

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6372

Tariff filing of Rochester Electric Light and Power Company requesting a 27.83% rate increase, to take effect May 1, 2000)	Hearing at
)	Montpelier, Vermont
)	August 29, 2000

Order entered: 11/8/2000

PRESENT: Judith M. Kasper, Esq., Hearing Officer

APPEARANCES: Sarah Hofmann, Esq.
for the Vermont Department of Public Service

Alan B. George, Esq.
Keyser, Crowley, Meub, Layden, Kulig & Sullivan, PC
for Rochester Electric Light and Power Company

FINDINGS AND ORDER

I. INTRODUCTION

This Modified Proposal for Decision replaces and supersedes the Proposal for Decision circulated to the parties on October 10, 2000 ("October 10 proposal").

The October 10 proposal recommended implementation of a rate increase in two phases. This Modified Proposal for Decision does not make that recommendation. Instead, it proposes that the Public Service Board ("Board") approve the 23.91% rate increase set forth in the Memorandum of Understanding ("MOU") submitted by the parties on July 21, 2000, effective for service rendered on or after November 1, 2000.

In response to the October 10 proposal, Rochester Electric Light and Power Company ("Rochester") requested oral argument before the Board. Because this Modified Proposal for Decision supersedes the October 10 proposal, that request now is moot.

II. SUMMARY OF PROCEEDINGS

On March 15, 2000, Rochester filed revised tariffs with the Vermont Public Service Board ("Board") requesting authorization to increase its retail rates in the amount of 27.83%, to produce \$205,362 in additional revenues, and to take effect on a service-rendered basis commencing May 1, 2000.

On April 10, 2000, the Vermont Department of Public Service ("Department"), pursuant to 30 V.S.A. § 225, requested that the tariff filing be suspended and investigated.

On April 12, 2000, the Board suspended the tariff filing and ordered an investigation of the changes proposed by Rochester. The Board appointed Judith M. Kasper to serve as the Hearing Officer for the proceeding.

On May 9, 2000, a prehearing conference was held. At that time there was discussion about scheduling and anticipated issues for this docket.

On June 6, 2000, Rochester filed the prefiled direct testimony, with exhibits, of Thomas B. Pierce.

On June 21, 2000, a duly noticed public hearing was held at the Rochester High School in Rochester, Vermont.

On July 21, 2000, the parties submitted a Memorandum of Understanding ("MOU") in which the parties agree to a rate increase of 23.91% to produce \$176,412 in additional revenues.

On August 29, 2000, a duly noticed technical hearing was held at the Public Service Board Hearing Room. At that hearing, (1) the previously filed prefiled testimony, with exhibits, of Thomas B. Pierce was entered into evidence, (2) additional testimony was presented by Mr. Pierce and by Raymond Koliander of the Department, (3) the MOU was entered into evidence.

On the basis of evidence and testimony in this docket, including the MOU, I report the following to the Board, pursuant to 30 V.S.A. § 8.

III. FINDINGS OF FACT

1. Rochester and the Department have agreed that an increase in Rochester's rates of 23.91% to produce \$176,412 in additional revenues, effective for services rendered on or after September 1, 2000, will result in just and reasonable rates. MOU at paragraph 3; tr. 8/29/00 at 18.

2. The MOU sets Rochester's authorized overall rate of return at 9.37%.¹ MOU at paragraph 4.
3. Rochester and the Department have made compromises on specific issues to reach the agreement embodied in the MOU. MOU at paragraph 5.
4. Rochester and the Department have agreed that the MOU resolves the issue of the justness and reasonableness of Rochester's rates in this rate proceeding. MOU at paragraph 5.
5. Rochester and the Department have agreed that the MOU shall not be construed by any party or tribunal as having precedential impact on any future proceedings involving Rochester except in a proceeding to ensure Rochester's implementation of the MOU or to enforce Rochester's obligations therein. And, they have agreed that the MOU relates only to Rochester and the Department and should not be construed by any party or tribunal to have precedential or any other impact on proceedings involving other utilities. MOU at paragraph 5.
6. Rochester and the Department have agreed that the MOU does not and shall not be construed to resolve any issues -- including, but not limited to, prudence of the Hydro-Quebec ("HQ") Contract, the lock-in of the HQ Contract, and/or the used and usefulness of the HQ contract -- regarding the costs and obligations incurred by Rochester as a result of power purchased through the contract between the Vermont Joint Owners and HQ. MOU at paragraph 5.
7. Rochester and the Department have agreed that the MOU shall be effective and binding upon the parties only if the Board issues an order in this docket containing terms consistent with the MOU in all respects and such order resolves completely this pending litigation. MOU at paragraph 6.
8. Rochester and the Department have stipulated to the entry of an order by the Board consistent with the provisions of the MOU. MOU at paragraph 7.

IV. DISCUSSION

This Proposal for Decision recommends that the Board approve a bottom-line settlement in response to Rochester's request for an increase in rates. Rochester's initial request in this

1. The return on equity is 11%.

docket was for a 27.83% increase. The MOU between the Department and Rochester settles instead upon a rate increase of 23.91% to produce \$176,412 in additional revenues. It is my conclusion that the MOU, taken in its entirety, will result in just and reasonable rates.

