

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6917

Joint Petition of Citizens Communications)
Company, d/b/a Citizens Energy Services)
("Citizens"), and Great Bay Hydro Corporation)
("Great Bay") for authority for Citizens to sell)
and Great Bay to purchase Citizens' generation)
assets; and petition of Great Bay for the issuance)
of a certificate of public good to own and)
operate said generation facilities, and for *de*)
minimis regulation --)

Order entered: 3/23/2004

**ORDER GRANTING CERTIFICATE OF CONSENT
AND CERTIFICATE OF PUBLIC GOOD**

I. INTRODUCTION

On November 26, 2003, Citizens Communication Company, d/b/a/ Citizens Energy Services ("Citizens"), and Great Bay Hydro Corporation ("Great Bay"), jointly, filed a petition with the Public Service Board ("Board") that requested approval under 30 V.S.A. § 109 for the sale of certain generation assets from Citizens to Great Bay. The petition also requested that a certificate of public good ("CPG") be issued to Great Bay under 30 V.S.A. Section 231 to own and operate the generation facilities and for *de minimis* regulation.

On January 28, 2004, a prehearing conference in this docket was held.

On March 3, 2004, a Procedural Order was issued that made Vermont Electric Cooperative, Inc. ("the Cooperative") a party in this docket.

On March 8, 2004, the Vermont Department of Public Service ("Department"), Citizens and Great Bay filed an executed stipulation ("Stipulation") that addresses the issues pertinent to resolution of this docket. The Stipulation includes an agreement between the parties that the Board should grant the petitioners' requests for approval to transfer the generation assets and for issuance of a CPG to Great Bay.

On March 8, 2004, the Cooperative filed a letter supporting the Stipulation.

As part of the Stipulation, the parties agreed that all prefiled testimony and exhibits filed by Great Bay and Citizens, as well as the responses of Great Bay and Citizens to discovery in this docket, may be admitted into evidence. I hereby admit all of these items as evidence in this docket.

Based on the information filed in this docket, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

II. FINDINGS

1. On March 8, 2004, the Department, Citizens and Great Bay filed an executed Stipulation that addresses the issues pertinent to resolution of this docket. Letter of Geoffrey Commons dated March 8, 2004, with attached Stipulation.

2. Great Bay is a New Hampshire corporation authorized to do business in the State of Vermont and is a wholly-owned subsidiary of BayCorp. Great Bay was formed in September 2003 with a goal of owning and operating hydroelectric generating facilities in New England. Callendrello pf. at 3-4.

3. Citizens and Great Bay entered into a Purchase and Sale Agreement ("Agreement") dated October 30, 2003, pursuant to which Citizens will transfer to Great Bay the following generation assets: Citizens' Newport Generating Facility Units 1, 2, 3 and 11, the Troy Generating Facility, and the West Charlestown Generating Facility, along with the real property associated with these facilities; the Seymour and Echo non-power dams, located on a tributary to the Clyde river; and the Newport diesel generating facilities and related property (together "Generating Facilities"). Perry pf. exh. KWP-2 at 1-2 and 7; Stipulation at 2.

4. The purchase price for this transaction is Ten Dollars (\$10.00). Perry pf. exh. KWP-2 at 8; Stipulation at 2.

5. The Stipulation provides that Great Bay shall continue to operate the Generating Facilities by the terms of the 401 certification issued by the Vermont Agency of Natural Resources ("ANR") and the Federal Energy Regulatory Commission ("FERC") license issued November 21, 2003, Project Nos. 2306-008 and 024. Stipulation at 2.

6. Citizens will indemnify Great Bay for a period of three years from the date of closing for all costs and expenses up to the sum of \$3,500,000 incurred by Great Bay to bring the Generating Facilities into compliance with the Water Quality Certification issued by ANR and with the FERC license, and to retire or dismantle any generating facilities pursuant to any permits, licenses or orders. Perry pf. exh. KWP-2 at 23-24; Stipulation at 2.

7. The Stipulation provides that Great Bay will not serve retail electric customers. Stipulation at 2.

8. The Stipulation provides that Great Bay will operate the facilities as "settlement only resources" under ISO-NE rules. Stipulation at 2.

9. The parties agree that Great Bay and its management have substantial experience in wholesale power marketing, have been involved in merchant generation since the early 1990s, are knowledgeable about the New England power markets, and will engage an experienced operations management company to support its dedicated operating personnel. Stipulation at 3.

