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February 4, 2008

Susan Hudson, Clerk  
VT Public Service Board  
Chittenden Bank Bldg.  
112 State Street – Drawer 20  
Montpelier, VT 05620-2701

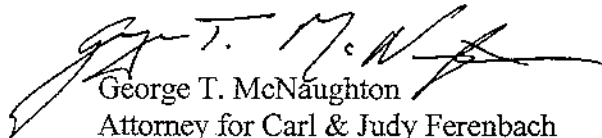
RE: Southern Loop, Docket #7373

Dear Ms. Hudson:

Please find enclosed for filing purposes an original and six copies of the following:

RESPONSE TO MOTION IN LIMINE FILED BY VELCO  
REGARDING VERMONT LAND TRUST RESTRICTIONS  
ON THE FERENBACH PARCEL

Sincerely,



George T. McNaughton  
Attorney for Carl & Judy Ferenbach

Cc: Service List

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Petition of Vermont Transco, LLC, and )  
Vermont Electric Power Company, Inc. )  
(collectively, "VELCO"), and Central Vermont )  
Public Service Corporation ("CVPS") for a )  
Certificate of Public Good, pursuant to 30 )  
V.S.A. §248, for the "**Southern Loop Project,**" )  
Located in Vernon, Guilford, Brattleboro, )  
Dummerston, Newfane, Brookline, Townshend, )  
Grafton, Windham, Andover, Chester, Ludlow )  
and Cavendish, Vermont, consisting of the )  
following elements: (1) a new, approximately )  
51-mile, 345 kV transmission line between )  
Vernon-Cavendish, to be built parallel to and )  
within the same utility right-of-way as )  
VELCO's existing Vernon-Cavendish 345kV )  
line; (2) a new VELCO 345 kV Vernon )  
substation, to be located just north of the )  
Vermont Yankee Nuclear Power Station; (3) a )  
new 345/115/46 kV Newfane substation; (4) a )  
new, approximately one-mile, 345 kV )  
transmission line loop between the new )  
Newfane substation and the new Vernon- )  
Cavendish 345 kV line; (5) expansion of )  
VELCO's Coolidge substation in Cavendish, )  
Vermont; and (6) the implementing of )  
incremental energy efficiency to defer )  
transmission upgrades in Southern Vermont )

Docket No. 7373

**RESPONSE TO MOTION IN LIMINE FILED BY VELCO  
REGARDING VERMONT LAND TRUST RESTRICTIONS  
ON THE FERENBACH PARCEL**

Comes now Carl Ferenbach, III and Judy W. Ferenbach, by their legal counsel George W. Lamb, PC, and responds to MOTION IN LIMINE TO EXCLUDE EVIDENCE WITH RESPECT TO VERMONT LAND TRUST RESTRICTIONS ON THE FERENBACH PARCEL as follows:

1) The Public Service Board is an inappropriate forum to determine the priorities regarding conflicting easements, however, Ferenbachs concede for the sake of argument that the Vermont Land Trust conservation and restrictive covenant agreements are legally

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subordinate to the utility easement at issue in this cause, and therefore will not burden the Board with a discussion of relative easement priorities;

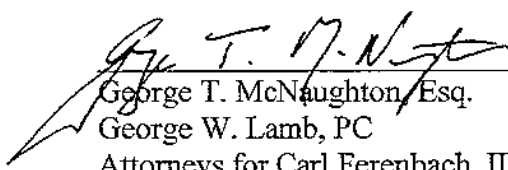
2) The Ferenbachs, however, assert that the fact that substantial portions of their land including the portions traversed by the utility easement is hardly irrelevant to these proceedings;

3) The Vermont Land Trust easements constitute a property right in a manner similar to a property right held in fee, and they are relevant to these proceedings in that they demonstrate a firm commitment of the landowner and the parcel to certain conservation ethics which may, or may not, be applicable to land in general in the State of Vermont;

4) The extent to which the proposed project violates restrictive covenants upon the Ferenbach lands is highly relevant in determining the appropriateness of the project and what conditions on activity respecting the project should apply.

