

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6758

Investigation into Fourteen Utilities' Provision of Service to Customers Pursuant to Expired Special Contracts or at Special Rates Without Prior Board Approval)
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Order entered: 7/10/2003

OPINION AND ORDER

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") approves supplemental stipulations between the Vermont Department of Public Service ("Department") and four utilities: Central Vermont Public Service Corporation ("CVPS"); Green Mountain Power Corporation ("GMP"); Verizon New England Inc., d/b/a Verizon Vermont ("Verizon VT"); and the Town of Readsboro Electric Light Department ("Readsboro"). In each stipulation, the respective utilities agree to pay penalties for their provision of unauthorized service, and to follow procedures in order to maintain compliance with the law and with Board procedures regarding special contracts and special rates.

II. BACKGROUND

Between October 2000, and August 2002, the Department investigated thirty-three of Vermont's public utilities in order to determine whether any of these companies were illegally providing services at preferential rates. The Department found that fourteen of the state's utilities had violated 30 V.S.A. § 229, a statute that requires public notice and prior Board approval of a

non-tariffed service offering.¹ The Department entered into fourteen stipulations in which the respective utility companies agreed to pay cumulative penalties of nearly \$400,000.² By Orders dated December 16, 2002, and January 15, 2003, the Board approved the stipulations submitted.

In the fourteen stipulations, each utility represented that it had searched its records, and that there were no other instances of service to customers at rates unapproved by the Board.³ However, subsequent to the signing and filing of the stipulations with the Board, but prior to the Board's review and approval of each stipulation, additional potential violations of section 229 were discovered. Some of these were discovered by the Department and others by the utility, specifically CVPS, GMP, Verizon and Readsboro.⁴ Thus the Department submitted four additional stipulations (jointly, "Second Settlement Stipulations") for Board review, three on March 28, 2003, and one on April 11, 2003. These additional stipulations are intended to supplement the original stipulations between the Department and these four utilities.

Also on April 11, 2003, the Department submitted prefiled testimony in support of all four Second Settlement Stipulations. All the parties agree that there is no need for a hearing on the stipulations. Each Second Settlement Stipulation recites the respective company's specific infractions, provides for payment of a financial penalty, and includes a recertification by the utility that it has identified and disclosed all relevant infractions.

1. Section 229 is intended to preclude the evils attendant to such practices as discriminatory offerings, undue preferences, and exploitation of other monopolized customers that fund the price breaks given to a selected few. *See generally* Order of 12/16/02 at 4-5.

2. For a list of the utilities, *see id.* at note 2. As indicated in the Order of 12/16/02, in addition to a cumulative proposal for penalties of \$393,975, the stipulations also describe procedures that the utilities have subsequently implemented to maintain compliance with the law and with Board procedures regarding special contracts and special rates. *See id.*

3. *See generally* Orders of 12/16/02, and 1/15/03.

4. In March 2003, the Department concluded its analysis and proposed resolutions including recommended penalties. The Department notified the three utilities of its findings and proposed recommendations on March 11, 2003. Steinhurst pf. at 2-3. On April 7, 2003, Verizon VT notified the Board and Department of one additional violation. *Id.* The Department conducted an evaluation of Verizon VT's reported additional violation and notified Verizon VT of the Department's findings, recommendations, and proposed resolution later on April 7, 2003. *Id.* Prior to signing the initial settlement stipulation, GMP had already discovered and disclosed two of the three violations that are addressed in this Order. GMP's initial stipulation contained provisions for the later disposition of those two violations. *See* Order of 12/16/02 at Findings 28-31.

III. FINDINGS

General

1. The Department has indicated that, for the more recent violations of section 229, it has collected and analyzed additional data and explored options for a penalty methodology.

Steinhurst pf. at 2-3.

2. Each of the Second Settlement Stipulations supplements the previously-approved stipulation between the Department and the respective utility. The Second Settlement Stipulations do not amend or otherwise alter any of the provisions of the original stipulations. *See generally* paragraph 4 of each of the Second CVPS Settlement Stipulation, March 28, 2003; Second GMP Settlement Stipulation, March 28, 2003; Second Verizon VT Settlement Stipulation, April 11, 2003; Second Readsboro Settlement Stipulation, March 28, 2003.

