

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5934

Petition of Northern New England Gas)
Corporation as an agent for Hydro-Quebec for)
such approval as may be required of Hydro-)
Quebec's acquisition of a controlling interest in)
entities that own Northern New England Gas)
Corporation)

Order entered: 2/25/2004

I. REPORT AND RECOMMENDATION

Introduction

This Docket was opened to consider the indirect acquisition by Hydro-Quebec of Vermont Gas Systems, Inc. ("VGS"), pursuant to 30 V.S.A. §107. In particular, this Docket involves a petition filed by Northern New England Gas Corporation ("NNEG"), acting as agent for Hydro-Quebec, requesting approval for the acquisition of a certain number of the outstanding shares of Noverco, Inc. ("Noverco") by Hydro-Quebec. Noverco, through several intermediary corporations, has a significant ownership interest in NNEG which, in turn, is VGS' sole shareholder.

The proposed acquisition is best understood in three parts. First, NNEG filed a January 31, 1997, petition requesting approval for the acquisition by Hydro-Quebec of 32 percent of the outstanding shares of Noverco. As part of the January 1997 petition, Hydro-Quebec also proposed to acquire an option to purchase an additional 8 percent of the outstanding shares.¹

Second, by letter dated February 11, 1997, NNEG notified the Board that Hydro-Quebec had, through a subsequent transaction, acquired approximately 6 percent of the shares in Noverco previously held by Laurentides Investissements S.A. ("Laurentides"). NNEG requested that the

1. Order Opening Investigation, 5/1/97.

Board include the second transaction as a part of NNEG's original petition for approval under Section 107.²

In addition to the two initial filings, there is a third filing being considered in this Docket, a petition by IPL Energy ("IPL" or "Enbridge") to acquire a 26 percent share of Noverco, filed in the summer of 1997 ("Enbridge Filing").

Background

During the pendency of the Docket, the City of Burlington Electric Department ("BED"), the Vermont Public Power Supply Authority ("VPPSA") and Central Vermont Public Service Corporation ("CVPS") raised questions about potential market power of Hydro-Quebec in Vermont, more specifically, whether Hydro-Quebec's indirect ownership of VGS could result in adverse effects upon regional competition in wholesale and retail electricity and gas markets.³ In Order to address the concerns over possible market-power, the parties agreed that VGS should be allowed to proceed with its plans to introduce transportation tariffs (both firm and interruptible). The rationale behind the decision to proceed on a separate track with investigations into transportation tariffs was to determine whether the establishment of just and reasonable rates for these two services would serve to resolve the market power allegations that had been raised. Review and approval of these tariffs has now taken place with the issuance of final orders in both Dockets 6016 and 6335.⁴

I convened a status conference in this Docket on August 25, 2003. In attendance were NNEG and the Vermont Department of Public Service ("Department"). Other participants in this

2. *Id.*

3. As discussed in the Order Opening Investigation:

HQ's indirect acquisition of VGS raises new issues as the acquisition will provide HQ with control over the natural gas sector of the energy services market in Vermont in addition to the significant influence HQ now exerts on the electrical energy market. This raises the potential that HQ could wield excessive market power in energy services markets to the long-term detriment of Vermont consumers.

Docket 5934, Order of May 1, 1997, at 2.

4. In Docket 6335 and Docket 6016, respectively, the Board determined that VGS has established just and reasonable rates for firm and interruptible transportation services. *See* Docket 6016, Order of 11/24/98 at 14; Docket 6335, Order of 4/10/03 at 40.

Docket did not attend the status conference, although they filed letters stating their current positions.

By letter filed on August 26, 2003, BED indicated that it does not intend to participate any further in this Docket. In separate letters, VPPSA and CVPS indicated that, while they did not expect to participate in the status conference, they support the proposal that they understood NNEG would make at the status conference.⁵ NNEG proposes that it file testimony that addresses the section 107 criteria of 30 V.S.A. § 107 as set out in the scoping order in this Docket, and that the Hearing Officer render a decision on the basis of that filing.⁶

The Department suggested an alternative manner in which to proceed. It has proposed to renew its original recommendation that the acquisition take place without a need for investigation.⁷ However, upon considering that its original recommendation had been submitted prior to the Enbridge Filing, described above as the third filing, the Department asked for time to review that filing before it would agree to renew its original recommendation in this Docket.

