

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6140

Investigation into the Reform of)
Vermont's Electric Power Supply)

DEPARTMENT OF PUBLIC SERVICE
COMMENTS ON TECHNICAL CONFERENCES

I. Introduction

On December 11, 1998, the Public Service Board ("Board") issued an Order re: Technical Conferences in this proceeding. That Order announced a Technical Conference with the Governor's Working Group on Vermont's Electricity Future ("Working Group") which took place on December 18. At that Conference, the Board received the Working Group's *Report* and received remarks from Department of Public Service Commissioner Sedano. The Order also announced, but did not schedule, three further Technical Conferences on topics related to this proceeding, namely Resource Sales and Auctions, Securitization, and Mergers and Industry Consolidation. Finally, the Order stated that the Board had decided to open a "supplementary, concurrent docket 6140-A, to examine critical legal and financial issues relating to the consequences of a potential bankruptcy proceeding and/or power purchase contract default involving one or more Vermont utilities" to proceed at a contested case. Order of 12/11/1998 at 16. That Order reported certain of the Board's intentions regarding Docket 6140-A, but does not appear to have actually opened the docket.

On December 23, 1998, the Board issued a one-page Procedural Order in this proceeding establishing January 8, 1999, as the deadline for written submissions on “the sequence of activities that should be undertaken in this investigation” Order of 12/23/1998.

On January 5, 1999, the Board issued its Second Order re: Technical Conferences. That Order scheduled dates for the Technical Conferences on Industry Consolidation (including mergers) and on Resource Sales and Auctions. The Order also invited Pre-Conference and post-Conference Filings.

These Comments provide comments on “the sequence of activities that should be undertaken in this investigation” in accordance with the Order of 12/23/1998 and the additional Orders mentioned above.

II. Background and General Recommendations for Technical Conferences

It is important to understand clearly the beneficial role that Docket 6140 can play and how that role may relate to other events that are expected in electric industry reform for Vermont. The Board’s Orders regarding power cost disallowance issues in Dockets 5983 and 6018, plus the Board’s approval of interim settlements in Dockets 6107 and 6120, along with the Working Group’s *Report* have established a very specific and clear dynamic that must play out in industry reform. The Working Group’s *Report* and the Board’s Orders in these four pivotal rate cases have placed the onus on the utilities involved to develop and present for approval a comprehensive resolution of numerous complex problems. That comprehensive resolution may include (as the

Working Group recommends) proposals for renegotiated above market power purchase contracts, financing for any payments necessary to such renegotiated contracts, disposal of assets as necessary for restructuring, corporate restructures to facilitate the comprehensive resolution, reductions to retail rate requests reflecting the benefits of such restructuring, and a prompt voluntary transition to retail competition. Other components may also be needed as part of a comprehensive package.

Given these critical requirements, the Department expects that, pursuant to the Working Group's *Report* and in response to the recent rate Orders, Vermont's electric utilities will promptly engage in intense research and negotiations to produce the comprehensive proposals needed to reform Vermont's power costs. Therefore, the Department recommends that the Technical Conference schedule and agendas (1) avoid proceedings that would interfere with or hamper renegotiations and (2) be planned to prepare the Board and parties to review the expected proposals, rather than to evaluate, perhaps prematurely, the merits of specific options.

The Department's view is that the Board need not address, at this time, the specific process for review of any utility proposals and should steer clear of public proceedings that could affect the negotiating power of the Vermont utilities. (Two potential exceptions will be discussed below.) Rather, the Conferences should seek to clarify for the Board and the parties the variety of forms in which mergers, resource sales, or securitization could present themselves, the technical concepts and issues that would likely arise in such presentations, and the experiences other utilities have had with such events.

III. Specific Technical Conferences

The Department appreciates the Board's decision to hold the two noticed Conferences. Both can be structured to present valuable information consistent with the above comments. We also believe that the Conference on securitization mentioned in the 12/11/1998 Order can be similarly valuable. As discussed above, it is reasonable to expect, based on discussions with Vermont electric utilities and the *Report of the Working Group*, that industry consolidation, securitization, and resource sales will all be proposed as part of any comprehensive electric industry reform package.