3. Each of the Second Settlement Stipulations contains: (1) a statement of specific infractions found; (2) a recertification by the utility that it has identified and disclosed all relevant infractions; and (3) an agreement to pay a financial penalty. *See id.* at paragraphs 1.

Penalty Methodology

4. With several exceptions discussed below, the methodology employed by the Department for establishing penalties for the violations of section 229 being considered here is substantially the same as the methodology used in the settlements approved in the Board's Orders of December 16, 2002, and January 15, 2003. The methodology employs various factors in setting specific dollar amounts for penalties. The methodology also establishes settlement terms and factors in consideration of the companies' willingness to cooperate and to negotiate. Steinhurst pf. at 4-6; *see also* Order of 12/16/02 at 9.

5. In this subsequent round of investigations, the Department indicated its interest in retaining the positive aspects of its earlier methodology while ensuring that utilities who lived up to their original representations receive the benefit of doing so. *Id.* at 4.

6. While the methodology adopted for the Second Settlement Stipulations employs similar factors, settlement terms, and considerations related to cooperation and settlement to those used

by the Department in its initial stipulations, this methodology doubles the dollar amounts in (a) the various penalty formulae and (b) the percentage caps applied. *Id.* at 6.

Remedial Measures

7. The section 229 violations being reviewed here occurred or began prior to the execution of the original stipulations reviewed and approved by the Board's Orders of December 16, 2002, and January 15, 2003. Consequently, the Department does not recommend any new remedial measures. *Id.* at 3.

The Second Settlement Stipulations

The Second Central Vermont Public Service Corporation Settlement

8. Beginning in the early 1970's, CVPS permitted seasonal customers to use power during their off-season, without paying the daily service charge in the residential rate class tariff. Approximately 5,000 seasonal customers may have participated in this offering. Second CVPS Settlement Stipulation, March 28, 2003, at 2.

9. CVPS estimates that if each of those customers elected to maintain electricity during their off-season and pay the daily service charge, instead of discontinuing service for those months, the current annual additional revenue would be approximately \$392,000. *Id.*

10. CVPS eliminated this seasonal service option, effective with letters sent to customers in billing cycles beginning September 9, 2002. *Id.*

11. Beginning April 1, 1997, CVPS has been charging a \$2.25 disconnection fee to non-residential customers without specific inclusion of that fee in the non-residential section of its tariff. CVPS did obtain Board approval of a residential tariff for an identical disconnection fee in Docket 5835, but CVPS neither requested nor submitted a specific tariff change to adopt the same provision for its non-residential tariff in that Docket. *Id.* at 3.

12. Such a non-residential disconnection fee was never approved by the Board. The estimated difference between the rate charged (but not necessarily collected) and the tariff rate for the period April 1, 1997, through February 21, 2003, is \$243,317. *Id.*

13. CVPS submitted Tariff Filing No. 5468 to incorporate the disconnection fee in the non-residential section of its tariff. The Board approved this tariff filing on February 28, 2003. *Id.*

14. As a result of the Department's investigation, CVPS discovered that it had entered into an agreement with Middletown Springs Historical Society ("MSHS") that permits MSHS to use a minimal amount of power at no charge. For several years following the agreement, CVPS metered the usage, which was minimal. CVPS then removed the meter and installed jumpers on the meter socket to allow MSHS to have access to the power. Upon discovery, CVPS immediately began metering the service. CVPS estimates that the tariff rate for the power used for the entire period is approximately \$100. *Id.*

15. CVPS, at no charge, or through a charitable rebate, provided power for 38 selected municipal and charitable events. *Id.* at 4-5.

16. The time period the service was provided varied from charity or municipality, but generally involved only one or two billing periods per year, from a few up to over thirty years. CVPS estimates that the aggregate tariff rate for the power provided to these charitable events for the entire period is approximately \$74,624. *Id.* at 5.