The MOU, by its terms, resolves only the issue of the justness and reasonableness of Rochester's rates in this proceeding; it does not have any precedential impact on future proceedings involving Rochester or any other electric utility company. In addition, the parties specifically agreed that the MOU does not and shall not be construed to resolve any issues regarding the costs and obligations incurred by Rochester as a result of power purchased through the contract between the Vermont Joint Owners and Hydro-Quebec.

The MOU in this docket represents a comprehensive bottom-line settlement. As such, it does not constitute sponsorship or approval of, or agreement by, the parties with any particular component of the cost of service underlying the rate increase. Rather, it is based upon a conclusion that the overall result is proper.²

Under Vermont law, it is well settled that utilities are entitled to a reasonable opportunity to recover their costs. During the negotiations leading to the MOU in this docket, the Department determined that the agreed-upon increase was just and reasonable based on Rochester's costs. In addition, the Department was persuaded that the agreed-upon rate increase was necessary in order to ensure that Rochester could continue to provide safe and reliable service.³ There is no evidence in this docket to the contrary. Therefore, based on the evidence in this docket, I conclude that the overall result of the proposed bottom-line settlement in this docket is proper.

Nevertheless, the MOU sets forth a very substantial rate increase, and I am concerned about the impact of that increase upon ratepayers. At the technical hearing on the MOU, the Department expressed the sentiment that: "If in the future Rochester sees their costs climbing, we would want them to come in more frequently for rate cases rather than stay out and have this huge rate shock type of rate increase."⁴ I agree that an increase of 23.91% in electric rates is a

2. Docket No. 5809, Order of 10/31/95 at 24.

3. Tr. 8/29/00 at 19.

4. Tr. 8/29/00 at 19.

difficult burden to be borne by the ratepayers if implemented all at once. However, at the technical hearing, Rochester acknowledged this problem, and represented that, in the future, it intended to make rate increase requests at more reasonable intervals.

Accordingly, I recommend that the 23.91% rate increase set forth in the MOU be approved by the Board, effective for service rendered on or after November 1, 2000.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 8th day of November, 2000.

s/Judith M. Kasper

Judith M. Kasper, Hearing Officer

V. BOARD DISCUSSION

On November 6, 2000, the Board was informed that on October 31, 2000, Rochester had sent a notice to its customers stating that, on October 31, the Board had issued an order approving a 23.91% increase in Rochester's rates.

Rochester's statement was erroneous and directly contradictory to the clear language of the cover letter accompanying the Hearing Officer's "*Proposal for Decision*" (emphasis added):

It should be emphasized that the enclosed Proposal is not a final decision of the Board and may be subject to modification by the Board.

As of November 6, 2000 (the date on which the Board became aware of Rochester's notice to its customers) the Board had not yet taken action on the Hearing Officer's recommendation concerning the 23.91% rate increase.

As a remedy for this false statement to customers, the Board hereby orders Rochester to send a corrected notice to its customers *before* the date on which the revised rates become effective and charged to ratepayers.⁵ Accordingly, the revised rates shall be effective only for service rendered on or after the date on which Rochester files with this Board an affidavit indicating that the corrected notice has been mailed to its customers. Rochester shall, at its expense (and not to be recovered from ratepayers), send a corrected notice to each of its customers that reads as follows:

"Corrected Notice to Customers

Dear Customer,

On October 31, 2000, we sent you a notice that incorrectly stated that we had received a Public Service Board order approving a rate increase of 23.91%. In fact, on October 31 we had received only a **proposed** Public Service Board order that **recommended** a rate increase of 23.91%. Subsequently, on November 8, 2000, the Public Service Board issued an order approving that rate increase. The rate increase of 23.91% is a result of negotiations with the Department of Public Service. These rates are effective on usage on or after [insert effective date]. Below is a list of the new rates and the charges associated with them.

[rate schedule as it appears on the October 31, 2000 notice]"

5. If Rochester believes some other remedy is appropriate, it may file a proposal to that effect with this Board. However, no rate increase may be implemented prior to this Board's review and acceptance of such an alternative if the remedy set out above is not pursued.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendations of the Hearing Officer are hereby adopted, except as modified above.

2. Rochester shall send a corrected notice, as described above, to each of its customers. Rochester shall file with the Board an affidavit stating that it has complied with this requirement, and shall include with this filing a copy of the corrected notice that is sent to customers.

3. The Memorandum of Understanding between Rochester Electric Light and Power Company and the Vermont Department of Public Service, setting forth a rate increase of 23.91% to produce \$176,412 in additional revenues, is adopted. This rate increase shall be effective only for service rendered on or after the date on which Rochester files with the Board the affidavit required in Paragraph No. 2 of this Order.

4. Rochester shall file appropriate compliance tariffs with the Board and the Department within seven (7) calendar days of the date on which it files the affidavit required in Paragraph No. 2 of this Order.

DATED at Montpelier, Vermont, this 8th day of November, 2000.

<u>s/Michael H. Dworkin</u>)	PUBLIC SERVICE
)	
)	BOARD
<u>s/David C. Coen</u>)	
)	OF VERMONT
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OFFICE OF THE CLERK

Filed: November 8, 2000

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 mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.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.