

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6330

Petition of Central Vermont Public Service)
Corporation and Green Mountain Power)
Corporation Requesting an Investigation into the)
Establishment of Retail Access Policies and)
Procedures)

Order entered: 12/12/2001

I. INTRODUCTION

In this Proposal for Decision, I recommend that the Public Service Board ("Board") close this Docket, without prejudice, and clarify its current position with respect to the implementation of retail choice in Vermont. Specifically, I recommend that the Board state that since the Board's December 30, 1996, Report and Order in Docket 5854 ("Report") is a nearly five-year old recommendation to the Vermont legislature and the Board has learned many lessons from other states' experiences with electric restructuring since the Report was issued, parties should recognize that it does not represent a current statement of the Board's position on all aspects of electric restructuring. I also recommend that the Board acknowledge that because of uncertainty in the regional wholesale market that is expected to last two to three years, conditions are not likely to be conducive to the implementation of retail choice in Vermont in the near future, and therefore Vermont's electric distribution utilities will have, for some period of time, the obligation to render monopoly electric service in their respective service territories.

II. PROCEDURAL HISTORY

On November 23, 1999, Central Vermont Public Service Corporation ("CVPS") and Green Mountain Power Corporation ("GMP") (collectively "the Petitioners") asked the Board to open an investigation into the establishment of specific retail access policies and procedures that would be applicable to the Petitioners should they voluntarily open their service territories to

retail choice. The Petitioners' filing made clear that the Petitioners would consent to retail open access only after all of the elements of their restructuring plan entitled "A Work Plan to Restructure a Significant Portion of Vermont's Electric Utility Industry" ("Plan")¹ are approved, and the filing included requests for the following:

- (1) permission to suspend the provision of power supply services to customers located within their service territories;
- (2) permission to amend their service tariff obligations to clarify that they retain their exclusive service franchises as providers of electric delivery services to customers within their respective service territories;
- (3) permission to implement a Retail Open Access Tariff that enables customers located within the Companies' respective service territories to choose their power supplier from an array of approved energy service providers and to purchase generation services at market-determined prices;
- (4) authority to select through a competitive bidding process an Energy Service Provider to deliver "Default Service" for energy to customers located within the Companies' service territories;
- (5) authority to select through a competitive bidding process an Energy Service Provider or Energy Service Providers to deliver "Transition Service" for energy to customers located within the Companies' service territories; and
- (6) approval of revisions and modifications to the Petitioners' tariffs to implement voluntary retail access within the Petitioners' respective service territories.²

In response, the Board opened this investigation and directed that it focus broadly on "operational issues and issues of policy implementation related to the possible establishment of retail access in the CVPS and GMP service territories."³ The investigation was divided into two parts – Phase I, an informal phase, and Phase II, a formal contested case proceeding. Phase I was further divided into Module I, which was educational in nature (and in which Board staff participated), and Module II, which was a negotiation stage (and in which Board staff did not participate).

1. Filed on March 3, 1999, in Dockets 6140 and 6140-A. The Plan was also filed with the Petitioners' request to open the current investigation.

2. Petition at 1 and 2.

3. Order of 2/18/00 at 2.

Phase I, Module I (the investigation's educational component) was originally scheduled to conclude by August 1, 2000, and Phase I, Module II (the investigation's negotiation segment) was originally scheduled to conclude by November 1, 2000.⁴ However, at the request of multiple parties, the deadlines for both Modules were extended several times, most recently to October 19, 2001.⁵

Many educational sessions were held in Phase I, Module I, ranging from numerous working group meetings in the spring and summer of 2000,⁶ to an educational conference entitled "Retail Access Lessons Learned" on October 24 and 25, 2000, and finally a New England Wholesale Market Roundtable on April 12, 2001. No educational sessions have been held since that date.

Because of the design of Phase I, Module II (the negotiation segment), the Board has not been informed of all the discussions and meetings that occurred in that Module. However, the Petitioners reported that "[s]ince the time of the [April 12, 2001] Roundtable, however, Participants have not been actively involved in efforts to reach consensus on docket issues due to events in wholesale power markets and in states that have already begun restructuring."⁷

Due to the extensions to Phase I, no proceedings have been held in Phase II, the formal segment of the investigation.