17. Other than the service to customers identified in paragraph 1 of its Second Settlement Stipulation, CVPS represents that it has conducted a thorough review of its special contracts and special rates and is not aware of other instances of service to customers pursuant to special contracts or at special rates without Board approval. CVPS commits to notifying the Board and the Department promptly if, at any time in the future, it identifies any instances of service to customers pursuant to special contracts or at special rates without Board approval. *Id.*

18. CVPS' Second Settlement Stipulation supplements the Original Stipulation dated August 29, 2002, between the parties and does not amend or otherwise alter any of the provisions of the Original Stipulation. *Id.* at 6.

19. Under the terms of the Second CVPS Settlement Stipulation, within 30 days after entry of a final order in this Docket, CVPS agrees to pay to the State of Vermont a penalty in the amount of \$129,131. *Id.*

20. The penalty will be paid exclusively by CVPS shareholders. The Second CVPS Settlement Stipulation provides that the payment will be in full settlement of any and all claims

for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by CVPS to the Department in the course of its investigation. *Id.*

21. CVPS agrees that, should the Department discover any additional violations of 30 V.S.A. § 229, the violations and representations identified in the Second CVPS Settlement Stipulation and the violations and the representations in the Original Stipulation will be considered in recommending the appropriate penalty as permitted by 30 V.S.A. §§ 30, 230 and 247. *Id.* at 6-7.

The Second Green Mountain Power Corporation Settlement

22. GMP is the successor in interest to Montpelier & Barre Light & Power Company, which entered into an agreement dated October 31, 1914, with M.A. Newhall, Angie Newhall, W.M. Newhall and Leona Newhall, to provide free electrical energy for personal and household use through a five-kilowatt transformer in consideration of receiving "the right to flow" certain property upstream of GMP's Middlesex dam facilities. This agreement predates the enactment of 30 V.S.A. § 229. GMP continues to provide free electricity under this agreement to the current owner of a portion of this property. Second GMP Settlement Stipulation, March 28, 2003, at 2.

23. In 1992, GMP replaced the five-kilowatt transformer with a ten-kilowatt transformer, which permitted the property owners to draw energy in excess of five-kilowatts as specified in the agreement. GMP did not bill the property owner for energy taken in excess of five-kilowatts. GMP is developing appropriate billing adjustments to ensure that the property owner is billed in the future for energy taken in excess of five-kilowatts and has agreed to notify the customer no later than June 1, 2003, after an appropriate billing mechanism has been finalized. *Id.* at 2-3.

24. GMP estimates that the applicable tariff rate for the energy taken in excess of the five kilowatts specified in the agreement from August 1996 through January 2003 is approximately \$1,625. *Id.* at 3.

25. As a result of the Department's investigation, GMP discovered that in approximately 1985 or 1986, it implemented a pilot program to provide off-peak energy for dual fuel heating

systems and storage heat systems at residential and small commercial locations at rates comparable to the off-peak component of GMP's time-of-use tariff. *Id.*

26. GMP received Board approval for the program, which required GMP to submit the individual contracts for each participant to the Board for approval. GMP did not obtain Board approval for the individual contracts with the participants. Approximately 25 customers entered this program. All customers remaining in the program were converted to the regular tariff rates by October 1, 2002. *Id.*

27. As a result of the Department's investigation, GMP discovered that it provided power for lighted holiday wreaths in Essex, without metering or billing. GMP provided this power at no charge for the period beginning in 1998 through 2002. GMP estimates that the appropriate tariff rate for this service for the entire period is approximately \$484. *Id.*

28. GMP represents that it has conducted a thorough review of its special contracts and special rates and disclosed to the Department those instances discovered by GMP of service to customers pursuant to special contracts or at special rates without Board approval to the best of GMP's knowledge. GMP represents that if, at any time in the future, it identifies circumstances in which retail customers may be receiving retail electric service on terms not contained in current approved tariffs or approved special contracts, GMP will promptly notify the Department and undertake appropriate remedial actions. GMP also represents that it has implemented procedures designed to ensure continuing compliance with 30 V.S.A. § 229. *Id.* at 4.

29. Under the terms of the Second GMP Settlement Stipulation, within 30 days after entry of a final order in this Docket, GMP shall pay a penalty to the State of Vermont in the amount of \$10,300. The penalty will be paid exclusively by GMP shareholders. *Id.* at 4, 5.

