

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7358

Petition of Green Mountain Power Corporation and )  
Green Mountain Power Investment Company for a )  
Declaratory Ruling that 30 V.S.A. § 107 Does Not )  
Apply to Dissolution of Green Mountain Power )  
Investment Company or, in the Alternative, for )  
30 V.S.A. § 107 Approval )

Order entered: 12/19/2007

**I. INTRODUCTION**

On October 23, 2007, Green Mountain Power Corporation ("GMP") and Green Mountain Power Investment Company ("GMPIC") filed a petition seeking either a declaratory ruling that the dissolution of GMPIC and the consequent transfer to GMP of a controlling interest in Vermont Yankee Nuclear Power Corporation ("VYNPC") does not require approval under 30 V.S.A. § 107 or, in the alternative, approval under 30 V.S.A. § 107. GMP also filed testimony by Dawn Bugbee, and a memorandum of law in support of the requested declaratory ruling.

On November 30, 2007, the Vermont Department of Public Service ("Department") filed a letter recommending that the Board issue the requested declaratory ruling or, in the alternative, approve the proposed dissolution under 30 V.S.A. § 107 without further hearing.

For the reasons stated below, we deny the requested declaratory ruling, but issue the approval under 30 V.S.A. § 107.

**II. FINDINGS**

Based upon the petition and accompanying documents, we hereby make the following findings of fact.

1. GMPIC is a wholly-owned subsidiary of GMP, formed for the express purpose of holding passive investments in other activities that were separate from GMP's business of selling electricity at retail. Petition at 1; Bugbee pf. at 2.

2. In 2003, GMP transferred to GMPIC its ownership interest in VYNPC in order to take advantage of favorable tax treatment relating to ownership interests held by passive investment companies. Bugbee pf. at 2.

3. The activities of GMPIC are limited to the maintenance and management of intangible assets and the collection and distribution of the income from such investments in order to qualify for certain income tax benefits under 32 V.S.A. § 5837. Petition at 1; Bugbee pf. at 2.

4. The tax advantages resulting from the transfer of the VYNPC ownership to GMPIC have been fully realized, and no further tax advantage will accrue from GMPIC's continued ownership interest in VYNPC. Bugbee pf. at 2.

5. GMP intends to dissolve GMPIC. Such dissolution will result, by operation of law, in GMP's direct ownership of the VYNPC stock, in a manner identical to GMP's ownership prior to the creation of GMPIC. Bugbee pf. at 2.

6. The dissolution of GMPIC will affect neither VYNPC's operations nor its managerial and financial structure. GMP will continue to account for its VYNPC ownership above the line for ratemaking purposes. Bugbee pf. at 2–3.

7. Dissolution of GMPIC will simplify GMP's accounting and tax returns, and reduce the amount of time that GMP staff are required to attend to corporate governance issues. Bugbee pf. at 3.

8. The dissolution of GMPIC will promote the public good, in that it will allow GMP to avoid the accounting, financial, legal and governance expenses associated with GMPIC. Bugbee pf. at 3.

## **II. DISCUSSION AND CONCLUSION**

Section 107(a) of Title 30 provides that "[no] company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the public service board."<sup>1</sup> In order to approve the acquisition of such a

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1. "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the

controlling interest, the Board must find that it will "promote the public good." 30 V.S.A. § 107(b).

GMP asserts that approval under 30 V.S.A. § 107 is not required for the dissolution of GMPIC, contending that the dissolution will not result in the acquisition of a controlling interest as defined in that statutory provision. GMP notes that previously, in Docket No. 6835, the Board approved the transfer of GMP's ownership interest in VYNPC to GMPIC under 30 V.S.A. § 107. That previous transaction resulted in GMP's ownership in VYNPC changing from a direct to an indirect one.

GMP claims that, unlike that previous transaction, the current proposal does not involve a new company acquiring a direct or indirect controlling interest. GMP argues that "[i]nstead, GMPIC's controlling interest will be eliminated and GMP's existing indirect controlling interest (through GMPIC) will become a direct controlling interest."<sup>2</sup> GMP further contends that:

The Section 107 phrase "directly or indirectly" means that approval is necessary for every acquisition of a new controlling interest, and that direct and indirect acquisitions of such new interests are identical for purposes of Section 107 approval.<sup>3</sup>

GMP asserts that the interests sought to be protected under Section 107 "are not implicated when the holder of an existing controlling interest merely changes its location within the corporate hierarchy, and no entity acquires a new or additional controlling interest."<sup>4</sup>

GMP's arguments that Section 107 is inapplicable are not entirely persuasive. The plain language of the statute provides that "[n]o company shall directly or indirectly acquire a controlling interest" without Board approval, and the proposed dissolution of GMPIC will result in GMP *directly* acquiring a controlling interest, in contrast to the indirect interest that it currently holds. Although under the present circumstances there is no dispute that the proposed

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management or policies of a company." 30 V.S.A. § 107(e)(1).

2. GMP Memorandum of Law at 2.

3. GMP Memorandum of Law at 2.

4. GMP Memorandum of Law at 3.

transaction will promote the public good, we are mindful of the potential for circumstances in which the transition from an indirect to a direct ownership might present significant concerns.<sup>5</sup>

Rather than reach this legal issue, we conclude that we should approve the dissolution of GMPIC and the consequent transfer of a controlling interest in VYNPC to GMP, pursuant to 30 V.S.A. § 107. As the findings above demonstrate, these corporate transactions will promote the general good of the state.

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#### **IV. ORDER**

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

1. Green Mountain Power Corporation's ("GMP") request for a declaratory ruling is denied, without prejudice.
2. The dissolution of Green Mountain Power Investment Corporation ("GMPIC"), and the consequent transfer of a controlling interest in Vermont Yankee Nuclear Power Corporation to GMP, will promote the public good and, therefore, is approved.
3. GMP shall file a letter notifying the Board of the completion of the dissolution of GMPIC within ten days following completion thereof.

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5. Consider, for example, a hypothetical transaction in which the relevant utility-management competence resides only in Company A, which directly owns a Vermont utility, and not in Company B, which is the corporate parent of Company A and thus is the indirect owner of the Vermont utility. If direct ownership of the Vermont utility were to be transferred to Company B, with Company A no longer playing any role in the utility's management, the public good of the state could be seriously compromised by Company B's inability to properly manage the utility.

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of December, 2007.

<u>s/James Volz</u>	)	
	)	
	)	
<u>s/David C. Coen</u>	)	PUBLIC SERVICE
	)	
	)	
<u>s/John D. Burke</u>	)	BOARD
	)	
	)	OF VERMONT

OFFICE OF THE CLERK

FILED: December 19, 2007

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: psb.clerk@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.*