On October 19, 2001, the Petitioners filed a status report on recent docket activities which also responded to my inquiry regarding whether the Docket should now be closed. The contents of this report are discussed in Section III.A., below.

Several parties filed comments on the Petitioners' status report. They include:

- the Department of Public Service ("DPS") on October 26, 2001;
- Washington Electric Cooperative, Inc., ("WEC") on October 31, 2001;

4. Procedural Order of 5/11/00 at 1.

5. Procedural Order of 9/4/01 at 1.

6. Three working groups were established: A - Market Structure and Regulatory Issues; B - Operational Issues, Including Customer Information Handling; and C - Consumer Issues. The issues to be investigated in this proceeding were divided among these three groups. *See*, Procedural Order of 3/20/00 at Attachment 1.

7. Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated October 19, 2001.

- the 13 Municipals⁸ on October 13, 2001;
- the City of Burlington Electric Department ("BED") on November 2, 2001; and
- Vermont Electricity Consumers Coalition ("VECC") on November 2, 2001.

These comments are described in Section III.B. below.

In addition, on August 23, 2001, the International Brotherhood of Electrical Workers Local Union 300 ("IBEW") filed a Motion to Direct All Parties to Respond to Status Report on Whether This Docket Should Be Closed.⁹ This motion included IBEW's comments on whether this Docket should be closed; those comments are described in Section III.B. below.

III. PARTIES' POSITIONS

A. Petitioners' Status Report

In their status report, the Petitioners recommended that the Board hold further proceedings in this Docket and asserted that this Docket is "part of an overall strategy that Petitioners have pursued to improve service and mitigate committed costs for customers consistent with the policy directives outlined by the Board in Docket No. 5854."¹⁰ Petitioners stated that they

remain committed to their proposal to introduce [retail] choice within their service areas when the Board determines the necessary conditions for competition have been established. We continue to believe that with appropriate care, retail competition will ultimately be in the best interest of the Companies and their customers. Petitioners also recognize that consensus has not emerged on when we should expect that regional wholesale market reforms will be conducive to the introduction of retail competition in the Central Vermont' [sic] and Green Mountain Power' [sic] service areas.¹¹

8. The 13 Municipals include: Barton Village, Inc. Electric Department; Village of Enosburg Falls Water & Light Department; Village of Hyde Park Electric Department; Village of Jacksonville Electric Department; Village of Johnson Water & Light Department; Village of Ludlow Electric Light Department; Village of Lyndonville Electric Department; Village of Morrisville Water & Light Department; Village of Northfield Electric Department; Village of Orleans Electric Department; Town of Readsboro Electric Department; Town of Stowe Electric Department; and Swanton Village Inc. Electric Department.

9. I ruled on this motion in my September 4, 2001, Procedural Order.

10. Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated October 19, 2001, at 2.

11. Letter from Morris L. Silver, Esq. to Susan M. Hudson, Clerk, dated October 19, 2001, at 2-3.

As a result, Petitioners requested an additional six to ten months to allow for educational activities and negotiations in an attempt to limit or resolve Docket issues. The specific activities that the Petitioners recommended pursuing in this Docket are:

- (1) a workshop or education conference to consider issues associated with the restructuring of the regional transmission system, including the status of the emerging Regional Transmission Organization;
- (2) consideration of the establishment of investment cost recovery rules and preapproval processes to remove barriers to the introduction of new technologies by utilities in the face of restructuring uncertainties;
- (3) consideration of "transition rules" that address utilities' exposure to increased power cost volatility in the regional power market and/or the cost of insuring against extraordinary wholesale power costs;
- (4) an education conference to update docket participants on "lessons learned" from other jurisdictions that have implemented retail choice; and
- (5) continuation of the negotiation module.