30. The Second GMP Settlement Stipulation provides that GMP's payment and undertakings set forth therein will be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by GMP to the Department in the course of its investigation. *Id.* at 4-5.

31. GMP agrees that should the Department discover any additional violations of 30 V.S.A. § 229, the violations and representations identified in the Second GMP Settlement Stipulation and the violations and the representations in the Original Stipulation will be considered in recommending the appropriate penalty as permitted by 30 V.S.A. §§ 30, 230 and 247. *Id* at 5.

The Second Verizon VT Settlement

32. Special Contract No. 311 was one of the contracts that were the subject of Docket No. 6077. In that Docket, the Board approved Special Contract No. 311 for a period until 90 days after the final order in that Docket, that is, until May 8, 2000. Verizon VT continued to serve the customer under the contract through May 20, 2001, the end of the term specified in the contract. The customer reverted to tariffed rates at that time. Second Verizon VT Settlement Stipulation, April 11, 2003, at 2.

33. The revenue difference between the contract rates charged and the appropriate tariff rate for the services under Special Contract No. 311 from May 9, 2000, through May 20, 2001, is approximately \$7,507. *Id*.

34. Verizon VT represents that it continued to serve the customer at contract rates until May 2001 in the belief that through its compliance filings in Docket No. 6077, it had shown compliance with the Board's requirements. *Id*. at 3.

35. Verizon VT recently discovered, and brought to the Department's attention, that the information regarding this contract that Verizon VT had previously provided to the Department in connection with the Department's investigation that resulted in this Docket No. 6758 was incorrect. *Id*.

36. Verizon VT represents that the error apparently was the result of human mistake on the part of a former Verizon employee responsible for assembling information responsive to the Department's inquiries prior to the opening of this Docket. The customer to the special contract was acquired by another corporate entity ("Acquirer") during the term of Special Contract No.

311.⁵ Verizon VT accordingly changed the name of the customer in its records to "Acquirer." Acquirer then entered into Special Contract No. 418 with Verizon VT. The former Verizon employee apparently mistakenly thought that No. 418 was for the same services as, and superseded, No. 311, and accordingly removed No. 311 from the "active" file and placed it in the "terminated" file. In actuality, however, No. 418 was for different services than, and did not supersede, No. 311. *Id.*

37. Verizon VT represents that in connection with the Department's investigation prior to the commencement of this Docket, it conducted a thorough review of its special contracts and special rates and is not aware of any other instances of services to customers pursuant to special contracts or at special rates without Board approval. Verizon VT indicates that it will take required corrective actions if it identifies such contracts in the future. *Id.* at 4.

38. Under the terms of the Second Verizon Settlement Stipulation, within 30 days after entry of a final order in this Docket, Verizon VT will pay a penalty in the amount of \$7,300 to the State of Vermont. The Second Verizon Settlement Stipulation provides that the payment will be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified in the Second Verizon Settlement Stipulation, and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by Verizon VT to the Department in the course of its investigation. *Id.* at 4-5.

39. Verizon VT agrees that should the Department discover any additional violations of 30 V.S.A. § 229, the violations and representations identified in the Second Verizon Settlement Stipulation and the violations and the representations in the Original Stipulation will be considered in recommending the appropriate penalty as permitted by 30 V.S.A. §§ 30, 230 and 247. *Id.* at 5.

5. The Board generally has accorded proprietary treatment to the names and other identifying information of customers under Verizon VT special contracts. Therefore, the terms "customer" and "acquirer" will be used herein.

The Second Town of Readsboro Electric Light Department Settlement

40. Readsboro served seven municipal accounts under the single-phase tariff rate at least since 1988, although each of these accounts received three-phase service. Second Readsboro Settlement Stipulation, March 28, 2003, at 2.

41. Readsboro installed three-phase meters in the fall of 2002, and began billing the seven municipal accounts under the three-phase service tariff rate on January 1, 2002. *Id.*

42. Readsboro estimates that the aggregate revenue difference for the seven municipal accounts for the entire period is approximately \$163,005. *Id.* at 2-3.

