

## **VERMONT PUBLIC POWER SUPPLY AUTHORITY**

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Property Tax Exemption Study Committee:

The following comments on the draft language (“Draft”) presented to the Property Tax Exemption Study Committee (the “Committee”) are submitted by Vermont Public Power Supply Authority (“VPPSA”) on behalf of its twelve municipal electric utility member systems (“Municipal Electrics”). VPPSA is a public instrumentality of the State of Vermont, formed by statute enacted by the Vermont Legislature in 1979, and acts as a joint action agency on behalf of the Municipal Electrics. In providing power purchase, financial, technical and many other services, VPPSA is engaged in “the performance of an essential governmental function of the state.” 30 V.S.A. § 5011(a).

The Municipal Electrics are local institutions with deep roots in Vermont; many have existed for well over a century. The Municipal Electrics represent local people working together to meet local needs. The local need that the Municipal Electrics provide, retail electric service, is a service that is critical to both Vermont’s residents and its businesses. All municipal utilities are governed locally so they are directly accountable to customers that they serve. Consumer owners have a direct voice in the operation of the utility and the important opportunity to influence and set policy on a local level. Decisions about the utility are made at meetings that are open to the public. Overall, the Municipal Electrics reflect the goals and concerns of each local community, including affordability, reliability, conservation and safety. They provide their service in a way that allows the local communities they serve to help shape those very goals.

Because they have no shareholders, the Municipal Electrics provide this service at cost, with no profit built into their rates. Their customers rely on a reliable source of electricity at the lowest possible cost in order to power their businesses and enjoy their homes. Savings that the Municipal Electrics can achieve are passed on to their customers. Conversely, any and all increased costs are passed on to their customers, residential, commercial and industrial alike. Thus, the Draft as presented to the Committee is troubling to the Municipal Electrics because it will act to increase costs on their customers at a time when they will see many of their other costs rise.

The Municipal Electrics understand that the Draft was created to address a concern about activities that are considered “public” and are not subject to taxation. While they do not argue that the provision of electric service is a “public” service, the Draft inappropriately includes municipal utilities, which are instrumentalities of the State, within its reach. The Draft should more appropriately look at private institutions that are engaging in public activities, not local municipalities that are subdivisions of the State and are the fundamental provider of local services to the communities that they serve.

There are two ways that the Draft will significantly increase the cost of electricity in local communities in which the Municipal Electrics serve customers and/or own property.. Outside of the boundaries of the municipality, adoption of the Draft would change the way in which improvements to real estate are taxed. Within the boundaries of the municipality, the Draft looks to remove an exemption from the statewide education tax that applied to utility service. Both of these changes could add large additional tax burdens to Municipal Electrics, which will be passed on to their customers.

#### Municipally-owned Property Outside Boundaries

Under current law, most improvements (e.g., substations) made to real estate located outside of the utilities' municipal boundaries are not taxed by the host municipality. A couple of restrictions on this exemption exist: (1) "electric utility poles, wires and pole fixtures" are taxed at their book value; and (2) some municipalities impose an additional tax on 75% of the value of the underlying real estate in lieu of a tax on the improvement. 32 V.S.A. § 3659. Importantly, however, most substations and similar infrastructure are not taxed as they are "improvements made subsequent to the acquisition" of the real estate. The draft bill changes this exemption such that all "fixtures" would be taxed like poles, wires and pole fixtures had previously been taxed – at their book value. The term "fixtures" includes substations, pad-mounted transformers, switching stations and other similar facilities. It could also include other utility assets like hydro and other generation facilities. *See Village of Northfield v. Town of Northfield*, Docket Nos. 559-9-11 Wncv and 967-9-11 Wncv, Order of 1/25/13 at 3.

Under current law, the host municipalities can already tax the improvement through the additional tax on 75% of the value of the real estate. If these improvements, which are all used to provide electric service at cost to their customers, were to be taxed at a significantly higher amount, it would have a major impact on the finances and the rates of Municipal Electrics, with those impacts being passed through to electric ratepayers. The value of substations and other similar types of infrastructure can exceed the value of the underlying real estate by multiples of ten or more. Thus, the increased tax burden that would be placed on to the customers would be sizable. The Draft would increase the cost of electricity, resulting in higher electric bills for the Municipal Electrics' customers.

#### Municipally-owned Property within the Boundaries

Currently, municipally-owned property within a municipal's own boundaries is exempt from the statewide education tax. The Draft would change the exemption so that it applies only to property used for "municipal purposes," not "general commercial purposes." The Draft does not provide a definition of "general commercial purposes," but there is a strong indication that utility service would be included in this definition. Current language in statutes states that a "municipal" purpose "include[s] *the provision of utility services.*" 32 V.S.A. § 5401(10)(F)(emphasis added). By removing this language, the intent of the bill seems to remove "utility services" from the scope of municipal purposes. Moreover, the draft bill accompanying the 1999 report included the language that is missing from the Draft, that "municipal purposes" includes the provision of utility services. Without any explanation, the Draft completely reverses the policy position that the 1999 report established.

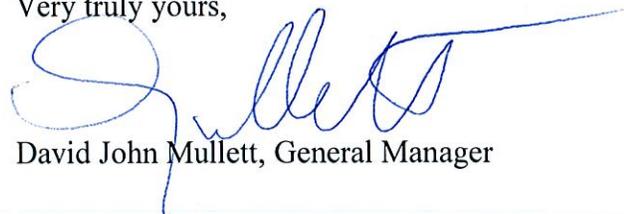
The result of this change would be just as significant as the change to Section 3659. Infrastructure used to provide electric service within the municipal boundaries that had previously not been taxed would be subject to taxation. Because the Municipal Electrics are at-cost providers of electricity, all of these increased costs will be passed through to their customers. The addition of one of these taxes by itself would have a significant impact on the Municipal Electrics' ratepayer, but both would likely be an increase in costs that could not be absorbed without placing a real burden on the customer.

VPPSA and the Municipal Electrics strongly urge the Committee to reject the portions of the Draft that change the way utility infrastructure will be taxed both inside and outside the municipal boundaries. Based on the value and the amount of the infrastructure involved, this would not be an incremental increase in tax burden. It would be a substantial increase. The property that would be subject to these new taxes is not being used to yield profits to private shareholders; it is being used to provide low cost electric service to the residents of the very same cities and towns. It is those residents who will end up paying the increased electricity costs.

The Municipal Electrics are not private, non-profit actors. They are all instrumentalities of the State that were each given a charter by the State to operate an electric utility. The Draft's main goal is to address the types of use of property that should and should not be subject to taxation. The Municipal Electrics should not be viewed through this lens. When it comes to taxation, they should not be treated the same as private, non-profit institutions. They are governmental actors providing an essential service, and state policy disfavors taxing such entities in these circumstances. "It is contrary to the policy of this State to subject its own property or that of its municipalities, which is devoted to a public use, to a general property tax, absent the most positive legislative enactment." *Village of Swanton v. Town of Highgate*, 131 VT 318, 322 (1973). VPPSA and the Municipal Electrics submit that the provisions of the bill that are counter to this policy should be removed by the Committee.

Should the Committee desire any additional information or have any questions, VPPSA and the Municipal Electrics are prepared to respond. Thank you for this opportunity to submit these comments.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. Mullett", with a long horizontal flourish extending to the right.

David John Mullett, General Manager