B. Comments on Petitioners' Recommendations

The DPS recommended that this Docket be closed now because: (1) none of the objectives listed by the Petitioners in their status report require continuing this proceeding; (2) much of the information developed during this Docket's earlier proceedings is stale; (3) there appears to be little momentum towards closure on the original issues raised by the Petitioners; and (4) it is unlikely that sufficient progress will be made in this proceeding in the immediate future to justify the burdens keeping the Docket open would impose on the non-petitioning parties. The DPS emphasized that its recommendation does not represent a change to its substantive position on retail choice – it still believes that benefits can be expected from restructuring Vermont's electric industry "when and if favorable conditions exist for doing so."¹²

WEC agreed with the DPS's recommendation that this Docket be closed now. WEC stated that: (1) this Docket is not the appropriate vehicle for continuing broad educational activities that affect all of Vermont's utilities; (2) much of the information developed during this Docket's earlier proceedings is stale; (3) the Petitioners do not appear to be pressing towards

12. Letter from James Volz, Esq., to Susan M. Hudson, Clerk, dated October 26, 2001, at 2.

closure on their original proposal; and (4) continuing this Docket would impose a burden on WEC. In addition, WEC asserted that the Board and the parties in this Docket should "revisit the issue of retail competition, including the Board's 1996 Report and Order in Docket No. 5854" in order to review "the fundamental question of whether retail choice is in the public interest."¹³

The 13 Municipals also recommended that this Docket be closed now. They asserted that it would be inappropriate for the Board to expand the scope of the issues to be covered in this Docket as the Petitioners' requested because (1) there would be potential "notice" problems (there could be persons interested in some of those new issues who are not currently parties to this docket), and (2) it would not be cost-effective to do so since the list of topics is so varied that not all parties and potential parties will be interested in all topics. However, the 13 Municipals agreed with the Petitioners that the Board should address concerns centering on the Board's Report and Order in Docket No. 5854. Specifically, the 13 Municipals assert that the Order is out of date, and the Board should state that: (1) Vermont's electric distribution utilities are likely to continue to have for some period of time the obligation to provide monopoly electric service in their respective service territories; (2) current Vermont law gives electric distribution utilities a reasonable expectation of recovering all prudent investments that they make in fulfilling their statutory obligation to serve; and (3) if the Vermont Legislature considers allowing or mandating retail choice, the Board will take the position that all prudently incurred costs of providing monopoly electric service should be recovered in the transition to retail choice.¹⁴

BED also recommended that this Docket be closed now because: (1) an effective retail electric market is dependent upon an effective, competitive wholesale market which is two to three years away in New England; (2) the question of whether retail choice is in Vermont consumers' best interests must be answered (in the affirmative) before it makes sense for parties to incur additional expense in this Docket; and (3) a further commitment of resources by BED to this Docket would be "a waste and unduly burdensome." However, BED suggested that the Board

13. Letter from Avram Patt, General Manager, to Susan M. Hudson, Clerk, dated October 31, 2001, at 1.

14. Letter from William B. Piper, Esq., to Susan Hudson, Clerk, dated October 31, 2001, at 2.

consider pursuing some issues associated with retail choice that do not require retail choice, such as creating a renewable portfolio standard.¹⁵

VECC supported the Petitioners' request to keep this Docket open because "this docket is the only forum currently in place that will provide the discipline and focus necessary to move these issues [electric restructuring and retail choice] forward." VECC asserted that it continues to believe that a "properly restructured" industry environment that allows retail choice will, in the long run, result in lower electricity rates and increased innovation in the electric industry; since this Docket is focused on what "properly restructured" means, it should be continued.¹⁶

IBEW recommended that this Docket be closed because: (1) it is doubtful that all the Docket's parties will reach an agreement regarding the voluntary establishment of retail choice in GMP's and CVPS's service territories; and (2) further proceedings in this Docket would impose a substantial cost on the parties.¹⁷

IV. DISCUSSION

A. Closure of This Docket

This Docket was opened nearly two years ago to consider "operational issues and issues of policy implementation related to the possible establishment of retail access in the CVPS and GMP service territories."¹⁸ There has been no progress in this Docket over the last six months, either in the form of educational sessions or active negotiations. Nevertheless, Petitioners have stated that they remain committed to their proposal to introduce retail choice in their service territories. However, they have acknowledged that there is no consensus regarding when regional wholesale market conditions will be appropriate for the implementation of retail choice in their service territories. BED and other parties have also noted that the wholesale market is expected to undergo significant structural changes over the next two to three years.¹⁹ I am persuaded that

