

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6575

Investigation of Village of Ludlow Electric Department's )  
tariff filing requesting a 10.86% rate increase, to take )  
effect November 1, 2001 )

Hearings at  
Montpelier, Vermont  
November 7, 2001  
February 19, 2002

Order entered: 4/2/2002

PRESENT: Hope G. Crifo, Hearing Officer

APPEARANCES: June E. Tierney, Esq.  
for Vermont Department of Public Service

William B. Piper, Esq.  
Primmer & Piper, PC  
for Village of Ludlow Electric Department

**I. INTRODUCTION**

On September 1, 2001, the Village of Ludlow Electric Department ("Ludlow") filed with the Public Service Board ("Board") revisions to its tariffs reflecting a 10.86% increase in its rates, to produce additional annual revenues of \$427,967, and a cost of service in support of the proposed rate increase. Pursuant to 30 V.S.A. § 226(b), Ludlow implemented the rate increase on a temporary basis beginning November 1, 2001.

On October 31, 2001, the Vermont Department of Public Service (the "Department" or "DPS"), pursuant to 30 V.S.A. § 225, filed a letter recommending that the Board open an investigation into Ludlow's tariff filing. The Department primarily recommended the investigation due to unresolved issues relating to the prudence and used and usefulness of Ludlow's purchased power costs associated with the Hydro-Quebec/Vermont Joint Owners Contract ("HQ-VJO Contract").

On November 7, 2001, a prehearing conference was held in this docket.

On January 20, 2002, Ludlow and the Department filed a Memorandum of Understanding ("MOU") that, if approved by the Board, will resolve all issues in this Docket.<sup>1</sup> A technical hearing was held on the MOU on February 19, 2002. The MOU represents that the 10.86% rate increase, based on an historical test year ended December 31, 2000, will result in overall rate levels that are just and reasonable.

Other key provisions of the MOU provide that:

- Ludlow will not be subject to any further penalties or cost disallowances based on either (1) Ludlow's prudence relating to its 1991 decision to lock-in early to the power purchase contract between Hydro-Quebec and the Vermont Joint Owners, or (2) the application of any "used and useful" doctrine to Ludlow's purchase of power under the HQ-VJO Contract;
- In conjunction with the Department, Ludlow will develop and implement a service quality and reliability plan;
- Ludlow will undertake a class cost allocation study to determine whether seasonal rates should be adjusted or terminated, and
- Ludlow will not seek either the implementation of the Account Correcting for Efficiency or the adoption of a replacement mechanism in connection with the delivery of Energy Efficiency Utility systemwide core programs.

I have reviewed the MOU, attendant exhibits and supporting evidence. I conclude that the settlement terms as provided in the MOU, taken as a whole, are reasonable, that the MOU will result in rates that are just and reasonable, and that the MOU will promote the general good of Vermont. Accordingly, I recommend that the MOU be approved by this Board.

## **II. FINDINGS**

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings and conclusions to the Board.

1. On September 13, 2001, Ludlow filed with the Board revisions to its tariffs reflecting a 10.86% increase in its rates, which took effect on a service-rendered basis commencing November 1, 2001, for bills rendered on and after December 1, 2001. Joint Exhibit 1.

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1. The MOU is attached hereto as Appendix 1, and was entered into the record on November 20, 2001, as Joint Exhibit 1.

2. The revised tariff will generate incremental annual revenues of \$427,967 in the adjusted test year from November 1, 2001, to October 31, 2002. MOU Attachment 1.

3. The 10.86% rate increase will result in just and reasonable rates, subject to the terms of the MOU. Joint Exhibit at 1-2.

4. Ludlow will record the total amount of its proportion of the Hydro-Quebec ice storm arbitration award, \$45,791.65, as income in 2001. The terms of the MOU require these funds to be used only for capital expenditures. Joint Exhibit at 2.

5. Ludlow had an historical test year net loss of \$187,601. Excluding the effect of the Hydro-Quebec ice storm arbitration refund, the revised rates will reduce the projected adjusted test year loss to \$60,000. Joint Exhibit Attachment 1.

6. Ludlow municipal utility has significant liquid resources which it can use for capital improvements. Tr. 11/19/02 at 7 (Collins).

7. Paragraphs 4 and 5 of the MOU provide that:

Ludlow shall not, in this or any further proceeding to determine Ludlow's rates, be subject to any further penalty or disallowance of costs incurred in the purchase of power pursuant to the HQ-VJO Contract based on Ludlow's prudence relating to any act of omission occurring prior to the date of the MOU.