To help with the education process and to minimize the burden on the participating utilities, the Department suggests that the best possible use be made of guest presenters. The Board and parties have in the past been successful in recruiting knowledgeable experts, often disinterested ones, to present at similar workshops and conferences. This series would be another opportunity to do so, although time is very short. If the Board agrees with this approach but finds the timing hampers the approach, it can, of course, alter the Conference schedule or continue some or all the Conferences to additional dates to hear from additional presenters. The Department will try to offer recommendations as soon as we can; other parties may be able to do so as well.

To supplement such presentations, we feel it would be uniquely useful and not unduly burdensome to request the Vermont utility parties, especially Green Mountain Power and Central Vermont Public Service, to present briefings on certain aspects of each topic. We would suggest

such briefings on all three topics, although each would likely stop at a different level of specificity. The utilities, given the outline they presented to the Working Group, should be well positioned to provide a briefing on how securitization could be implemented. They also clearly have the best understanding of what could be accomplished through consolidating operations and what would be involved in doing so. In the area of resource sales, we know that at least some of the utilities have been very active in pursuing sale options, but ongoing negotiations may be underway that would limit what could be presented. For all these Technical Conferences, we urge the Board to program the time available to emphasize interaction among the presenters, the parties and the Board. For these Conferences to be most valuable, they should provide maximum opportunity to address the questions and concerns of all attendees.

With regard to the proposed Technical Conference on securitization, we urge the Board to expedite that Conference and ensure that it answers the questions of whether the type of securitization, which may be thought of as “regulatory securitization,” is within the Board’s powers, and the Board would entertain a request for approval of regulatory securitization as part of a comprehensive restructuring settlement. We suggest that an early Conference on securitization in general and on these two questions in particular, followed immediately by such other procedure as the Board find necessary to issue an appropriate Board Order, would address the Working Group’s final recommendation:

The Working Group recommends that within the context of the current Public Service Board Docket 6140, the Board review the report of the Working Group, the Comprehensive Regulatory Framework herein, and as elaborated on by the companies themselves, and set a prompt hearing to determine if the procedure is acceptable and, if so, to establish an immediate schedule for the creation of the dockets necessary to accomplish this proposal within one year to eighteen months.

[Report at 15.]

In our view, the order necessary to accomplish this Working Group recommendation need not and, given the needs of ongoing negotiations, should be narrow and should address only two questions: the Board's authority to approve regulatory securitization and the Board's willingness to consider such proposals, in principle. To address the rest of the Working Group's recommendation, such an order should also consider whether anything is necessary to accommodate proceedings to consider approval of any comprehensive restructuring settlement that may be proposed. In fact, no particular "immediate schedule" seems needed, beyond an order such as the one just described, since any specific dockets needed can be opened and commence proceedings in a matter of days after a comprehensive restructuring settlement is filed.

IV. Proposed Additional Technical Conference

The Working Group clearly envisions voluntary retail access as a part of the comprehensive restructuring package. Many Vermont electric utilities have indicated their

willingness to include voluntary retail access in such a package, although this may not be unanimous. If voluntary retail access is definitely expected in the package of reforms we anticipate, it is not too soon to begin work on understanding how voluntary retail access should operate.

Consumer protections and other public benefit issues naturally attendant on retail access, voluntary or otherwise, were not fully addressed in the Board's two Technical Conference Orders nor were they fully treated in the Working Group's *Report*. In preparing the expected reform package, the utilities, in their quest to move toward competition, may leave important operational issues inadequately thought out or developed. As utilities move to unbundle rates and ready themselves for an open market, many operational and consumer issues are likely to require policy guidance. Furthermore, we are concerned that important tenets embedded in past global restructuring proposals may be lost under a hastily developed voluntary competition. A crucial example is the question of low income protection programs.