15. Letter from William F. Ellis, Esq., to Susan M. Hudson, Clerk, dated November 2, 2001.

16. Letter from David Rouse, Chair, VECC, to Susan Hudson, Clerk, dated November 2, 2001.

17. IBEW's August 23, 2001, Motion to Direct All Parties to Respond to Status Report on Whether This Docket Should Be Closed.

18. Order of 2/18/00 at 2.

19. *See, for example*, Letter from William F. Ellis, Esq., to Susan M. Hudson, Clerk, dated November 2, 2001, at 1.

the uncertainty over the timing and substance of the changes to the wholesale market creates a real risk that any additional information developed in this Docket will be stale by the time conditions are appropriate to consider implementing retail choice.²⁰

Nevertheless, I have considered whether this Docket should be kept open to pursue the five specific tasks proposed by the Petitioners in their October 19, 2001, status report. I conclude that the five tasks could be performed outside this Docket for the following reasons. First, as WEC commented, restructuring the regional transmission system affects all Vermont electric utilities significantly. There is no reason that education on this topic must be conducted in this Docket. Other forums are available and may, in fact, be more appropriate. Second, investment cost recovery rules and preapproval processes, and transition rules to deal with increasingly volatile wholesale power costs are outside the current scope of this proceeding; I agree with the concerns raised by the 13 Municipals associated with expanding the scope of the Docket. Third, information about the implementation of retail choice elsewhere in the country is widely available, and any party interested in retail choice has ample opportunity to obtain this information outside this Docket. Finally, there is no need to continue the negotiation module of this Docket in order to enable negotiations among various parties because parties are free to negotiate with one another at any time, inside or outside of a Docket.²¹

Finally, I have considered the likely costs of potential future proceedings in light of their potential benefits. The DPS, IBEW, and other parties have pointed out the financial and resource burdens keeping the Docket open would place on the non-petitioning parties. The costs associated with keeping the Docket open could become considerable, while the benefits of additional proceedings are very uncertain given the risk that any additional information developed would be stale by the time conditions are appropriate for the introduction of retail choice.

20. In fact, the DPS and other parties have asserted that much of the information developed in this Docket is already stale.

21. The question of whether further structured negotiations in this Docket would be productive is a separate one. Successful negotiations require active participation by multiple parties. I note that five of the six non-Petitioning parties in this Docket expressed the opinion that further proceedings would not be productive. This causes me to attribute little weight to the argument that further negotiations as part of this Docket would lead to an agreement of some type.

For all the reasons articulated above, I recommend that the Board close this Docket, without prejudice.

B. The Board's Report and Order in Docket 5854

The Petitioners and several other parties have referenced the Board's Report in their recent filings in this Docket. After reading their comments, it is clear to me that it would be helpful for the Board to clarify its current position with respect to the implementation of retail choice in Vermont.

First, the Report was a recommendation to the Vermont legislature.²² In the Report, the Board concluded that "significant structural, financial, and regulatory reform of the Vermont electric system is now essential", and it proposed a nine-part plan of action to restructure Vermont's electric system. This plan, which built upon the Vermont Restructuring Principles,²³ was a complex proposal that required action by many entities, including the legislature, electric utilities, the DPS, and the Board, in order to be fully implemented. One element of the plan was retail choice for all Vermont consumers by the end of 1998.²⁴

Since the Report was issued, the Board has re-examined and reaffirmed the Vermont Principles on Electric Industry Restructuring in Docket 6140-A,²⁵ but has not formally re-examined the other aspects of its Report. Nearly five years have passed since the Board issued the Report. Many events related to the Report's recommendations have occurred during that time period, including the implementation of retail choice in other parts of the country, and significant structural changes to the New England regional power market. As a result, I believe that some

22. "[T]he purpose of this Docket to date has been to assist the Board in preparing a recommendation for the Vermont legislature, and to allow interested persons to participate in the development of that recommendation." Docket 5854, Report and Order of 12/30/96 at 17.

