

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6018

Tariff filing of Central Vermont Public            )  
Service Corporation requesting a 6.6% rate        )  
increase, to take effect November 6, 1997        )

and

Docket No. 6120

Tariff filing of Central Vermont Public Service    )  
Corporation requesting a 12.9% rate increase,    )  
to take effect July 27, 1998                        )

Order entered: 2/12/2001

**PROCEDURAL ORDER**

AND

**NOTICE OF HEARING**

**Docket 6018**

On September 22, 1997, Central Vermont Public Service Corporation ("Central Vermont") filed a tariff requesting a 6.6 percent increase in rates, to take effect on November 6, 1997. The tariff was suspended by the Board and Docket 6018 was commenced. On April 17, 1998, the Board issued a procedural order in which it concluded that it was not precluded from investigating and litigating the prudence and used-and-usefulness of Central Vermont's purchased power contracts with Hydro-Québec. On April 30, 1998, the Board granted Central Vermont's request for a stay of Docket 6018, on the terms and conditions stipulated and agreed to by the parties, pending an interlocutory appeal of the Board's April 17 Order. The April 30 Order approved, among others, the following conditions agreed to by the parties:

5. Effective April 22, 1998, CVPS agrees to toll the seven-month rule under 30 V.S.A. § 227(a) on a day-for-day basis, subject to the following conditions:

- a. The tolling commences April 22, 1998, on the assumption that the Board issues an order approving the stipulation between the parties effective April 22.
- b. The seven-month rule will remain tolled until 15 days after the Supreme Court issues its decision.
- c. Following remand, the parties will negotiate in good faith a new schedule to complete the remainder of the litigation; the schedule will be developed to complete the proceeding in the same time that would exist under the existing schedule (i.e., the number of days from April 22 to September 24).
- d. In establishing the schedule following remand, CVPS agrees to further extend the seven-month rule by up to 30 additional days if the Board determines that such additional time is necessary.

### **Docket 6120**

On June 12, 1998, Central Vermont filed a tariff requesting a 12.9 percent rate increase, to take effect July 27, 1998. The tariff was suspended and Docket 6120 was commenced. At an August 4 prehearing conference, Central Vermont and the Vermont Department of Public Service ("Department") agreed to a procedure for moving the docket forward while the interlocutory appeal of Docket 6018 (designated by the Court as Docket No. 98-214) was still being considered by the Vermont Supreme Court. As later memorialized in a letter from Central Vermont filed with the Board on September 2, and accepted by Order of the Board dated September 22, 1998, Docket 6120 was bifurcated. Issues pertaining to the prudence and used-and-usefulness of Central Vermont's purchased power contracts with Hydro-Québec were stayed pending the Supreme Court's determination in Docket No. 98-214. All other issues were to be adjudicated within the seven-month period allowed pursuant to 30 V.S.A. § 227(a). Central Vermont's letter describing the agreement of the parties went on to describe the procedure to be used after the Court disposed of Docket No. 98-214:

If those [prudence and used-and-useful] claims are to be litigated, the issue now before the Court, that litigation will occur in the context of Docket No. 6018 unless the rate period covered by that Docket is no longer germane. The Board has previously established a schedule for the administration of that litigation, pursuant to its Order of April 30, 1998 in Docket No. 6018 [*which see above*]. If that Docket is no longer applicable, the parties agreed to determine a new schedule upon issuance of the Court's decision. This would be the case if the Court were to issue its decision on or after March 1, 1999.

### **The Vermont Supreme Court's Ruling**

On February 9, 2001, the Supreme Court ruled on the interlocutory questions authorized by the Board's Order of April 30, 1998. *See* Docket No. 98-214. The only definitive ruling in the Court's decision appears to be that this Board is precluded from further consideration of the prudence of Central Vermont's lock-in to the Hydro-Québec contract. The Court ruled that the Board's Order in Docket 5701, dated October 31, 1994, determined that Central Vermont's lock-in to the Hydro-Québec contract was imprudent and that, because of legally complete litigation of the issue by the parties in 1994, this determination precludes further litigation of that issue. However, the Court did not definitively resolve any of the other issues raised for interlocutory consideration. For example, the Supreme Court stated that the Board is not precluded from imposing further consequences upon Central Vermont for imprudence of its decision to make an early "lock-in" to the Hydro-Québec contract. The Court's decision also explicitly does not preclude the Department from litigating the prudence of the negotiation and entry into the Hydro-Québec contract. The decision also remands for our renewed consideration the economic usefulness of the Hydro-Québec power.

### **Status Conference**

The scheduling impacts of the stipulation and letter agreement quoted above are difficult to determine. It may be that the intent of the parties was that the Board is now to have 155 days (the time from April 22 to September 24), starting 15 days after the Court's decision, to issue final decisions in both Dockets 6018 and 6120, and perhaps those dockets ought to be consolidated for hearing and disposition. However, this is unclear on the current record.

Pursuant to 30 V.S.A. §§ 10 and 225 et seq., the Board will hold a status conference in these Dockets on Wednesday, February 21, 2001, at 1:30 pm in the Board's Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont, for the purpose of narrowing the issues to be litigated and to set a schedule for the remainder of these cases. Since there will be many preliminary issues to be discussed, and since the parties are obligated by their prior stipulations in both cases to negotiate a schedule, the parties to these dockets are directed to

meet among themselves at 10:30 am in the Board's Hearing Room, which will be available for their use until 1:30 pm if they so desire.

SO ORDERED.

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of February, 2001.

s/ Michael H. Dworkin )

) PUBLIC SERVICE

s/ David C. Coen )

) BOARD

s/ John D. Burke )

) OF VERMONT

OFFICE OF THE CLERK

FILED: February 12, 2001

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)*