

# The Great Hydropower Heist

*How Corporations Colonized Our Watershed Commons*

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From Vermont's founding as a Republic in 1777 until the early 1900s, its citizens were far more energy independent than we find ourselves now. The old-timers traveled and transported goods with an efficient blend of the original horse power and coal-fired steam trains. They heated largely with wood and built hundreds of small hydropower facilities—initially, mechanized mills that utilized raw waterwheel power and were later retrofitted with electric generators and complementary coal-fired steam-powered systems. Hence, the claim: “Hydro—the power that built Vermont.” Now Vermonters spend roughly \$2 billion every year on out-of-state fuels for transportation, heating, industrial applications, and electricity. More than \$1 billion pays for imported oil and gas alone.

How did Vermont lose its energy independence? Why haven't we converted more of our potential “energy commons”—our sunlight, our wind, our forests, our rivers, our economy's waste products—into sustainable power sources?

The concept of “commons” goes back to medieval Europe where the law of the realm recognized that certain natural resources or “real estate” belonged to all the people, and that its ownership and access resided in the public domain for “the public good.” American colonists carried this concept to the New World and built their villages around the “town commons” where they corralled their animals for safekeeping each night, and around which they built their meetinghouses, churches, homes, and businesses. The commons then functioned in colonial America both as the physical epicenter and philosophical keystone of the “public good.” The physical commons has morphed into some “set asides” of natural resources that belong to the public, some more than others, at least theoretically. We're all familiar with state/national parks; internationally recognized offshore limits; public access to seashore, lakes, rivers; regulated access to aquifers, mineral rights, airways, and electronic bandwidths. The more prosaic forms of “public good”—like recognizing the value in keeping the village green for grazing animals—have evolved into a complex web of local, state, and federal government sponsored “public works” or “public services” that range from town water-and-sewer to transportation systems, healthcare, public assistance, and municipal electric utilities.

Stewardship, in this conversation, simply means the public's responsibility to maintain the health of the commons for future generations. And the public's track record reflects the full range of the human condition—from inspired care of sacred sites (e.g., declared wilderness areas) to utter neglect and abuse (most rivers in the United States at one time or the other). Vermonters' care of the Connecticut River watershed devolved from most respectful to shameful, before we earned our current reputation as a “green” or environment-friendly state. By the mid-1800s the new Vermonters had overlogged and then overgrazed by sheep farming the Connecticut watershed to the point where the land had lost its natural spongelike ability to absorb rainfall and release the water over time. As a result, unchecked runoff made the Connecticut River and its tributaries run wild after storms and in the spring, the floods repeatedly destroying railroad lines and inundating towns and farmlands. Damming many of the rivers for hydropower was not an option in the 1800s. So not until Vermonters reluctantly allowed the woodlands to grow back and made the transition to dairy farming in the second half of the 1800s did the watershed recover its ability to store runoff.

Experts agree that 60 to 70 percent of the Connecticut River's daily flow comes from the watershed's slow release of groundwater. Indeed, it has been Vermonters' responsible stewardship of the watershed—displayed in the popular images of pastoral Vermont's rolling mix of woodlands, farms, and small villages—that produces the “white coal,” the hydropower potential of the Connecticut and Deerfield rivers.

Commercial interests also access the commons to extract natural resources, be it for farming, logging, mining, and so on. The inherent questions of extraction versus exploitation did not escape the settlers in North America. It can be argued that the abuses of the English-chartered corporations such as the East India Company and the Hudson's Bay Company triggered the American Revolution. The American colonists of all socioeconomic ranks—from laborers, small farmers, traders, and artisans, to the landed gentry—opposed these “multi-territorial” corporations that King George and Parliament used to exploit natural resources and human labor to extend their control over the British colonies. Having defeated English corporate imperialism, the revolutionaries did not grant executive, judicial, or military sectors the authority to charter corporations. Instead, they made certain that their elected representatives issued charters, one at a time, for a specific public purpose (building a bridge or dam), for a limited span of time (10–20 years), with the requirement that the project be turned over to the state or town at the expiration of the charter. A charter of incorporation was regarded as a privilege—and with that privilege came the corporate obligation to serve the public interest.

For the first half of American history, corporations served the public good at the pleasure of the granting authority. And so legislatures routinely revoked corporate charters, or allowed the charter to expire and corporations to be dissolved—at any time when the public's representatives determined that a corporation had failed the test of “serving the public good.” Our early Vermont history is chock full of experiments in privately funded roads and postal services that ultimately failed to meet the criteria of the “public good.”

What happened to this system of state control over corporations? In 1886, the federal government recognized “corporate personhood.” Over the next 120 years, Washington coupled these newly acquired corporate-personhood rights and privileges with federal jurisdiction over interstate trade to erode state rights and state control over corporations.