23. The Vermont Restructuring Principles were developed by the Vermont Roundtable on Competition, and were first adopted by the Board in its Order of 5/24/96 in Docket 5854 to guide the restructuring process. The Principles are included in that Order as Attachment A.

24. Docket 5854, Report and Order of 12/30/96 at 23-24.

25. When the Board reaffirmed the Restructuring Principles, it stated that "proposals to open one or more electric franchise service areas to retail competition can be found to satisfy the public good only after giving due consideration to all of the fourteen Principles adopted in Docket 5854." Docket 6140-A, Order of 6/24/99 at 6.

general statements regarding the Report's continued applicability would be helpful, and I recommend that the Board make such statements.

Specifically, I recommend that the Board clarify that: (1) the Report was a recommendation to the Vermont legislature at a specific point in time; (2) the Board recognizes that there are lessons to be learned from other states' experiences with electric restructuring – lessons that were learned after the Report was issued; and, therefore, (3) parties should not consider the Report to be a current statement of the Board's position on all aspects of electric restructuring. Such a statement by the Board would not mean that the Board rejects all of the Report's contents. Rather, it would indicate that if the Board were to develop a recommendation to the legislature regarding electric restructuring today, the recommendation would likely be different in at least some areas.²⁶

In addition, I recommend that the Board agree with the parties' consensus position that wholesale market conditions are not now appropriate for the implementation of retail choice.²⁷ As described at the April 12, 2001, educational roundtable in this Docket, the New England wholesale market is in a state of flux. Currently, there are several proceedings underway before the Federal Energy Regulatory Commission ("FERC") regarding the market's size, structure and rules. Given the complexity of the changes now under consideration, and the knowledge gained from presentations at the October 24-25, 2000, educational conference in this Docket regarding how important a functioning competitive wholesale market is to the successful implementation of retail choice, I am persuaded that it would be inadvisable to implement retail choice in Vermont

26. For example, the Report recognized that "A vibrant competitive market in the region will be essential to ensure that the changes contemplated by this Board and FERC are realized in lower rates to retail consumers." Docket 5854, Report and Order of 12/30/96 at 136. Nevertheless, the Report contemplated simultaneous movement toward competitive wholesale and retail markets. Other states' experiences with retail choice over the last five years have shown how important a functioning wholesale market is to the successful implementation of retail choice. Therefore, if the Board were to issue a recommendation regarding electric restructuring today, it might reach a different conclusion regarding whether a workably competitive regional wholesale market should be in place before implementing retail choice in Vermont.

27. Several parties stated this explicitly. *See, for example*, Letter from William F. Ellis, Esq., to Susan M. Hudson, Clerk, dated November 2, 2001, at 1. Petitioners implicitly agreed with this position when they stated that "consensus has not emerged on when we should expect that regional wholesale market reforms will be conducive to the introduction of retail competition in the Central Vermont' [sic] and Green Mountain Power' [sic] service areas." Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated October 19, 2001, at 3.

while so much uncertainty exists regarding the New England wholesale market. FERC expects significant changes in the regional market to occur over the next two to three years.²⁸ Therefore, I think it likely that Vermont's electric distribution utilities will have for some period of time the obligation to render monopoly electric service in their respective service territories. I recommend that the Board acknowledge this.

C. Other Issues

I note that Petitioners have expressed a concern that there are "potential investment issues that are potentially impacted by restructuring uncertainty and have direct impact on customer service."²⁹ I recommend that the Board remind the Petitioners and all other parties that Vermont's electric distribution utilities have an obligation to provide quality and cost-effective service to their customers. Uncertainty regarding whether retail choice will be implemented in Vermont at some point in the future is not a justification for failing to provide such service, including making appropriate infrastructure investments.

