

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6807

Petition of Caruso Wood Products vs. Town of)	
Readsboro Electric Light Department in re: dispute)	Hearing at
concerning certain charges relating to the provision of)	Montpelier, Vermont
electric service –)	June 5, 2003

Order entered: 6/9/2004

PRESENT: Judith M. Kasper, Esq., Hearing Officer

APPEARANCES: Anthony Caruso, Jr., Pro Se
for Caruso Wood Products

William B. Piper, Esq.
Primmer & Piper P.C.
for the Town of Readsboro Electric Department

Dixie Henry, Esq.
for the Vermont Department of Public Service

I. INTRODUCTION

This docket concerns a dispute between Caruso Wood Products ("Caruso") and the Town of Readsboro Electric Light Department ("Readsboro") pertaining to electric service charges billed to Caruso. In part, this billing dispute is related to whether a certain special contract between the two parties has terminated, and if so, when. In addition, this docket concerns a request by Caruso for reimbursement from Readsboro for the cost of certain electrical switch boxes.

In this revised proposal for decision,¹ I conclude that the special contract between the parties terminated on August 31, 1990, and that Readsboro should make certain adjustments to the charges for which it has billed Caruso. I also conclude that the Public Service Board ("Board") should not grant Caruso's request for reimbursement related to the electrical switch boxes.

Procedural History

On December 24, 2002, Caruso filed a petition with the Board seeking the following: (1) a ruling that a certain special contract between Caruso and Readsboro is still in effect; (2) relief from the payment of demand charges; (3) adjustments to a credit for a 2½ percent discount given to Caruso by Readsboro; and (4) reimbursement from Readsboro for the cost of certain electric switch boxes.²

On February 18, 2003, a prehearing conference in this docket was held. The parties in attendance were Caruso, Readsboro and the Vermont Department of Public Service ("Department"). Also in attendance was Charles Underhill of the Vermont Public Power Supply Authority ("VPPSA").³ At the prehearing conference, the parties indicated that they would attempt to negotiate a settlement on all issues.⁴ However, the parties did not reach a comprehensive settlement of the case, as evidenced by a "Statement of Contention" filed by Caruso on April 21, 2003.

On June 5, 2003, a technical hearing in this docket was held.

On January 7, 2004, a proposal for decision in this docket was issued.

1. I initially issued a proposal for decision in this docket on January 7, 2004. The Vermont Department of Public Service filed comments on that proposal for decision on January 20, 2004. After considering the Department's comments, I decided to issue this revised proposal for decision.

2. Letter of Anthony Caruso, Jr., filed December 24, 2002.

3. VPPSA has not entered an appearance as a party in this docket; however, Mr. Underhill asked that VPSSA be treated as an "interested person" in this proceeding.

4. Tr. 2/18/03, pp. 17-19.

On January 20, 2004, comments on the January 7 proposal for decision were filed by the Department.

This revised proposal for decision is issued as a result of the comments filed regarding the January 7, 2004, proposal for decision.

Evidence Ruling

As agreed at the June 5, 2003, technical hearing, a schedule was set for parties to make supplementary filings for admission into evidence, and for parties to respond to such submissions.⁵

On June 11, 2003, Readsboro filed the following document with the Board: Letter from Annette Caruso (Utility Clerk for Readsboro) to Anthony Caruso dated October 9, 2001.

On June 12, 2003, Caruso filed the following documents with the Board:

1. Minutes of the July 19, 1988, Town of Readsboro Selectmen's meeting.
2. Letter from Dixie Henry to Annette Caruso (Utility Clerk for Readsboro) dated September 26, 2001.
3. Letter from Annette Caruso (Utility Clerk for Readsboro) to Anthony Caruso, Jr. dated September 11, 1990.
4. Letter from Annette Caruso (Utility Clerk for Readsboro) to Anthony Caruso dated October 9, 2001.⁶
5. A twelve page document (including cover) entitled "Readsboro Electric Service Requirement."
6. Affidavit of Richard L. Schlieder, Chief Electrical Inspector, State of Vermont, dated June 11, 2003.

On June 18, 2003, Caruso filed a Statement of Anthony Caruso.

No party has objected to the admission of any of the above items as evidence. Accordingly, I hereby admit each of the above items as evidence in this proceeding.