The emergence of large, powerful corporations has heated up the debates around the commons versus corporations, public versus private, democracy versus development, socialization versus privatization. The question of what entity—public or private—would do the best job of delivering reliable, affordable electricity to Vermonters lands smack in the middle of this debate. It's a rhetorical question; the reality is that the private sector has basically controlled Vermont's electric power system over the past one hundred years.

Brattleboro and Windham County serve as a case in point; this corner of the state had achieved a high level of prosperity based on the small business model and a balance between economic activity—agriculture, transportation, retail services, and manufacturing—and the prudent utilization of the commons—properly stewarded grazing lands, woodlands, mineral springs, and the two major watersheds. All along the Connecticut and Deerfield rivers' numerous tributaries, several hundred water-powered mills, many with complementary steam plants, employed thousands and produced flour, textiles, and hundreds of different wood products from matches to chairs, as well as powering metal manufacturing machinery. Mirroring the age of water power in New England, a high point in decentralized, indigenous renewable-energy production, Brattleboro prospered, its practically self-sufficient economy exporting a wide range of manufactured goods to markets throughout the region.

It was natural then for people living along the recently tamed Connecticut to dream about harnessing its awesome power. In 1902 several forward-looking local businessmen promoted the idea of a hydroelectric station. Brattleboro's representative in the state legislature introduced a bill for the charter of the Connecticut River Power Company—CRPC, or what we'll call the “Power Company.” The New Hampshire legislature gave its approval to a companion charter in 1903. The state charters

specified that towns adjoining the flowage had the right to take power for street lighting and other municipal uses. The legislatures, in other words, empowered a private, for-profit company with powers of eminent domain and rights to water use because the legislators expected that the electricity would be distributed for public use and community benefit. Armed with the authority of the two state charters and backed by out-of-state investors, the Power Company incorporators, readily acknowledged as “town fathers,” persuaded the public to support this enterprise.

In 1903, our local leaders and state legislators traded away a magnificent slice of our commons for a promise. Well, how well did the deal shake out? While the local Power Company incorporators were selling the Vernon dam project up here in Vermont, the Power Company’s major players down there—wealthy Boston-based financiers—had recognized a growing power shortage in large industrial cities of eastern Massachusetts. These utility speculators were looking to the relatively remote and untapped northern New England hydro resources. As the Vernon dam was being built, its output was upgraded from 12,000 to 28,000 horsepower, and other Power Company construction crews built hundreds of miles of transmission lines from Vernon to eastern Massachusetts. This orientation of infrastructure flipped the switch. There was no way to direct significant power flow back to Brattleboro.

The Power Company’s next major project, the Deerfield River System, was a monster technically and a monster ethically. The Whitingham dam dwarfed any existing New England dam. The Power Company drained much of southeastern Vermont and submerged thousands of acres of farmland, entire villages, and miles of roads and railways—all of which required expensive relocation. The Power Company augmented the dam work with additional transmission lines that linked the Deerfield dams with the Vernon dam, to further the goal of exporting the power south. The company promised a stable, affordable electricity supply while threatening potential customers with their financial and legal clout—to buy up water rights and dams from the mills on the Connecticut and Deerfield tributaries. In a final coup de grace to independent power producers, the Power Company refused to sign power supply contracts with local mills unless they agreed to sign over and/or destroy their dams and hydroelectric generators. Power Company crews went in and destroyed waterwheels and electrics with sledgehammers and crowbars. The net result was that hundreds of Windham County’s water/steam mills lost access to their own inexpensive, local power—what we now call decentralized or “distributed” power.

Some might argue that Windham County and the Deerfield Valley never recovered from the invasion of the Power Company. Southern Vermonters experienced early on the “resource curse” that currently bankrupts developing countries that witness outside interests exploiting their resources to the detriment of the environment and indigenous people. As some humorists have pointed out, “Vermont is a third-world country, but the natives don’t realize it.” The aggressive energy moguls solidified their holdings to the point that by 1930, 95 percent of Vermont’s consumers were held hostage to out-of-state Investor Owned Utilities (IOUs) that owned 99 percent of the electric power plants in the state. Vermonters paid “through the nose” for electricity. And worst of all, nine out of ten Vermont farmers could not get electricity! Today, TransCanada, a multinational energy corporation that makes its money largely from American consumers paying to have Canadian natural gas pumped across the border, and the new owner of the entire Connecticut/Deerfield hydropower system, is the latest investor to milk our Windham County “cash cows.”

In 1909 the IOUs, not consumers' advocates, successfully lobbied for the establishment of the Vermont Public Service Commission (PSC), which later evolved into the current Department of Public Service and its complementary quasi-judicial agency, the Public Service Board. IOUs wanted the state to recognize them as "public utilities"—a clever misnomer for privately owned, for-profit entities. Secondly, IOUs wanted the PSC to supercede municipal authorities. Here the IOU lawyers and lobbyists really earned their paychecks. In one fell swoop, they maneuvered the state into removing local control and thereby shielding the IOUs Achilles heel. Instead of being burdened with dealing with hundreds of potential local "regulators" with clear allegiances to their communities, the out-of-state investors could focus all their resources on influencing one state regulatory agency. And early on, the nascent Public Service Commission was intentionally underfunded resulting in overworked, less-than-qualified personnel supported by IOU handpicked consultants.