I decline to recommend that the Board make any new statements regarding cost recovery under current Vermont law or in a transition to retail choice, as the 13 Municipals have requested.³⁰ The Board has clearly articulated the standards it applies to cost recovery under current Vermont law, and there is no need for the Board to decide now what position it would take if the legislature were, at some future date, to consider legislation regarding retail choice.

Finally, I note BED's willingness to participate in a proceeding to investigate the establishment of a renewable portfolio standard in Vermont. While I agree with BED's assertion that implementation of a renewable portfolio standard need not be tied to implementation of retail

28. Letter from Jim Volz, Esq., to Susan M. Hudson, Clerk, dated October 26, 2001, at 2. I recognize that there is not consensus among all parties to this Docket regarding the length of time wholesale market reforms will take in New England. However, FERC's current estimate makes clear that the reforms will not be fully implemented for a significant period of time.

29. Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated October 19, 2001, at 3.

30. See Section III.B. above.

choice, I decline to recommend that the Board open such an investigation at this time. However, the Board may wish to consider opening such an investigation in the future.

V. CONCLUSION

After reviewing the Petitioners' October 19, 2001, status report, the other parties' comments on the status report, and the procedural history of this Docket, I am persuaded that this Docket should be closed, without prejudice. Accordingly, I hereby recommend this to the Board.

In addition, I have noted the references by the Petitioners and several other parties to the Board's December 30, 1996, Report and Order in Docket 5854. These references have led me to recommend that the Board clarify its current position with respect to the implementation of retail choice in Vermont. Specifically, I recommend that the Board state that since the Report is a nearly five-year old recommendation to the Vermont legislature and the Board has learned many lessons from other states' experiences with electric restructuring since the Report was issued, parties should recognize that it does not represent a current statement of the Board's position on all aspects of electric restructuring. I also recommend that the Board acknowledge that because of uncertainty in the regional wholesale market that is expected to last two to three years, conditions are not likely to be conducive to the implementation of retail choice in Vermont in the near future, and therefore Vermont's electric distribution utilities will have, for some period of time, the obligation to render monopoly electric service in their respective service territories.

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 27th day of November, 2001.

s/Ann Thompson Bishop_____

Ann Thompson Bishop

Hearing Officer

VI. BOARD DISCUSSION

On November 26, 2001, the DPS and the Petitioners filed comments on the Hearing Officer's Proposal for Decision. The DPS agreed with the Hearing Officer's recommendation that this Docket be closed, but raised concerns about two statements made in the Proposal for Decision. The Petitioners disagreed with the Hearing Officer's recommendation that this Docket be closed, and urged the Board to keep the Docket open to pursue the additional docket activities identified by Petitioners in their October 19, 2001, status report. In addition, Petitioners raised concerns about the Hearing Officer's recommendations regarding clarification of the Board's position on retail choice. The discussion below addresses (1) whether this Docket should be closed now; (2) the concerns raised by the DPS regarding utilities' obligation to serve; and (3) the Board's position on retail choice (including the concerns raised by the Petitioners and the DPS related to this issue).

First, we agree with the Hearing Officer that this Docket should be closed now, for the reasons articulated on pages 7-8 of the Proposal for Decision. We note that in its comments on the Proposal for Decision, the DPS argued that any decision to close this Docket should not be based on the assertion that conditions in the wholesale market are not likely to be conducive to the implementation of retail choice in the near future. We agree with the Hearing Officer's statement on page 7 of the Proposal for Decision that "uncertainty over the timing and substance of the changes to the wholesale market creates a real risk that any additional information developed in this Docket will be stale by the time conditions are appropriate to consider implementing retail choice." Nevertheless, we note that this is only one of several reasons supporting the immediate closure of this Docket. Additional reasons are those that the DPS has identified on page 2 of its comments on the Proposal for Decision, *i.e.*, the record is stale, the relief the Petitioners are seeking has changed significantly from their original filing, and "there is no need to keep the Docket open to address the other issues the [P]etitioners raised in their comments, because they can all be better addressed outside the Docket."³¹

31. Letter from James Volz, Esq., to Susan M. Hudson, Clerk, dated November 26, 2001, at 2.

We are not persuaded by Petitioners' argument that this Docket is necessary to "resolve the significant policy issues arising on account of the evolving state of industry reforms."³² Nor are we persuaded by Petitioners' assertion that it would be appropriate to make decisions regarding retail choice in Vermont before concerns over competitive wholesale market conditions are resolved.³³ On the contrary, resolution of wholesale market issues now appears essential in order to establish the context for an evaluation of any petition to move to retail choice, and is particularly important for an analysis of the risks and benefits associated with a particular petition's specific implementation plan.