The Board has stated that it is not necessary to revisit at this time the conclusions and recommendations contained in the Board's Order in Docket 5854. Order of 12/11/1998 at 13. We generally agree. However, in anticipation of voluntary restructuring proposals, two steps should be undertaken now. First, the Board's Order in Docket 5854 should be reviewed to ensure that the principles and recommendations it sets out still work under voluntary restructuring and today's conditions. Second, any changes or new principles and recommendations that would be needed under voluntary restructuring should be identified and established. Third, the operational

provisions that will be needed to carry out voluntary retail access should be identified and mechanisms, such as task forces, initiated. Examples of such operational provisions include billing and disclosure requirements, certification requirements for retailers, and consumer education and protection issues.

The Board stated it is willing to discuss such voluntary restructuring proposals in the context of this docket to the extent that "such proposals are generally consistent with the principles articulated by the Board in Docket 5854". Order of 12/11/1998 at 14. Given the three needs identified in the previous paragraph, we recommend a more proactive approach and urge the Board to hold a Technical Conference in this proceeding and along the lines discussed above to ensure that the principles adopted in Docket 5854 fit the voluntary approach to restructuring and are sufficient for that purpose and that critical operational concerns are being addressed on a suitable schedule. In this area, as distinct from the topics of the other three Technical Conferences, the Department believes that it *is* timely to develop specific guidance and, perhaps, even to issue rules or orders so that the principles to be adhered to in any voluntary proposal to come before the Board are clearly articulated.

Unlike our suggestions for the other Technical Conferences in this proceeding, where we proposed an educational focus emphasizing outside experts and utility briefings, here we hold a different view. Instead, we propose that the Board focus on the contents of its Order in Docket 5854 and the form of S.62 as passed by the last General Assembly as a suitable outline and adopt a procedure it feels will produce a usable standard that will be in place when it is needed to

implement voluntary retail access. The Department is prepared to file by February 15 an outline identifying the issues that should be dealt with and a draft proposal addressing them, should the Board desire.

V. Comments on the Board's Intended Docket 6140-A Regarding Bankruptcy Issues

Finally, and perhaps most importantly, the Department believes that the Board's proposed Docket 6140-A should not move forward. Paramount to the discussion of resources are the concerns the Department presented at the December 18, 1998, Technical Conference. We are deeply concerned that the intended docket would force bankruptcy discussion into a public arena--indeed, a contested case--and will harm potential negotiations and electric power cost reform process. Suppose, for example, that due to fiduciary duties or for tactical reasons relating to pending rate requests utilities feel compelled to strenuously pursue their "dire straits" arguments before the Board in the proposed Docket 6140-A. Then they could be arguing that bankruptcy is an inappropriate option under *any* circumstances or that the grounds for any rulings that could result in bankruptcy were without support or merit or any of a number of other theses aimed at heading of any prospect of bankruptcy. But simultaneously, the same utilities could be in the midst of negotiations with above market power suppliers or others from whom they seek concessions on the basis that they, the utilities, are at risk of insolvency so that it is in the power suppliers' interest to grant concessions so as to retain a financially viable business partner. The utilities would be caught in a terrible dilemma, and whatever persuasiveness they might have

before the Board could undercut their negotiating position. Similar tensions could arise in regard to negotiations with other creditors.

The Board has indicated that the intended Docket 6140-A would be a contested case proceeding. The Department shares the Board's apparent preference for placing the relevant facts and positions of parties on such an important matter firmly in the record subject to the most careful scrutiny and evidentiary testing. This is especially true in a matter of such grave import for the corporations involved. We are concerned, however, that the time requirements, not the least of which would be management attention, of conducting the proceeding as a contested case could seriously interfere with ongoing negotiations and the many other activities needed to develop the comprehensive proposals referred to earlier. Also, the contested case format would exacerbate the strategic concerns presented in the previous paragraph.

Lastly, the Board noted that it intends to hire legal and technical experts for advice, as suggested in the Agreement on Joint Request to Hire Experts filed by the parties in Docket 6107. It is important to note that these parties did not recommend opening a separate bankruptcy docket and felt that the Board would conduct its further analysis as needed under Docket 6107 simply in preparation for a possible resumption of proceedings in September, 1999. Neither did the Department contemplate such an outcome.

For these reasons, the Department recommends that the Board not proceed with Docket 6140-A as described in the Board's Order of December 11, 1998.