To paraphrase architect and industrial ecologist William McDonough, regulatory agencies regulate us, the public. Not the agencies' partners, the corporations. Regulators decide what quality of service, at what cost, and at what level of toxicity we, the public, will have to tolerate. Arsenic and fluoride in our water, sulfuric acid in our rainwater, noxious particulates and unburned hydrocarbons in our air, genetically modified organisms in our food, radioactive strontium-90 in our atmosphere from weapons fallout. Exotic emissions from automobiles, refineries, power plants, pharmaceutical and manufacturing operations. So when you hear or read about "regulations," you may want to think carefully about the level of risk the regulations are imposing on you and your local community. "Regulator" is shorthand for the fox guarding the hen house.

As the Connecticut River Power Company's electrical power flowed south and east from the Vernon dam and the Deerfield River system of dams, the state legislature finally appointed in 1912 a Commission on the Conservation of the Natural Resources of the State of Vermont to look into the matter. The Commission recommended that the state control the export of electric power, much as Maine had banned exports in 1909. But the combination of the Power Company's and its IOU allies' lobbying efforts and public relations campaigns convinced the legislature to ignore the recommendations. A few years later spurred on by public outrage of the Vernon and Deerfield dams rip-off, the PSB made a second attempt to implement state regulation of exports. The Power Company challenged the order in Federal Court, which, in turn, ruled in 1919 that Vermont, or any state for that matter, had no jurisdiction over such interstate commerce as export contracts. The Federal Court's ruling rendered the State powerless to enforce the "public interest" intent of the original Power Company charter.

Many analysts agree that these watershed decisions triggered the long-standing, ongoing battle over Vermont's electric power exports. The decade of the twenties literally lit up America—demand of electricity doubled every few years—and ushered in the IOUs' ruthless campaign of monopoly and Enron-like manipulation, corruption, and outright thievery. By 1929 IOUs had bought out the lion's share of Vermont's patchwork of municipal and small private utilities and thereby controlled over 90 percent of the electricity generated and about 75 percent of the power distributed in Vermont.

Back in 2002–2004, our Brattleboro-based group NECSIS, the NorthEast Center for Social Issues Studies, put together a team of professionals who volunteered their time and talents to convince the State to purchase these "green" power sources, the dams on the Connecticut and Deerfield rivers—535 megawatts of combined capacity, or more than 80 percent of what Vermont Yankee supplies Vermont. A purchase that in one fell swoop would answer the Pro-Nukes' perennial rejoinder to the Shut-Down VY crowd: "And how do you propose to replace all that reliable, low-cost power?" Simple. With safer, more reliable, lower-cost, and infinitively more green and greenhouse-friendly hydropower. Our lobbying efforts paid off when the legislature invested \$750,000 in an attempt to buy the dams outright. But Governor Douglas sold the deal down the river while the legislature washed its hands of the affair and went looking for other ways to "diversify the state's energy portfolio."

The vast majority of the world's remaining oil comes from the most unstable countries in the world. The Bush administration's reaction to 9/11 in the form of a more corporate-friendly, business-as-usual National Energy Plan (closed-door consultations chaired by VP Cheney) and the subsequent invasions of Afghanistan and Iraq opened the proverbial "Pandora's Box" and triggered a strong reaction from Vermont's culture of active grassroots organizations. More and more Vermonters have been equating their dependence on imported energy with the U.S. government's aggressive military policies. In the spring of 2003, eighty-one of eighty-three towns passed a Vermont Energy Independence resolution urging our state government and congressional delegation to encourage all sectors of the Vermont economy toward a sustainable energy future. In 2005, forty-eight of fifty-three towns across Vermont voted in favor of resolutions requesting that their state representatives use their executive and legislative powers to investigate the deployment of the Vermont National Guard to Iraq. On February 13, 2007, the Vermont House and Senate voted to press Congress and the president "to commence immediately the orderly withdrawal of American military forces from Iraq."

In addition, a spontaneous outbreak of self-selecting groups are initiating a wide array of direct action on the local level. In southern Vermont alone we can point to Brattleboro-based Post Oil Solutions, Windham Energy Coalition, Windham Environmental Coalition, District Heating Group, Vermonters for a Fair Economy and Environmental Protection, Brattleboro Climate Protection, Putney's Energy Committee, Springfield's Sustainable Valley Group, and Norwich's Sustainable Energy Resource Group. Most of these groups have been exploring the relationship between indigenous renewable-energy sources (wind power, small hydropower, wood chips, "cow power," basic energy efficiency, biodiesel) and the health of our local economies, especially around locally grown food. In short, Vermonters are stepping up their collective efforts to take responsibility for their dependence on the global fossil-fuel-driven economy and its enormous environmental and social costs.