the Long-Range Transmission Plan. Therefore, we modify VELCO's fifth proposed amendment to retain this requirement, absent adequate justification for its elimination. We require that VELCO file for Board approval either (a) revised language for MOU Paragraph 28 that retains the identification of the lead Distribution Utility, or (b) justification for deleting this requirement from the Long-Range Transmission Plan.

VELCO's seventh proposed amendment would add as voting members of the VSPC the EEU's and the SPEED Facilitator. In our Order approving the MOU we stated:

Paragraph 73 of the MOU provides that the EEU shall designate a representative to the VSPC to be a non-voting participant. We determine that, as long as the EEU is a contractor to the Board, it is appropriate for it to be a non-voting participant in the VSPC.

We note, however, that Vermont policymakers have recently discussed whether this model should be changed such that the EEU would become an independent entity, no longer under contract to the Board. If such change were to occur, we hereby put the parties to this proceeding on notice that it may be appropriate to revisit some aspects of the role of the EEU in the transmission-planning process set forth in the MOU. In particular, it may be appropriate to consider whether the EEU should remain a non-voting participant in the VSPC, or whether it should be given voting status, and if so, what effect that might have on the VSPC's voting structure. Accordingly, if the Board considers whether to change the EEU model, we will notify the parties to this proceeding so they may participate in those discussions.⁸

8. Order of 6/20/2007 at 37.

We agree with VELCO that it is appropriate that the EEUs be assigned a voting role, as neither EEU is now under contract to the Board.⁹ However, the SPEED Facilitator is currently under contract to the Board. Thus, the SPEED Facilitator does not function independently of the Board, so it is unclear on what basis and under what authority the SPEED Facilitator would exercise its VSPC voting rights. Furthermore, the VSPC responsibilities include the review of reliability deficiencies and possible solutions that may eventually come before the Board for determination in the Board's quasi-judicial capacity (typically in a proceeding under 30 V.S.A. § 248); accordingly, it would be inappropriate for the Board's contractor to vote on such matters. For these reasons we reject VELCO's proposal to designate the SPEED Facilitator as a voting member of the VSPC.

An additional clarification is needed in MOU Paragraph 73. In Docket No. 7676, the Board is reviewing the possible appointment of an entity to deliver natural-gas efficiency services pursuant to 30 V.S.A. § 209 (d)(2). Accordingly, in the first sentence of amended Paragraph 73 of the MOU, the phrase ", except for an entity appointed to deliver only natural-gas efficiency services," shall be added immediately following the word "Programs."

We also request VELCO to clarify one aspect of the proposed language in its amended MOU Paragraph 51. As proposed, Paragraph 51(a) requires the VSPC to report quarterly to the VSPC (i.e., to itself). By April 30, 2012, VELCO should clarify whether this is in fact the intended effect; if so, VELCO should explain the purpose of this apparent self-reporting, and if not, VELCO should propose alternative language.

Turning to the Department's proposed conditions, they are sensible and unopposed, and therefore we include them in today's Order.

IV. CONCLUSION

When we first approved the MOU in 2007, it established an unprecedented process for least-cost integrated resource planning for Vermont's transmission system. It is not surprising that as the participants have gained experience implementing this new process, they have

9. Of the two current EEUs, one (Vermont Energy Investment Corporation) was formerly under contract to the Board, but now functions independently under an Order of Appointment, while the second (City of Burlington Electric Department) is a distribution utility that is not, and was not previously, under contract to the Board.

identified areas in which the process can be improved. With the relatively minor modifications and conditions identified above, we adopt the proposed amendments to the MOU. We commend VELCO and the VSPC participants for their efforts in identifying these improvements to Vermont's transmission-planning process.

It appears to us that there is no longer any need to maintain this matter as an open proceeding. Therefore, we propose to close this Docket after the additional filings required in this Order are submitted and acted upon by the Board. If any future proposed amendments to the MOU require formal process, we would open a new Docket at that time. We welcome comments from the parties on our proposal to close the current proceeding; any comments should be filed by February 10, 2012.

V. ORDER

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

1. The proposed amendments to the memorandum of understanding ("MOU") in this proceeding, as set forth in Exh. VELCO-dlf-2, are approved, with the following modifications:

a. Paragraph 6 of the MOU shall be modified as follows:

In preparing the plan, VELCO will be responsible for assessing forecasted demand, supply conditions, system configurations, and usage levels of the Bulk system and Subsystem in determining whether Reliability Deficiencies exist or will arise, accounting for local or regional changes in load with implications for the assessment. In preparing its own forecast to use in making the assessment, VELCO will use the best data reasonably available, and may utilize demand and supply forecasts and related information, prepared by other entities, such as DPS, DUs, and ISO-NE, as well as demand-side savings projected by the EEU. In performing these actions, VELCO may utilize, to the extent appropriate, any relevant ISO-NE analyses.

b. The proposed amendment to Paragraph 28 of the MOU shall be modified to retain the requirement in the Long-Range Transmission Plan for identification of the lead Distribution Utility, absent adequate justification for its elimination. By April 30, 2012, VELCO shall file for Board approval either

(i) revised language for MOU Paragraph 28 that retains the identification of the lead Distribution Utility, or (ii) justification for deleting this requirement from the Long-Range Transmission Plan. Parties shall have two weeks from the date of VELCO's filing to submit comments on the filing.

- c. The proposed amendment to the last sentence of Paragraph 73 of the MOU is denied. The last sentence of Paragraph 73 shall remain unchanged.
- d. In the first sentence of amended Paragraph 73 of the MOU, the phrase ", except for an entity appointed to deliver only natural-gas efficiency services," shall be added immediately following the word "Programs."

2. Within six months of the date of this Order, the non-transmission alternatives ("NTA") screening tool shall be updated and filed with the Board, in accordance with the process set forth in paragraph 21 of the MOU. If, despite good-faith efforts, the VSPC has not completed the revisions to the NTA screening tool within six months, the Parties must file a status report on the actions and efforts to date on completing revisions to the NTA screening tool with an estimate as to when the revisions will be completed and final.

3. The Parties, through the VSPC process outlined in Paragraph 21 of the MOU, shall further define the terms "impracticable" and "uneconomic" in the context of revising the NTA screening tool. These definitions shall be filed with the Board by July 31, 2012, for the Board's approval. Parties shall have two weeks from the date that the definitions are filed to submit comments on the definitions.

4. Within one month after the filings required by this Order are submitted and ruled upon by the Board, VELCO shall file a complete copy of the amended MOU as approved by the Board, including an electronic version in a format that is searchable and extractable.

SO ORDERED.

Dated at Montpelier, Vermont, this 30th day of January, 2012.

s/James Volz)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: January 30, 2012

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: psb.clerk@state.vt.us)