5. Scheduling Order, June 10, 2003.

6. This is a copy of the same letter submitted by Readsboro on June 11, 2003.

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

II. FINDINGS

1. On June 14, 1990, the Board approved a special contract between Caruso and Readsboro that set the terms and conditions for Caruso to purchase its electric power from Readsboro. Exh. 2.

2. Readsboro billed Caruso for electric power pursuant to the terms of the special contract from March 1, 1990, to November 1, 2001. Exh. 2; letter of Annette Caruso to Anthony Caruso, dated October 9, 2001.

3. On November 1, 2001, Readsboro began billing Caruso for electric power under its #16 Industrial Rate tariff applicable to three-phase customers. Letter of Annette Caruso to Anthony Caruso, dated October 9, 2001.

4. Under tariff #16, Caruso was billed demand charges. Underhill pf. at 3.

5. Under tariff #16, Caruso should be given a 2½ percent discount. Underhill pf. at 2.

6. Due to a software problem at VPSSA, which was responsible for calculating Readsboro's customer bills, the 2½ percent discount was not applied to Caruso's account for the period November 2001 to August 2002. Underhill pf. at 2.

7. During the late 1980's, Mr. Caruso purchased switch boxes for installation at his new mill. Tr. 6/5/03, Caruso at 37-38.

8. These switch boxes were approved by the Vermont state engineer. Tr. 6/5/03, Caruso at 37-38.

9. After Caruso installed these state-approved switch boxes, Caruso was informed by an electrical engineer who had been hired by the town of Readsboro⁷ that these switchboxes could not be used. Tr. 6/5/03, Caruso at 37-38 and 42.

7. It is not clear from the record in this docket whether the electrical engineer from Readsboro was hired by the town (independent of the electric department) or the electric department itself. The name of this individual also is not part of the record in this docket.

10. Caruso replaced the state-approved switch boxes with switch boxes required by the electrical engineer who had been hired by the town of Readsboro. Tr. 6/5/03, Caruso at 42.

III. DISCUSSION

Special Contract termination and application of filed tariff rates

In 1990, Readsboro and Caruso entered into a special contract ("Special Contract")⁸ which set forth the charges, as well as other terms and conditions, for Caruso's purchase of electric power from Readsboro. The Special Contract was approved by the Board in accordance with the provisions of 30 V.S.A. § 229, which provides in pertinent part:

A public service company shall not directly or indirectly or by a special rate, rebate, drawback or other device or method make any deviation from the rates, fares, charges or prices for any service rendered by it or in services rendered or to be rendered in connection therewith, as specified in its schedules of charges in effect at the time such service was rendered. No public service company may enter into any contract, agreement or arrangement relating to the furnishing or rendering of any special product or special service not provided for or covered in the schedule without the prior approval of the board. . . . Subject to the approval of the board, it shall be lawful for any public utility to make a contract for a definite term for its product or service.

The Board approved the Special Contract "for the period commencing March 1, 1990 and continuing through August 31, 1990."⁹ In addition, this contract contained the following provision:

Term of contract. This contract shall remain in effect through August 31, 1990. If at such time, both parties agree to the continuation of the contract, the contract shall remain in effect from year to year unless terminated by mutual consent of the parties, or by Order of the Board, or written notice by one party to the other not less than six months prior to the anniversary date of this contract.¹⁰

8. Special Contract No. 30 (exh. 2).

9. Exh. 2 at 1.

10. Exh. 2 at 4.

From September 1, 1990, until November 1, 2001, Readsboro continued to provide Caruso with electric service under the terms of the Special Contract, consistent with the parties' mutual belief that the contract was renewing automatically every year.¹¹ However, during the year 2001, the Department undertook an investigation concerning the provision of utility services to customers pursuant to expired special contracts.¹² In the course of that investigation the Department determined that the Board had approved the Special Contract for the period March 1, 1990, through August 31, 1990, only,¹³ whereupon the Department asked Readsboro to return Caruso to the appropriate tariff service immediately.¹⁴ Readsboro, in turn, promptly notified Caruso that it could no longer provide service to Caruso under the Special Contract. Pursuant to notice given by Readsboro on October 9, 2001, Caruso was returned to service under Readsboro's filed tariff, on the 3-phase demand rate, effective November 1, 2001.¹⁵ On December 16, 2002, the Board issued an order approving a settlement stipulation between the Department and Readsboro, in which Readsboro and the Department agreed that the Special Contract had expired.¹⁶