Ludlow shall not, in this or any future proceeding to determine Ludlow's rates, be subject to any further penalty or disallowance of costs incurred in the purchase of power pursuant to the HQ-VJO Contract based on the application of any "used or useful" theory.

Joint Exhibit Attachment 1.

8. In the event of a sale, or partial sale of the municipal electric utility, or similar event, the Board may consider the recapture, or return of a portion of the excess HQ-VJO Contract purchase power costs. Joint Exhibit at 3.

9. Ludlow and the Department are committed to filing with the Board a final Service Quality & Reliability Performance, Monitoring & Reporting Plan ("SQRP"), which contains minimum performance standards in service areas including call answering, billing, metering, customer satisfaction, worker safety and reliability. Joint Exhibit Attachment 2.

10. Paragraph 7 of the MOU prohibits Ludlow from seeking to recover from the Account Correcting for Efficiency ("ACE"), or any alternative mechanism for ACE. Joint Exhibit at 3.

11. Paragraph 8 of the MOU provides that Ludlow will perform an appropriate class cost of service study to determine if its current rate design, including seasonal rates, should be modified. Ludlow further commits to confer with the Department on its recommendation for rate design changes, if any, and to file the study with the Board. Should the study demonstrate a need for Ludlow to revise its rate design, Ludlow will file the proposed rate design changes with the Board in time for revenue-neutral implementation by November 1, 2002. *Id.*, tr. 2/19/02 at 6-7 (Collins).

12. The parties agree that the MOU relates only to these parties, and has no precedential or other impact on proceedings involving other utilities. Joint Exhibit at 4.

### **III. DISCUSSION**

Prior to the current tariff revision, Ludlow last raised its rates 9.41% on a service-rendered basis effective October 1, 1988; i.e., almost fourteen years ago.<sup>2</sup>

The MOU filed by the parties on January 20, 2002, provides for a 10.86% increase in tariffs, effective on a bills-rendered basis on or after December 1, 2001. The revised rates do not cover the adjusted test year cost of operations, and will result in an adjusted test year loss of \$60,000. In this case, the gap between expenditures and revenues is acceptable because the municipal utility has sufficient capital resources which it can use to fund its capital expenditure requirements.<sup>3</sup> Thus, on a year-to-year basis, the municipal utility is not dependant upon revenues generated from ratepayers to cover its entire operating and capital requirements.

The settlement provides that Ludlow will not be subject to any further penalty or disallowance of costs incurred in the purchase of HQ-VJO Contract power related to imprudence or implementation of the used and useful theory. This treatment of HQ-VJO Contract costs is consistent with the Board's treatment of HQ-VJO Contract power costs in Dockets 6107 and

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2. This rate request was unopposed.

3. Ludlow's cash and temporary investments are largely the result of a refund from the MMWEC Project Six or Seabrook payments. Tr. 2/19/02 at 7 (Collins).

6120/6460 governing, respectively, Green Mountain Power Corporation ("GMP") and Central Vermont Public Service Corporation ("CVPS"). In both those cases, the Board approved settlements which provided that GMP and CVPS would not be subject to any further penalty or disallowance of costs incurred in the purchase of HQ-VJO Contract power based on the companies' imprudent decision to lock-in early to the Contract. In addition, in both cases the Board declined to impose a disallowance based on the application of the "used and useful" theory.<sup>4</sup> The Board's justification for approving these provisions (which require ratepayers to pay more than they would under traditional cost-of-service regulation), is the potential harm to the two companies' financial viability and access to capital from disallowances.

The Board approved a similar resolution to the HQ-VJO Contract cost recovery issue in a series of cooperative and municipal utility rate cases.<sup>5</sup> The Board's reason for doing so was to prevent harm to ratepayers that would result if the cooperative's, or municipal utility's, financial viability and access to capital were jeopardized. That rationale is also applicable with respect to Ludlow.

The MOU preserves the Board's right to consider imposition of a mechanism to return to Ludlow ratepayers excess HQ-VJO Contract purchase power costs in the event of a sale, or partial sale, of the municipal electric utility, or similar event. Ludlow has similarly reserved its right to oppose any such recapture.

Consistent with the GMP and CVPS Orders, as well as a number of recent Orders governing cooperatives and municipals, the MOU requires Ludlow to adopt a service quality and reliability plan. Attachment 2 of the MOU provides that Ludlow and the Department will file a service quality plan within 90 days of the issuance of this Order, and that such a plan will include minimum performance standards and one or more service guarantees.