10. The parties agree that Great Bay and its affiliates have the experience and expertise necessary to operate the Generating Facilities safely and efficiently. Stipulation at 3.

11. The Stipulation provides that Great Bay shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081, et. seq., to the extent that such requirements are not inconsistent with requirements imposed by FERC in connection with its regulation of the Generating Facilities. Stipulation at 3.

III. DISCUSSION

In this proposal for decision I recommend that the Board approve the requested transfer of assets from Citizens to Great Bay, as well as issuance of a CPG pursuant to 30 V.S.A. § 231 to Great Bay to own and operate the Generating Facilities.

Citizens has decided to sell its Vermont electric generating facilities as part of its overall goal to become a telecommunications company and to no longer be in the business of electric generation, transmission or distribution.¹ In Docket Nos. 6850 and 6853, the Board approved the

1. Perry pf. at 2.

transfer of Citizens' non-generation assets to the Cooperative. Here, Citizens requests Board approval to sell its Vermont generation assets to Great Bay.

The sale of the Generating Facilities to Great Bay proposed here correlates with the asset transfer from Citizens to the Cooperative. The Cooperative will expand its business solely as an electric distribution entity, while Great Bay has indicated that its goal is to own and operate hydroelectric generation facilities.² The Cooperative has made it clear that it has no interest in remaining a vertically integrated utility and acquiring the Generating Facilities, notwithstanding the nominal purchase price. Given the fact that these facilities may require expenditures up to \$3,500,000 over the next three years, the Generating Facilities appear to be more of a liability than an asset.³ The Cooperative has affirmed its support for the Stipulation.⁴

There is sufficient information in the record of this docket to show that Great Bay should be able to effectively own and operate the Generating Facilities. Great Bay's parent company, BayCorp has substantial experience and expertise in merchant generation and the New England wholesale power market. BayCorp's subsidiaries held ownership interests in the Seabrook Nuclear Power Project in Seabrook, New Hampshire ("Seabrook"), BayCorp has had a subsidiary as a member of the New England Power Pool ("NEPOOL") since 1992, and, BayCorp's subsidiaries have been subject to FERC jurisdiction and, therefore, have been required to file with FERC all contracts for the sale of electricity.⁵ Great Bay will have firsthand benefits of

2. See Docket Nos. 6850 and 6853 Order of 3/1/2004 at 4; Callendrello pf. at 3-4.

3. The Cooperative clearly views the Generation Facilities as an unwanted potential financial burden. It is mindful of the potential costs (up to \$3,500,000 over the next three years) and diversion of management resources that would become necessary for the acquisition of generating facilities of marginal value. These considerations also were important to the Cooperative's lender, the National Rural Utilities Cooperative Finance Corporation, which did not want the Cooperative to acquire Citizens' generation assets. Letter of Thomas R. Melloni, March 18, 2004.

In addition, the Department has observed that the purchase price for the Generating Facilities was determined in an arm's-length negotiation between independent parties, and thus presumably represents the fair market value of the assets, which has been dramatically affected by the liabilities associated with them. The Department also notes that, regardless of the value of future output from the Generating Facilities, the FERC license requires significant expenditures in the near term. If the dams were owned by a vertically-integrated Vermont utility, the costs of compliance presumptively would be recoverable from ratepayers. Under the terms of the sale to Great Bay proposed here, these costs will be borne by Citizens, and not Vermont ratepayers. Letter of Geoffrey Commons, March 18, 2004.

4. Letter of Michael L. Burak, March 8, 2004, at 2.

5. Callendrello pf. at 4-5.

BayCorp's experience and expertise because of the relationship of the management of the two companies- the President of BayCorp is also the President of Great Bay, the Vice President and Chief Operating Officer of BayCorp holds the same positions at Great Bay, the Vice President of Finance and Treasurer of BayCorp is also the Vice President of Finance and Treasurer of Great Bay, and BayCorp's Director of Marketing is responsible for wholesale power sales and represents BayCorp and its subsidiaries at NEPOOL.⁶

Great Bay appears to have the financial ability to acquire and operate the Generation Facilities. A nominal purchase price is being paid by Great Bay to Citizens, and Citizens has agreed to indemnify Great Bay for the reasonably anticipated costs of complying with the FERC and ANR licenses.⁷ Hence, Great Bay will not need to obtain financing for acquisition funds or certain capital improvement funds. Great Bay expects that the revenue stream from power sales made into the NEPOOL wholesale power market will provide sufficient funds for the ongoing operation of the Generation Facilities. Also, Great Bay has represented that its parent company, BayCorp, has sufficient available funds if a significant capital improvement is required.⁸

Finally, the proposed sale of the Generating Facilities by Citizens to Great Bay will promote the general good of the State of Vermont. Because of Great Bay's experience, knowledge and financial strength, the Generating Facilities can be operated in a safe and reliable manner. This will help ensure a reliable and long-term supply to the New England market, including Vermont, of clean, renewable and sustainable energy.

