

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6950

Petition of Vermont Electric Cooperative, Inc., for )  
Authorization to Accept Credit Card Payments )

Order entered: 5/12/2006

**I. REPORT AND RECOMMENDATION**

This docket concerns a request by Vermont Electric Cooperative, Inc., ("VEC") for Public Service Board ("Board") approval for VEC to accept credit card payments directly from its customers. The issue of such direct credit card payments initially arose in Docket Nos. 6850 and 6853, which addressed VEC's acquisition of Citizens Communications Company, d/b/a Citizens Energy Services ("Citizens"). This docket was opened in response to a petition filed by VEC to address the provisions of an Amendment to the Memorandum of Understanding ("MOU") between the Department and VEC that was approved by the Board in Docket Nos. 6850 and 6853. That provision states:

If VEC wishes to continue offering credit card payment in a manner that causes all ratepayers to pay the associated charges and bank fees, VEC shall, no later than 45 days after Board approval of this MOU, file a tariff amendment seeking approval of the practice. VEC shall not offer electronic billing or payment options to customers that cause all ratepayers to pay charges or bank fees greater than those customarily associated with payment by check without first obtaining tariff approval to do so.<sup>1</sup>

On February 9, 2006, VEC informed the Board that it no longer seeks approval to accept direct credit card payments because of VEC's plan to discontinue the availability of this payment option to its customers.<sup>2</sup> Instead, VEC intends to implement a "Speedpay" credit card payment

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1. Docket Nos. 6850 and 6853, Order of 3/1/04 as reissued on 3/29/04, at 10 and 28.

2. Letter of Victoria J. Brown dated February 8, 2006.

option, under which VEC will not have to incur transaction costs.<sup>3</sup> VEC indicated that it would implement this change in mid-February 2006.<sup>4</sup>

Notwithstanding this change in VEC's credit card payment option practice, the Department has requested that the Board rule on the issues presented in this docket.<sup>5</sup> The Department states that the issues presented are not unique to VEC, and that "if this docket were to be dismissed without decision, it is likely that either the DPS or another utility would find it necessary to file another petition raising the same issues."<sup>6</sup>

For the reasons set forth below, I recommend that the Board decline the Department's request for a ruling, and close this docket.

Because VEC no longer seeks authorization to accept direct credit card payments from its customers, and because this practice is no longer even available to VEC's customers, I conclude that the issues in this docket are moot. It is well settled that an adjudicative determination may be made only in connection with a live controversy.<sup>7</sup> There is no such live controversy here.

Moreover, even if the Department's request for a ruling were construed as a petition for a declaratory judgment, the Board would lack jurisdiction to render an opinion. In the absence of an actual or justiciable controversy, a declaratory judgment is merely an advisory opinion that an adjudicative body lacks constitutional authority to render.<sup>8</sup>

The Department has stated that the issues presented in this docket are not unique to VEC, and that "other utilities are indeed waiting for a PSB Order in this matter, since the same issues affect them."<sup>9</sup> This suggests that the Department is looking to this docket to set a policy or precedent that would be applicable to utilities other than VEC. However, from the outset of this proceeding, the parties have been on notice that this docket would be concerned solely and specifically with the practices of VEC as related to the subject MOU provision, and that input from

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3. *Id.*

4. *Id.*

5. Letter of Geoffrey Commons, dated February 14, 2006.

6. *Id.*

7. *E.S. v. State of Vermont*, 872 A.2d 356, 358-359 (2005).

8. *Doria v. University of Vermont*, 156 Vt. 114, 589 A.2d 317 (1991).

9. Letter of Geoffrey Commons, dated February 14, 2006.

other utilities might be helpful only in that context.<sup>10</sup> This limitation is consistent with the observation of the Vermont Supreme Court that Public Service Board orders made in the context of a contested case are adjudicative in nature and applicable only to the particular matter in controversy.<sup>11</sup>

For the foregoing reasons, I recommend that the Board decline to rule on the issues in this docket, and that the Board order this docket closed.

The above report and recommendation is presented to the Board pursuant to 30 V.S.A. § 8.

This 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 4<sup>th</sup> day of May, 2006.

s/Judith M. Kasper  
Judith M. Kasper, Esq.  
Hearing Officer

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10. Docket No. 6950, Prehearing Conference Memorandum and Scheduling Order, 5/20/04 at 2. While all the Vermont utilities were given notice of this docket, none of them appeared or otherwise participated in this docket.

11. *In Re Petition of Telesystems, Corp. d/b/a Green Mountain TV, Small Cities Cable Television, Inc., and G.O. Enterprises Inc.*, 143 Vt. 504, 510, 469 A.2d 1169 (1983).

## II. BOARD DISCUSSION

We have reviewed the comments on the Proposal for Decision filed by the Department on April 17, 2006.<sup>12</sup> We note that, while the Department does not contest the legal analysis supporting dismissal of this docket, it believes that a determination about the direct credit card payment issue presented in this case would have provided valuable guidance for utility companies other than VEC. The Department further represents that it already has dedicated significant resources toward compiling information on the subject of direct credit card payments, and it expresses frustration with the fact that this docket was not resolved at an earlier date.

While we regret the delay in resolution of this docket, we do not agree that the outcome of this case would necessarily have provided meaningful guidance to other utility companies. From the outset of this docket, the parties have been on notice that this case was not intended to apply to utility companies other than VEC. At the prehearing conference, the Hearing Officer clarified that, "absent some compelling reason," this docket would not be expanded beyond consideration of VEC's petition and the application of credit card payments to VEC's business.<sup>13</sup> She further emphasized that point in her Prehearing Conference Memorandum and Scheduling Order by stating "this docket will be concerned specifically with the practices of the Cooperative as related to the subject MOU provision."<sup>14</sup>

We nonetheless appreciate the fact that the Department has expended time and resources on addressing an issue that it believes important for all utility companies. We do not wish to have these efforts go to waste, and accordingly, we would be glad to meet with the Department to discuss whether we should initiate a rulemaking to address generally the issue of direct credit card payments.

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12. No other parties filed comments on the Proposal for Decision.

13. Tr. 5/13/04, at 13-14.

14. Prehearing Conference Memorandum and Scheduling Order, 5/20/04 at 2.

**III. ORDER**

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

1. The recommendation of the Hearing Officer is adopted.
2. This docket shall be closed.

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of May, 2006.

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	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/John D. Burke	)	

OFFICE OF THE CLERK

FILED: May 12, 2006

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.*