43. Readsboro represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than those identified in the Second Readsboro Settlement Stipulation. Readsboro commits to notifying the Board and the Department promptly if at any time it identifies any instances of service to customers pursuant to special contracts or special rates without Board approval. *Id.* at 3.

44. Under the Second Readsboro Settlement Stipulation, within 30 days after entry of a final order in this Docket, Readsboro will pay a penalty in the amount of \$917.00. The \$917.00 penalty will be paid by recording a regulatory liability in that amount on the municipality's books. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers in the amount of Readsboro's most recent long-term borrowing (or 4.75% in the event that Readsboro possesses no long-term borrowings). This regulatory liability and accrued interest will be applied for the benefit of ratepayers in Readsboro's next rate case by amortizing it over a five-year period (or such shorter period as Readsboro may elect) as an offset to operating expenses. *Id.* at 4.

45. The Second Readsboro Settlement Stipulation provides that the payment will be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers described above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by Readsboro to the Department in the course of this investigation. *Id.* at 3-4.

46. Readsboro agrees that should the Department discover any additional violations of

30 V.S.A. § 229, the violations and representations identified in the Second Readsboro Settlement Stipulation and the violations and the representations in the Original Stipulation will be considered in recommending the appropriate penalty as permitted by 30 V.S.A. §§ 30, 230 and 247. *Id.* at 6.

IV. DISCUSSION

The facts relevant here are not in dispute. As a result of its investigation, the Department determined that in various instances CVPS, GMP, Verizon VT, and Readsboro provided preferential rates without Board approval. The Department and each of the affected utilities agree that by providing service to a customer at rates pursuant to a special agreement with the customer, each utility has offered special rates in violation of Section 229 of Title 30. In all, the four affected utilities provided significant discounts to customers under these unapproved special contracts – over \$880,000 in total.

The primary question facing the Board is the appropriate remedy for the violations. The Department and the affected utilities have entered into settlement stipulations in which they recommend relatively minor penalties: cumulatively, less than \$130,000 total. The Department contends (1) that the stipulated penalties are adequate to create a desirable deterrent effect for the long-term benefit of ratepayers, (2) that the actual harm caused to users who did not receive a preferential rate is relatively small, and (3) that all the violations were inadvertent. The various stipulations and the Department's witness note that the utilities cooperated with the Department in its investigation. In addition, the record indicates that the utilities have taken reasonable steps to correct their internal processes that resulted in the violations of Section 229.⁶

Consequently, the Department recommends that the Board accept the stipulated penalties under Sections 30, 230, and 247, in full settlement of any and all claims that were or could have been brought in this Docket for violations of Section 229. In each case, the Department agrees that this payment is appropriate and sufficient consideration for this settlement, considering each

6. In his prefiled testimony, Department witness Steinhurst indicates that none of these Second Settlement Stipulations alters or amends the remedial measures agreed upon and ordered by the Board in its Orders of 12/16/02, and 1/15/03. The Department reasons that this was not necessary because each of the additional violations considered here occurred or began prior to the execution of the original stipulations. Steinhurst pf. at 3.

company's cooperation with the Department, and conduct during this investigation. The parties also agree that the settlement set forth in the stipulation is a compromise of contested claims reached in arms-length negotiations, and is fair, reasonable, and in the public interest.

We conclude, in general, that the affected utilities have taken reasonable steps to alter their internal practices in ways that should promote compliance with Section 229. The utilities have committed to what appear to be substantive remedial measures designed to improve their special contract review and implementation procedures.⁷

V. ORDER

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

1. The individual Second Settlement Stipulations (attached hereto) between Central Vermont Public Service Corporation ("CVPS"), Green Mountain Power Corporation ("GMP"), Verizon New England Inc., d/b/a Verizon Vermont ("Verizon VT"), the Town of Readsboro Electric Light Department ("Readsboro") and the Vermont Department of Public Service ("Department") are approved.
2. Each of the utilities shall pay the penalties per their respective stipulations as settlement of the claims for this proceeding.

7. For a discussion of various approved tracking measures, *see* Order of 12/16/02 at 39-41.