The Department has now reviewed the Enbridge Filing, and by letter of September 24, 2003, indicates that it reaches the same conclusion that it reached with regard to the initial two filings.⁸ The Department states that it "does not oppose the acquisition which is the subject of the petition and does not seek investigation or hearings."⁹

Discussion

For the following reasons, I conclude that the Department's recommendation is reasonable.

First, as described above, the Board has approved both interruptible and firm transportation tariffs for VGS. The Board has found that these tariffed services provide access to competitive markets for gas supply.

5. VPPSA filed a letter on August 22, 2003, and CVPS filed on August 26, 2003.

6. There were fifteen criteria, in total, set out. *See* Order of 7/21/97 at 2-3.

7. The Department filed a letter on March 10, 1997, in response to the first two filings, in which it recommended approval of the proposed transactions without hearings. *See also* Order of 5/1/97 at 1.

8. Department Letter of September 24, 2003.

9. *Id.*

Second, given the positions of the Department and BED, and the apparent positions of VPPSA and CVPS, there no longer appears to be any controversy for the Board to review here. Rather than requiring NNEG to submit prefiled testimony in support of its petition, I conclude that accepting the Department's proposal would be a more expedient resolution to this Docket. If, in fact, there are no issues to resolve here, the Department's proposal provides a simpler, and what would appear to be the more reasonable, resolution. Notwithstanding this conclusion, I recognize that CVPS and VPPSA support NNEG's proposal, and have not had an opportunity to comment upon the Department' suggested resolution. Since this is a proposal for decision, CVPS and VPPSA, if they wish, may take the opportunity to provide further comment.

I find, therefore, that there are no genuine issues of material fact for the Board to consider here, and conclude that the Board should approve the indirect acquisition by Hydro-Quebec of Vermont Gas Systems, Inc., pursuant to 30 V.S.A. § 107. I thus recommend that the Board adopt the Department's renewed proposal that the Board grant NNEG's petition without investigation or hearings. I further recommend that, upon the issuance of this proposal for decision, and an opportunity by all the parties to comment and agree on this recommended resolution, the Board close this Docket.

The foregoing is reported to the Public Service Board in accordance with the provisions of 30 V.S.A. § 8.

The 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 12th day of February, 2004.

s/David Farnsworth
David Farnsworth, Esq.
Hearing Officer

II. DISCUSSION AND CONCLUSION

The Board has reviewed all the comments of the parties in this Docket which, in general, support the Hearing Officer's Proposal for Decision ("PFD"). Northern New England Gas Corporation ("NNEG") urged the Board to consider two additions to the final Order. First, NNEG indicates that, while the PFD discussed and recommended that the Board approve the acquisition by IPL Energy Inc. ("Enbridge") of Noverco, Inc., which indirectly controls NNEG, the proposed ordering paragraph did not explicitly acknowledge this. Second, NNEG noted that Enbridge had acquired, not 26 percent of Noverco, Inc. (as written at page 2 of the PFD), but instead had acquired 32 percent.

We appreciate and agree with NNEG's comments. First, we hereby recognize that Enbridge acquired 32 and not 26 percent of Noverco, Inc. Second, paragraph 2 below explicitly reflects approval of that transaction.

Finally, we agree with the recommendations of the Hearing Officer in this matter and conclude that the indirect acquisitions of Vermont Gas Systems, Inc. meet the requirements of 30 V.S.A. § 107, and will promote the public good.

III. 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, with the modifications noted above.
2. The indirect acquisition of Vermont Gas Systems, Inc., by Hydro-Quebec and IPL Energy Inc., pursuant to 30 V.S.A. §107, is approved.
3. This Docket shall be closed.

Dated at Montpelier, Vermont, this 25th day of February, 2004.

<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: February 25, 2004

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 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.