Caruso contends that, pursuant to the "Term of contract" ("TOC") provision in the Special Contract, it was incorrect for Readsboro to discontinue service under the Special Contract without first giving Caruso six months' advance notice.¹⁷ The Department asserts that, notwithstanding the TOC provision, the Special Contract expired on August 31, 1990.¹⁸ For the

11. Docket No. 6758, Order of 12/26/02, at 29 and 30.

12. Docket No. 6758.

13. Exh. 2 at 1.

14. Letter of Dixie Henry to Annette Caruso, September 26, 2001.

15. Letter of Annette Caruso to Anthony Caruso, October 9, 2001.

16. Docket No. 6758, Order of 12/16/02, at 29-31 and 44. While neither the stipulation nor the Board Order explicitly specified the date on which the Special Contract expired, it is clear from the Board's description of the settlement agreement that Readsboro and Caruso were mistaken in their belief that the Special Contract could be extended beyond August 31, 1990, by the parties' mutual agreement. *Id.* at 30.

17. Tr. 2/18/03, Caruso at 16.

18. Department Memorandum of Law, 7/3/03, at 4.

reasons that follow, I am persuaded that the TOC provision is without force and effect, and that the Special Contract expired on August 31, 1990.

In order for a special contract to be valid and enforceable it must meet two specific requirements set forth in 30 V.S.A. § 229; it must be approved by the Board, and it must be for a definite term.¹⁹ The Vermont Supreme Court has held that, pursuant to 30 V.S.A. § 229, a contract for non-tariff rates between a utility and one of its customers that has not been specifically approved in advance by the Board is not valid and enforceable at any time.²⁰ In addition, the Board has held that automatic renewal provisions in special contracts do not comply with the statutory requirement of 30 V.S.A. § 229 that the Board approve contracts between utilities and their customers for a "definite term."²¹

The TOC provision in the Special Contract allows for automatic annual contract renewal(s). It thereby would permit indefinite extensions of the contract period without Board approval for any of those extensions. Consequently, the TOC provision is inconsistent with the statutory requirements of 30 V.S.A. § 229 that special contracts be approved by the Board and be for a definite term.²² Accordingly, I conclude that the automatic renewal component of the TOC provision was without force and effect, and that, therefore, the Special Contract terminated on August 31, 1990.²³

19. 30 V.S.A. § 229; *In re Morrisville Water & Light Dept.*, 134 Vt. 428, 432 (1976) (A contract for non-tariffed rates between a utility and one of its customers that has not been specifically approved in advance by the Board pursuant to 30 V.S.A. § 229 is not valid and enforceable at any time.)

20. *In re Morrisville Water & Light Dept.*, 134 Vt. 428, 432 (1976).

21. *See, e.g.*, Special Contract Approval Re: S.C. #117, Central Vermont Public Service Corporation and New England Woodcraft, Order of March 28, 1994, at 2 ("The contract term is one year, but will be renewed automatically unless terminated by either party upon three month's prior notice. In essence, this makes the contract of unlimited duration and, as such, it violates 30 V.S.A. § 229, which requires that special contracts be of a definite term.")

22. *Id.*

23. In support of its position that the TOC controls here, Caruso cites several Vermont contract cases. However, none of these cases involve contracts that were subject to regulatory approval, as is the Special Contract here.

I further conclude that Readsboro did not err when it returned Caruso to service under Readsboro's filed tariff, on the 3-phase demand rate, effective November 1, 2001.²⁴ Because the Special Contract expired August 31, 1990, Caruso was not entitled to receive service under the terms of the Special Contract after that expiration date. Nor was Caruso entitled to six months' notice prior to being placed on Readsboro's filed tariff service. Moreover, as discussed above, the November 1, 2001, changeover date occurred as a result of Readsboro's cooperation with the Department to ensure Readsboro's compliance with 30 V.S.A. § 229.²⁵

There is no evidence in the record of this docket that Caruso should have been placed on a filed tariff rate other than Readsboro's 3-phase demand service rate. Nor is there any evidence here that the 3-phase demand rate is incorrectly assigned to Caruso at the present time. However, as observed by Readsboro, Readsboro and Caruso are free to seek Board approval for a newly negotiated special contract for an appropriate non-tariff rate.²⁶

The 2½ percent discount adjustment

Under Readsboro's approved tariffs, including its #16 Industrial Rate (the 3-phase demand rate), customers who are metered on the primary side of the service transformer enjoy a 2½ percent primary metering discount on capacity and energy charges (the "Discount"). Once Caruso was placed on the Industrial Rate (i.e., as of November 1, 2001), it became entitled to the Discount.²⁷ However, due to a computer programming error, Readsboro did not apply the Discount to billing calculations for Caruso during the period November 2001 through August

24. In Docket No. 6758, the Board found that the Special Contract had expired and that Readsboro should have been charging Caruso for electric service under the terms of its filed tariff rather than the terms of the Special Contract beginning on September 1, 1990.