Second, we agree with the DPS's suggested clarifications regarding the statement on pages 1 and 12 of the Proposal for Decision that "Vermont's electric distribution utilities will have, for some period of time, the obligation to render monopoly service in their respective service territories." The DPS correctly noted that Vermont's electric utilities have, and will continue to have, the obligation to serve until they are relieved of that obligation by either regulatory or legislative action; the passage of time, by itself, will not change that obligation. In addition, the DPS correctly pointed out that a utility's obligation to serve is independent of its status as a monopoly provider within its service territory – it is theoretically possible that a utility could retain an obligation to serve (for example, as a provider of last resort) after voluntarily opening its service territory to retail choice.

Third, we agree with the Hearing Officer and the Petitioners that a clarification of the Board's position with respect to retail choice would be helpful. However, we do not accept the Hearing Officer's specific recommendations with respect to the Docket 5854 Report, and we do not accept the Petitioners' request that we clarify the Board's "position on the ultimate desirability of retail access in Vermont (including under what conditions it may proceed) and the policy conclusions set forth within the Docket No. 5854 Report and Order."³⁴ The Report was the

32. Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated November 26, 2001 at 4. As indicated by the Hearing Officer on page 3 of the Proposal for Decision, the parties have held discussions and meetings under the auspices of this Docket in which Board staff did not participate. This is entirely appropriate, and it would be appropriate for the parties to continue these discussions outside this Docket, if they so chose.

33. Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated November 26, 2001 at 2.

34. Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated November 26, 2001, at 6.

result of a wide-ranging collaborative process and extensive Board consideration of the complex issues associated with retail choice. It includes numerous policy recommendations on a wide variety of interrelated issues, including statutory changes that the Legislature has declined to make in the four years since the Report was first presented. We have not re-examined all these issues in a comprehensive manner and therefore decline to state whether or not the Report is a current statement of the Board's policy on electric restructuring. Furthermore, whether or not the Report is a current statement of the Board's position with respect to electric restructuring is not relevant to the closing of this Docket.

For similar reasons, we decline to take a position on the ultimate desirability of retail access in Vermont, or the individual policy conclusions set forth in the Report, as requested by the Petitioners. Nevertheless, based on our expert knowledge of the New England and other northeastern wholesale markets, we find it unlikely that regional wholesale market conditions will be appropriate for the implementation of retail choice in Vermont for at least a few years, and we conclude that we should wait to revisit the specific positions taken by the Board in Docket 5854 until there is more certainty regarding the regional wholesale market's future structure and market rules.³⁵

The Board actively participates in and tracks new developments in the regional wholesale power market. Significant changes to this market that are under discussion include (1) the implementation of Standard Market Design which, according to ISO-NE, could take place in early 2003; and (2) the possible creation of a single northeastern wholesale market which, if ordered by FERC (an outcome that is still uncertain), would not be implemented until some unknown future date at least a few years from now. *See*, Administrative Law Judge Mediator's Report to the Commission, in FERC Docket RT01-99-000 at 9 (if FERC ordered the creation of a single northeastern wholesale market by November 1, 2001, its implementation could occur in fourth quarter 2003 at the earliest). *See also*, FERC's 9/17/01 Order Granting Clarification in Docket

35. We recognize the DPS's concerns about the Board reaching a conclusion regarding when conditions in the wholesale market might be conducive to the implementation of retail choice, but believe it is in the public interest to respond to several parties' requests that we clarify our position on retail choice in Vermont. As in Docket 5854, we are not making formal findings or determinations in this Order.