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4. In GMP's case, the Board stated that it would treat the HQ-VJO Contract as if it were used and useful. Docket 6107, Order of 1/23/01 at 79-81. In CVPS's case, the Board approved settlement language which stated that the company would not be subject to any further penalty or disallowance of costs incurred in the purchase of HQ-VJO Contract power based on the application of any used-and-useful theory. Dockets 6120/6460, Order of 6/26/01 at 36.

5. These cases are Dockets 6033 and 6327 (Barton Village Inc. Electric Department), 6142 (Village of Enosburg Falls Water & Light Department), 6462 (Village of Hyde Park Electric Department), 6158 and 6371 (Village of Lyndonville Electric Department), 6110 and 6472 (Town of Northfield Electric Department), and 6149 and 6315 (Washington Electric Cooperative).

In general, Ludlow's service quality plan is substantially similar to plans for other Vermont municipal utilities. I recommend that Attachment 2 be amended in Paragraph 3, Line 2 to change the word "from" to the word "before" to clarify that a successor plan should be submitted 90 days before expiration of the two-year life of the SQRP.

Such service quality plans provide significant benefits to ratepayers. These benefits include, but are not limited to, more comprehensive service monitoring, supplying public information on the level of service a company is providing, the establishment of a database from which to set future, more stringent targets, and the commitment of the utility to institute economically feasible measures to improve the reliability of areas on its system where the most outages occur.

Paragraph 8 of the MOU provides that Ludlow will perform an appropriate class cost study based on the cost of service set forth in Attachment 1 to the MOU. If the study warranted it, Ludlow would file proposed new tariffs and supporting information, including the justification for any change in rate design, with the Board in time for a November 1, 2002, revenue-neutral implementation. At the same time, customers would be notified about the proposed changes. Any new tariffs will be reviewed in the same manner as any new tariff filed with the Board under 30 V.S.A. § 225.<sup>6</sup>

Although certain of the provisions of the MOU will result in increased costs to ratepayers, I conclude that on balance the interest of Vermont ratepayers in Ludlow's service territory will best be served by approval of the MOU.

#### **IV. CONCLUSION**

I have reviewed the MOU, the Cost of Service filing, and the transcripts from the hearings in this Docket. I find that based upon all of the foregoing, the MOU between Ludlow and the Department proposing a settlement resolving all outstanding issues in this Docket, taken

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6. Because Section 225 requires proposed tariff revisions to be filed at least 45 days prior to the proposed effective date, Ludlow should file its proposed rate design changes, if any, by September 16, 2002. Parties should inform the Board promptly of any expected deviation from this filing schedule.

as a whole, promotes the general good of the state, and results in just and reasonable rates. I, therefore, recommend that the MOU be approved by this Board.

The parties have waived their right to service of the Proposal for Decision in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 28<sup>th</sup> day of March, 2002.

s/Hope G. Crifo  
Hope G. Crifo  
Hearing Officer

**V. ORDER**

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

1. The Findings and Conclusion of the Hearing Officer are adopted.
2. The Memorandum of Understanding ("MOU") dated January 19, 2002, between the Village of Ludlow Electric Department ("Ludlow") and the Vermont Department of Public Service, is approved in its entirety, except that we change the word "from" to "before" in Paragraph 3, line 2 of Attachment 2 of the MOU.
3. In the event of a sale or partial sale of the municipal utility, the Board may consider whether there ought to be a recapture for the benefit of Ludlow ratepayers of an appropriate amount of any excess Hydro-Quebec costs paid by such ratepayers. Ludlow retains the right to oppose any Board consideration of, or determination with respect to, such return.
4. Ludlow shall submit minimum performance standards for the areas identified in the Service Quality & Reliability Performance, Monitoring & Reporting Plan within 90 days of the issuance of this Order.
5. Ludlow shall file the monitoring reports required by Paragraph 4 of Section A of the aforementioned service quality plan with the Board, as well as with the Department.
6. Ludlow shall perform an appropriate class cost of service study based on the cost of service set forth in Attachment 1 to the MOU. Ludlow shall confer with the Department on its recommendation for rate design changes, if any, and shall file the study with the Board. Ludlow shall file the proposed rate design changes, if any, with the Board in time for revenue-neutral implementation by November 1, 2002.
7. Ludlow shall file appropriate tariffs consistent with the Findings and this Order within ten days of the date of this Order.

Dated at Montpelier, Vermont, this 2<sup>nd</sup> day of April, 2002.

s/Michael H. Dworkin )

) PUBLIC SERVICE

s/David C. Coen )

) BOARD

s/John D. Burke )

) OF VERMONT

OFFICE OF THE CLERK

FILED: April 2, 2002

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.*