25. In Docket No. 6758, the Board approved a stipulation between Readsboro and the Department that Readsboro had erred in providing service to Caruso under the Special Contract for the period September 1, 1990, through November 1, 2001. An estimated revenue difference of \$45,304 was attributed to this error. Readsboro was not required to recover this difference from Caruso (or otherwise); however, Readsboro was required to pay a monetary penalty as a result of its non-compliance with 30 V.S.A. § 229.

26. Tr. 2/18/03, Lewis at 18.

27. There is no evidence in the record of this docket as to whether the Discount was considered as part of the cost of energy paid under the Special Contract. Underhill pf. at 3.

2002.²⁸ This computer error was corrected, and Readsboro's billings to Caruso beginning in September 2002 properly reflected the Discount. Readsboro has agreed to adjust its billings to Caruso for the period November 2001 through August 2002, so as to credit Caruso's account for any overcharges made as a result of failure to apply the Discount to bills rendered during that period.²⁹ I conclude that such a credit is appropriate, and I recommend that the Board require Readsboro to issue this credit to Caruso.

The electric switch boxes

Caruso seeks reimbursement from Readsboro for its costs related to certain electric switch boxes. Caruso asserts that, in the late 1980's, these switch boxes were approved by the State of Vermont for installation at Caruso's saw mill. Caruso further asserts that these boxes were not acceptable to Readsboro, and that, consequently, in the early 1990's, Caruso had to install a completely different set of electrical switch boxes. According to Caruso, it has not been able to use the original set of switch boxes at its saw mill.

Readsboro contends that the Board lacks jurisdiction to adjudicate Caruso's claim for reimbursement, and that even if the Board had jurisdiction over this issue, Caruso's claim would be barred by the statute of limitations.

Based on the evidence presented in this case, I conclude that the Board should not grant Caruso's request for reimbursement related to the electrical switch boxes.

At the technical hearing, Mr. Anthony Caruso testified that "the state engineer okayed the whole program and everything and all the wire and the boxes."³⁰ Mr. Caruso further testified that, after these switch boxes were installed, an electrical engineer who had been hired by Readsboro informed Caruso that the installed boxes could not be used and would have to be replaced with "individual breaker boxes."³¹ Finally, Mr. Caruso testified that, as directed by

28. Underhill pf. at 2.

29. Tr. 2/18/03, Underhill, at 10; Underhill pf. at 2.

30. Tr. 6/5/03, Caruso at 38.

31. Tr. 6/5/03, Caruso at 43.

Readsboro's engineer, the installed state-approved boxes were removed, and replaced with the individual breaker boxes.³²

While Caruso contends that the directive of Readsboro's engineer contradicted the approval of the state engineer, Caruso has not demonstrated that this directive constituted a failure by Readsboro to comply with its tariff or otherwise fulfill an applicable utility company responsibility or obligation. The parties were expressly provided the opportunity to submit information pertinent to the switch box issue,³³ and, after the technical hearing, Caruso filed a five page document entitled "Readsboro Electric Service Requirement." However, neither Caruso nor Readsboro explained or specified how this document might relate to the switch box issue. Caruso has not identified any tariff provision(s) that Readsboro may have violated, nor has Caruso articulated any specific responsibility or obligation that Readsboro may have failed to fulfill in connection with the switch boxes. Hence, to the extent that Caruso seeks enforcement of Readsboro's utility tariff or other responsibilities or obligations as a regulated utility, it has not sufficiently stated a claim upon which the Board has authority to act.

In addition, although the Board has the authority to regulate and enforce the tariffs, responsibilities and obligations of utility companies, it does not have "the authority to rule on claims for damages alleged to have been caused by negligence or breach of contractual obligations on the part of corporations subject to their supervision."³⁴ Therefore, to the extent that Caruso does not seek enforcement of Readsboro's utility tariff, or other responsibilities or obligations, the Board lacks jurisdiction to adjudicate Caruso's claim concerning the switch boxes .