ER01-2115-002, et al., at 3 (the three Northeastern ISOs estimate that the implementation of a single Northeast market could take between 38 and 50 months from the date it is approved by FERC) and 6 (characterization by FERC of the development of Standard Market Design as a short-term project, and the development of a single northeastern market as a "longer-term goal").

In addition, the Board regularly keeps informed of other states' experiences with the implementation of retail choice. These experiences (some of which we heard about in this docket's educational conference "Retail Access Lessons Learned") have demonstrated to us (and to many state legislatures and other public utility commissions around the country) how important a functioning competitive wholesale market is to the successful implementation of retail choice. Again based on our expert knowledge, we do not believe a wholesale market that is undergoing the degree of structural change currently contemplated in New England can be considered ready to facilitate the implementation of retail choice.

Concern about the health and functionality of wholesale markets is hardly unique to Vermont. Other state regulatory agencies have recognized the close link between competitive wholesale and retail markets. For example, the Pennsylvania Public Utility Commission stated in its order opening an investigation into PJM's Installed Capacity Credit Market:

The operation of this region's competitive wholesale markets is the bedrock upon which our competitive retail market is founded. It should be noted that to the extent that there has been an exercise of undue market power in the PJM ICAP market, there has likely been a corresponding injury to the PJM retail market both in Pennsylvania and throughout the region.³⁶

In addition, the Federal Energy Regulatory Commission is concerned about the possible exercise of market power by generating companies. *See, e.g.*, FERC's November 20, 2001, Order in Docket Nos. ER96-2495-015, et al., (Order on Triennial Market Power Updates and Announcing New, Interim Generation Market Power Screen and Mitigation Policy).

Finally, we strongly agree with the Hearing Officer's recommendation regarding Vermont electric utilities' obligation to provide quality and cost-effective service to their customers, including making appropriate infrastructure investments, despite uncertainty regarding whether

36. The Pennsylvania Public Utility Commission's November 30, 2001, Order opening Docket I-00010090 (Investigation Upon the Commission's Own Motion with Regard to PJM Installed Capacity Credit Markets) at 3.

retail choice will be implemented in Vermont at some point in the future. In their comments on the Proposal for Decision, Petitioners once again asserted that:

[i]f utilities make investments now to expand and enhance their services, these decisions may either create lost opportunities when retail access is introduced or create 'new' strandable costs. . . . If utilities are not given clear guidance on the Board's direction, they will have little choice but to initiate their work based on a vague understanding followed by asking the Board for special rulings and clarification each time significant infrastructure investments are made since they could be viewed as prudent decisions under one policy regime but not, or not used and useful, under others.³⁷

We cannot emphasize our position on this issue enough. *All Vermont electric utilities are required by law to make those infrastructure investments necessary to enable them to provide quality and cost-effective service to their customers.* The possibility that retail choice may be implemented in Vermont at some point in the future is not an excuse for a utility to disregard its obligation to make appropriate infrastructure investments.³⁸

VII. ORDER

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

1. The report and recommendations of the Hearing Officer are adopted, except as modified above.
2. This Docket shall be closed, without prejudice.

37. Letter from Morris L. Silver, Esq., to Susan M. Hudson, Clerk, dated November 26, 2001, at 5-6.

38. It is ironic that the Petitioners would question whether they should make appropriate investments that benefit ratepayers since, under the terms of the final orders in the most recent GMP and CVPS rate cases (Docket 6107, Order of 1/23/01, and Dockets 6120/6460, Order of 6/26/01, respectively), Petitioners' ratepayers are paying more than they otherwise would under traditional cost-of-service ratemaking in order to preserve the companies' financial viability and investment-grade bond ratings. One would expect that in recognition of this special financial contribution by ratepayers, the Petitioners would be *more* likely, not *less* likely, to make appropriate investments that directly benefit ratepayers.

Dated at Montpelier, Vermont, this 12th day of December, 2001.

s/Michael H. Dworkin)	PUBLIC SERVICE
)	
)	
s/David C. Coen)	BOARD
)	
)	
s/John D. Burke)	OF VERMONT

OFFICE OF THE CLERK

FILED: December 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 apparent 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.