

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7577

Joint Petition of Central Vermont Public Service )  
Corporation and Custom Investment Corporation for )  
approval of transfer of ownership interests in Vermont )  
Yankee Nuclear Power Corporation )

Order entered: 12/29/2009

**I. INTRODUCTION**

On September 9, 2009, Central Vermont Public Service Corporation ("CVPS" or the "Company") and Custom Investment Corporation ("Custom"), a wholly-owned subsidiary of CVPS, filed a petition (the "Petition") with the Vermont Public Service Board ("Board") seeking approval pursuant to 30 V.S.A. § 107 to permit CVPS to re-acquire common stock in the Vermont Yankee Nuclear Power Corporation ("VYNPC") currently held by Custom.<sup>1</sup> The Company previously transferred the common stock in VYNPC to Custom in 2003 to take advantage of certain income tax benefits provided under 32 V.S.A. § 5837. With the repeal of 32 V.S.A. § 5837, the tax benefits are no longer available to Custom and CVPS seeks to re-acquire the VYNPC stock and dissolve Custom. The Board approved the original transfer to Custom in this docket on October 10, 2003.<sup>2</sup>

On September 23, 2009, the Clerk of the Board issued a letter informing CVPS that additional information was needed in order to complete the review of the Petition.

On October 12, 2009, CVPS filed the additional information.

On December 16, 2009, the Department of Public Service ("DPS") informed the Board by letter that it recommended approval of the Petition by the Board without hearing.

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1. Under Section 107, the direct or indirect acquisition of more than 10% of the voting securities of a Vermont public utility is prohibited unless approved by the Board. Ten percent or more of the outstanding voting securities is presumed to constitute a "controlling interest" under the statute. 30 V.S.A. § 107(e)(1).

2. See Docket No. 6835, Order of 10/10/03.

I have reviewed the Petition and the supplemental filing. I conclude that approval of CVPS's Petition pursuant to 30 V.S.A. § 107 is appropriate and that such approval may occur without hearing. Based upon the evidence of record, and the DPS letter of December 16, 2009, I hereby report the following findings and conclusion to the Board in accordance with 30 V.S.A. § 8.

## **II. FINDINGS**

1. CVPS is a Vermont corporation conducting an electric utility business in the state of Vermont, and subject to the regulatory authority of the Board. Pet. at 1.
2. Custom is a wholly-owned subsidiary of CVPS formed for the purpose of serving as a passive investment holding company for CVPS's shareholdings in VYNPC and other entities. The activities of Custom are limited to the maintenance and management of intangible assets and the collection and distribution of the income from such investments in order to qualify for certain income tax benefits under 32 V.S.A. § 5837. Under that statutory provision, income from certain investments is exempt from the Vermont corporate income tax. Petition at 1; Docket No. 6835, Order of 10/10/03 at 2.
3. By Order entered on October 10, 2003, the Board approved the transfer of VYNPC common stock held by CVPS to Custom. Custom acquired 33.226% of the stock of VYNPC. Petition at 1-2; Docket No. 6835, Order of 10/10/03 at 3.
4. After the 2003 transfer, the dividend, interest and gains from the VYNPC shares, and associated tax treatments and benefits, were accounted for by CVPS "above the line" for ratemaking purposes and lowered CVPS's cost of service. The VYNPC shares are the only shares of any company held by Custom. Petition at 2.
5. The tax benefits of Custom holding the VYNPC shares are no longer available following the repeal of 32 V.S.A. § 5837. Without the tax benefits, the other incremental non-tax-related benefits provided by the 2003 transaction (creation of an additional level of protection from claims of creditors, greater flexibility for financing, compliance with financial covenants) no longer outweigh the benefits of CVPS re-acquiring the VYNPC shares. As a result, CVPS

now seeks Board approval to re-acquire the VYNPC stock from Custom and to dissolve Custom. *Id.*

6. Re-acquisition of the VYNPC shares by CVPS will not affect the Company's rights and obligations to VYNPC, including the purchase of a portion of the output of the VYNPC nuclear station under the 2001 Amendatory Agreements dated as of September 21, 2001, between VYNPC and CVPS. The proposed transfer will not have any impact on VYNPC's managerial and financial structure or operations, or the Board's jurisdiction over CVPS and its other regulated subsidiaries. Petition at 2-3.

7. The proposed re-acquisition will not have any impact on CVPS's rate base, cost of service or cost of common equity because Custom was consolidated with CVPS for all regulatory filings with the State of Vermont and the Federal Energy Regulatory Commission ("FERC"). Nor will the proposed transfer have an impact on CVPS's compliance with existing financial covenants of its creditors. CVPS letter dated October 9, 2009 at 1.

### **III. DISCUSSION AND CONCLUSION**

Based upon the findings and the evidence in the record, I find that CVPS's Petition as described above will be consistent with the general good of the State. The tax benefits and advantages which provided the basis for the original transfer and acquisition of VYNPC shares by Custom are no longer available following the repeal of 32 V.S.A. § 5837. I therefore recommend that the Board approve the Petition and authorize the requested re-acquisition of the VYNPC common stock from Custom by CVPS.

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

Dated at Montpelier, Vermont, this 16<sup>th</sup> day of December, 2009.

s/Jay E. Dudley  
Jay E. Dudley  
Hearing Officer

**IV. 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 re-acquisition by Central Vermont Public Service Corporation ("CVPS") of Custom Investment Corporation's ("Custom") ownership interest in Vermont Yankee Nuclear Power Corporation ("VYNPC") is approved.
3. The Petitioners shall file a letter notifying the Board of the date of completion of the transfer of ownership interest within ten days following completion thereof.

Dated at Montpelier, Vermont, this 29<sup>th</sup> day of December, 2009.

<u>s/James Volz</u>	)	
	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
	)	
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: December 29, 2009

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)*

*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.*