

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 5731

Board investigation into Central )  
Vermont Public Service Corporation's )  
Request for Approval of its Clean )  
Air Act Credits Application )

Order entered: 8/19/2003

**REPORT AND RECOMMENDATION RE MOTION TO DISMISS**

**Introduction**

On June 11, 2003, I circulated for comment an unsigned Proposal for Decision in this Docket. After reviewing the Proposal for Decision, Central Vermont Public Service Corporation ("CVPS" or "Company") filed a motion to dismiss. In this revised Proposal for Decision, I review the Company's motion and recommend that the Vermont Public Service Board ("Board") grant CVPS's request.

**Background**

In 1993, the U.S. Environmental Protection Agency ("EPA") developed the Allowance Reserve Program ("Allowance Program"). The Allowance Program allows public utilities to receive credits against future emissions of sulfur dioxide. In order for this to happen, utilities must demonstrate that their use of conservation measures and renewable energy resources meets Allowance Program standards.<sup>1</sup>

In my Proposal for Decision, CVPS requested certification by the Board that CVPS meets Allowance Program requirements and that the Company ought to receive credits under the Allowance Program. I based my analysis of CVPS' request upon my own review of: (1) EPA's

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1. The Allowance Reserve Program, located at 40 C.F.R. part 73 part F, was developed pursuant to section 404(f) of the Clean Air Act. 42 U.S.C.A. § 7651c(f).

Allowance Program criteria; (2) Vermont's least-cost planning process; and (3) those Board Orders that have assessed CVPS' implementation of Vermont's least-cost planning process, and CVPS' integrated resource plans ("IRP"). In the Proposal for Decision, I concluded that:

1. Vermont's framework for least-cost integrated planning and CVPS' relevant IRP meet the Allowance Program criteria established by the EPA; but that
2. For the years 1992, 1993, and 1994 – the three years for which CVPS requested approval – CVPS did not implement its Board-approved IRP to the "maximum extent practicable," *i.e.*, the standard required by the EPA for a utility to receive credits under the Allowance Program.

As a result, I recommended that the Board deny CVPS' request for certification.

On June 27, 2003, CVPS filed a motion to dismiss. According to CVPS, throughout the proceeding it:

has contended that the standards applicable to the implementation of conservation and efficiency services under the [Allowance Program] are different from those required by the [Board] pursuant to the requirements of Docket No. 5270 and 30 . . . V.S.A. §218c.<sup>2</sup>

CVPS further states that "[a]s such, the Proposal for Decision is based on conclusions reached by the Board that are well documented and now largely historical in nature."<sup>3</sup> Finally, CVPS indicates that it intends to pursue Allowance Program credits "using other means" and that its customers will benefit, if it "is correct that the standards applicable to this review are different from those employed under the Proposal for Decision . . . ."<sup>4</sup>

On June 27, 2003, the Vermont Department of Public Service ("Department") filed a letter in which it supports CVPS' motion. The Department states that it has reviewed CVPS' motion, "which includes statements that CVPS will seek those allowances through alternative means and apply any allowances it receives for the benefit of the ratepayers."<sup>5</sup> The Department furthermore states that, "[i]n view of these statements, [it] concurs in the dismissal without prejudice of CVPS' application."<sup>6</sup>

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2. CVPS Motion of June 27, 2003, at 3.

3. *Id.* at 4.

4. *Id.* at 4-5.

5. Department Letter of June 27, 2003.

6. *Id.*

## **Discussion**

CVPS' motion suggests that, in the Proposal for Decision, I reached my recommended decision on the basis of an outmoded standard, "largely historical in nature." The implication is incorrect. This standard is neither historical, nor somehow an archaic vestige of Vermont law that has now been superceded.<sup>7</sup> The standard that I applied in the Proposal for Decision is currently in effect and is located at Part 73 of the Code of Federal Regulations. Naturally, however, since CVPS' application asked for approval of its conservation and efficiency practices during the years 1992 through 1994, the Proposal for Decision had an historical element to it. It reviewed a 1994 Board Order that, in turn, contained extensive findings based on sworn testimony by CVPS and others as to CVPS' conservation and efficiency practices during those years.<sup>8</sup>

Rather than relying upon an historical basis as CVPS suggests, I reached my decision to recommend denial of CVPS' request largely due to the Department's effective advocacy. At the center of this case, and as the Department correctly argued, in order to receive Allowance Program credits, CVPS must demonstrate that it has met EPA's standard of implementing its IRP to the "maximum extent practicable."<sup>9</sup>

Despite the questionable reasoning underlying CVPS' motion, I still conclude that the motion should be granted. I reach this decision for reasons other than those advocated by CVPS. I recommend that the Board dismiss this case and close the Docket for simpler reasons. First, CVPS has withdrawn its request for certification by the Board that CVPS meets Allowance Program requirements. Second, the Department – the only other party in the case – does not oppose the motion.

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7. In its Motion, CVPS writes:

As reflected in the Proposal for Decision, proceedings on the CVPS request have spanned nearly ten years. During that period, many proceedings have been undertaken in conjunction with [CVPS'] delivery of conservation and efficiency services. In material part, those issues have all been resolved and the provision of efficiency and conservation services has been effectively restructured pursuant to the Board's landmark order in Docket No. 5980 establishing the energy efficiency utility . . . . CVPS Motion at 3.

8. See e.g., Dockets 5701/5724, Order of 10/31/94.

9. See Department Letter of 9/4/97, citing 40 C.F.R. § 73.82(a)(4)(vi),(5).

**Conclusion**

I recommend that the Board grant CVPS' motion to dismiss this case without prejudice, and furthermore, that the Board close this Docket.

The foregoing is hereby reported to the Public Service Board in accordance with the provisions of 30 V.S.A. § 8. This revised Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.<sup>10</sup>

Dated at Montpelier, Vermont, this 28<sup>th</sup> day of July, 2003.

s/David Farnsworth

David Farnsworth, Esq.  
Hearing Officer

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10. While the parties have waived their rights to oral argument in this Docket, they have asked that they be provided with a copy of the Proposal for Decision. See Recording of Telephonic Status Conference of 4/12/00.

**ORDER**

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

1. The Hearing Officer's report and recommendations are accepted.
2. Central Vermont Public Service Corporation's application for Clean Air Act Credits for the years 1992, 1993, and 1994 is dismissed without prejudice.
3. This Docket shall be closed.

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of August, 2003.

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

OFFICE OF THE CLERK

Filed: August 19, 2003

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 in writing) 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.*