Accordingly, there is insufficient basis in the record of this docket to conclude that the Board is authorized to act upon Caruso's specific request that Readsboro reimburse it for the cost

32. Tr. 6/5/03, Caruso at 39 and 42.

33. Tr. 6/5/03 at 46-47.

34. *Green Mountain Power Corporation v. Sprint Communications*, 172 Vt. 416, 419 (2001), citing *Trybulski v. Bellows Falls Hydro-Electric Corp.*, 112 Vt. 1, 9, 20 A.2d 117, 121 (1941).

of the unused switch boxes.³⁵ To the extent that Caruso's request for reimbursement is simply a tort or contract claim sought by Caruso against Readsboro, then Caruso must seek that specific relief in a different forum.³⁶

IV. CONCLUSION

For the reasons discussed above, I conclude that Readsboro did not err when it placed Caruso on a regular tariff rate, for service effective November 1, 2001. I also conclude that Readsboro should adjust its billings to Caruso for the period November 2001 through August 2002, so as to credit Caruso's account for any overcharges made as a result of Readsboro's failure to apply a 2½ percent primary metering discount on capacity and energy charges to bills rendered during that period.

Finally, I conclude that there is insufficient basis in the record of this docket to find that the Board has jurisdiction to adjudicate Caruso's request that it be reimbursed by Readsboro for costs related to certain electrical switch boxes.

This revised 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 9th day of June, 2004.

s/Judith M. Kasper

Judith M. Kasper, Esq.
Hearing Officer

35. Because I cannot conclude that the Board has jurisdiction here, I need not address Readsboro's contention that the statute of limitations bars consideration of Caruso's claim regarding the switch boxes.

36. I also note, for example, that Caruso contends that it was harmed under the Consumer Protection Act. Petitioner's Statement of Contention at 2.

V. BOARD DISCUSSION

We have reviewed comments filed on the Hearing Officer's Revised Proposal for Decision ("Revised PFD").³⁷ The Department has stated that it "fully supports" the Revised PFD.³⁸ Caruso has stated:

I would like a copy of the letter that the Public Service Board (BOARD) sent to the Utility clerk, Readsboro's selectboard or to Caruso's Wood Products terminating the contract between The Town of Readsboro's Electric Department and The Caruso Wood Products (DOCKET # 6807
I have never received one.³⁹

We draw Caruso's attention to the Board Order issued on June 14, 1990, that was issued approving the special contract. That Order states in pertinent part:

The new contract for ELECTRIC service between Town of Readsboro Electric Department and Caruso Wood Products (CWP) for the period *commencing March 1, 1990 and continuing through August 31, 1990 . . .* is approved. (Emphasis added.)

While this approved special contract contained a clause providing for contract renewal by mutual consent of the parties, that clause must be read in conjunction with 30 V.S.A. § 229, which provides in pertinent part:

Subject to the approval of the board, it shall be lawful for any public utility to make a contract for a *definite term* for its product or service. (Emphasis added.)

The special contract thus afforded the parties the express opportunity to approach the Board every six months and request approval(s) to extend the contract term for a new "definite term," i.e., the ensuing six months. The parties did not do so. Consequently, the special contract terminated on August 31, 1990, in accordance with the June 14, 1990, Board Order.

37. Comments were filed by the Department and Caruso. Readsboro did not file comments. We also note that progress toward resolution of this docket has been slowed, in part, by representations of the parties that they would be attempting to negotiate a settlement. Tr. 2/18/03, pp. 17-19; letter of William B. Piper, 3/28/03.

38. Letter of Dixie Henry, May 28, 2004.

39. Letter of Anthony J. Caruso, Jr., filed June 2, 2004.

VI. ORDER

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

1. The findings, conclusions and recommendations of the Hearing Officer are adopted.
2. The Town of Readsboro Electric Light Department ("Readsboro") shall adjust its billings to Caruso Wood Products ("Caruso") for the period November 2001 through August 2002, so as to credit Caruso's account for any overcharges made as a result of Readsboro's failure to apply a 2½ percent primary metering discount on capacity and energy charges to bills rendered during that period.
3. Caruso's claim concerning reimbursement for its costs related to certain electric switch boxes is dismissed.

Dated at Montpelier, Vermont, this 9th day of June, 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: June 9, 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.