5) That it is difficult to discern any appreciable delay which would be incurred in these proceedings by an inquiry and investigation as to the extent the proposed project would be inconsistent with the Vermont Land Trust restrictions, in fact, an exclusion of such inquiries is likely to result in delay regarding the case in chief due to legal contention as to whether certain types of inquiries were or were not legitimate which would consume more time than would be consumed by allowing the inquiry to occur.

WHEREFORE, Carl Ferenbach, III and Judy W. Ferenbach request that said motion be denied.

  
George T. McNaughton, Esq.  
George W. Lamb, PC  
Attorneys for Carl Ferenbach, III and Judy W. Ferenbach

#### MEMORANDUM

The following is filed in support of the foregoing Response by Carl Ferenbach, III and Judy W. Ferenbach:

1) It is acknowledged that the Public Service Board has broad discretion in limiting testimony before the Board in proceedings relative to technical hearings before it<sup>1</sup>;

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<sup>1</sup> See Investigation into *General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC, and related transactions*, Order Re: Motion to Strike, (3/21/2002)

2) However, when dealing with evidentiary matters before the Board it is recognized and established that

The rules of evidence are relaxed in Board proceedings so that evidence not admissible in court is admissible by the Board if it may "illuminate the case." *In re Central Vermont Public Service Corp.*, 141 Vt 284, 292, 449 A. 2d 904, 909 (1982)

As cited in *In re: Petition of Twenty-Four Vt. Utilities* (1992) 159 Vt. 339; 618 A. 2d 1295, at p. 350.

3) Further, while the Board has broad discretion to receive evidence, the Vermont Supreme Court has ruled that it does not necessarily have as broad discretion to exclude evidence:

But the right to admit such evidence does not imply that agencies are also free to exclude relevant evidence. See *In re New England Power Corp.*, 103 Vt. 453, 459, 156 A. 390, 392-93 (1931)

As cited in *In re: Central Vt. Public Service Corp.*, (1982) 141 284; 449 A. 2d 904, at 293.

4) VELCO has objected to the relevancy of the Vermont Land Trust covenants and restrictions, this is not well taken because such covenants are directly related to esthetics as specifically referenced in 30 V.S.A. §248, and also as incorporated by reference Criteria 4 and 8 under 10 V.S.A. § 6086 (a).

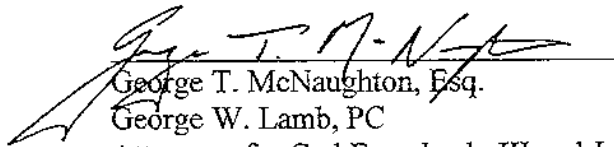
5) Clearly the extent to which the land across which a utility easement runs and adjoins is conserved land and the nature of the covenants and restrictions which pertain to such conserved land is highly relevant to the determinations required by the Public Service Board under 30 V.S.A. §248.

6) Further, although VELCO has sought to obtain an unreasonably short period in which Ferenbachs are to be required to respond to its Motion in Limine, there is nothing in the record of these proceedings which suggests that Ferenbachs have in anyway contributed to any delay, to the contrary, the responses of Ferenbachs have been prompt and timely.

7) Ferenbachs would remind the Public Service Board that it cautioned the Board to expect that VELCO would vigorously attempt to hinder and restrict the full participation of Ferenbachs in these proceedings and that a limitation on issues to which Ferenbachs were granted standing would result in this type of motion by VELCO.

8) Ferenbach consequently object to any attempt at limiting their participation in these proceedings.

Respectfully submitted this 4<sup>th</sup> day of February, 2008.



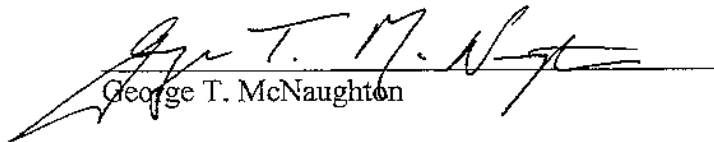
George T. McNaughton, Esq.  
George W. Lamb, PC

Attorneys for Carl Ferenbach, III and Judy W. Ferenbach

### CERTIFICATE OF SERVICE

Comes now George T. McNaughton and certifies that a copy of the above and foregoing motion and memorandum were served upon the service list attached hereto on the 4<sup>th</sup> day of February, 2008 by depositing the same in the United States mails first class postage affixed.

Certified this 4th day of February, 2008



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