IV. CONCLUSION AND RECOMMENDATIONS

For the reasons discussed above, I conclude that the proposed sale will promote the general good. I therefore recommend that the Board approve the Stipulation, and approve in all respects the transactions required by the parties under the Purchase and Sale Agreement. I also recommend that the Board find that the designation of the generating facilities as an "eligible facility" for purposes of exempt wholesale generation status will benefit consumers, is in the

6. Callendrello pf. at 5.

7. Perry pf. exh. KWP-2 at 8 and 23-24.

8. Callendrello pf. at 6.

public interest, and does not violate Vermont law. Finally, I recommend that the Board determine that due to the limited activities to be undertaken by Great Bay in Vermont, *de minimis* regulation is appropriate.

Consistent with the provisions of 3 V.S.A. § 811, this proposal for decision has not been circulated to the parties for comment because all parties have waived the opportunity for hearing and comment upon it, and because it accepts the Stipulation and, therefore, it is not adverse to any party.

Dated at Montpelier, Vermont, this 23rd day of March, 2004.

s/Judith Kasper

Judith Kasper, Esq.
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, Conclusion and Recommendations of the Hearing Officer are adopted.
2. The transfer of certain generation assets of Citizens Communications Company, d/b/a Citizens Energy Services ("Citizens"), to Great Bay Hydro Corporation ("Great Bay"), specifically, Citizens' Newport Generating Facility Units 1, 2, 3 and 11, the Troy Generating Facility, and the West Charlestown Generating Facility, along with the real property associated with these facilities, the Seymour and Echo non-power dams, located on a tributary to the Clyde river, and the Newport diesel generating facilities and related property (together "Generating Facilities") as set forth in a Purchase and Sale Agreement ("Agreement") dated October 30, 2003, is approved pursuant to 30 V.S.A. § 109. This transaction will promote the public good, and therefore, a Certificate of Consent for the transfer shall be issued.
3. The Stipulation among Citizens, Great Bay and the Vermont Department of Public Service ("Department"), filed with the Public Service Board ("Board") on March 8, 2004, is approved.
4. The Generating Facilities shall be operated and maintained consistent with the representations of Great Bay and the terms of the Stipulation among Citizens, Great Bay, and the Department submitted in this proceeding.
5. Great Bay shall continue to operate the Generating Facilities by the terms of the 401 certification issued by the Vermont Agency of Natural Resources ("ANR") and the Federal Energy Regulatory Commission ("FERC") license issued November 21, 2003, Project Nos. 2306-008 and 024.
6. Great Bay shall operate the facilities as "settlement only resources" under ISO-NE rules, and, initially, Great Bay will sell the power generated from the Generating Facilities into the ISO-NE Market and be paid the nodal price at a local pricing node, currently identified by Vermont Electric Power Company, Inc. as the Irasburg node.
7. Great Bay shall not serve retail electric customers.

8. Great Bay shall file any amendments of the FERC hydro license issued November 21, 2003, Project Nos. 2306-008 and 024, with the Board and the Department within 14 days of issuance.

9. Any FERC filings related to the Generating Facilities made by Great Bay shall also be filed with the Board and the Department.

10. Great Bay shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081 et. seq., to the extent that such requirements are not inconsistent with requirements imposed by FERC in connection with its regulation of the Generating Facilities.

11. Pursuant to 30 V.S.A. § 231, a certificate of public good that includes the conditions recommended by the Hearing Officer herein shall be issued to Great Bay Hydro Corporation, for ownership and operation of the Generating Facilities.

12. Great Bay shall not be required to make any filings with the Board or the Department pursuant to 30 V.S.A. § 108 governing financing.

Dated at Montpelier, Vermont, this 23rd day of March, 2004.

s/Michael H. Dworkin)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: March 23, 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.