

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5826

Investigation into Vermont Marble Power Division of)
OMYA, Inc.'s Integrated Resource Plan filed)
on October 3, 1994)

Hearing at
Montpelier, Vermont
October 5, 1995

Order entered: 6/5/2000

REPORT AND RECOMMENDATION

A. Summary

This Proposal for Decision recommends that the Public Service Board ("Board") approve the Stipulation between the Vermont Marble Power Division of OMYA, Inc. ("Vermont Marble" or "Company") and the Vermont Department of Public Service ("Department" or "DPS") and close this Docket, while making no determination as to the approval or disapproval of Vermont Marble's integrated resource plan ("IRP"). This recommendation is in keeping with the request of the parties.¹ The record in this Docket is now quite stale, and intervening events have since occurred which make many of the issues raised in the Docket moot.

B. Background

Vermont Marble filed this IRP on October 4, 1994. Vermont Marble filed revisions to this IRP over the next several months. On June 20, 1995, a prehearing conference was held at which time a schedule for reviewing the IRP was set.

The parties filed testimony on several issues. On September 26, 1995, Vermont Marble filed a motion *in limine* to exclude the Department's testimony on external environmental costs. In a procedural order issued September 29, 1995, the Hearing Officer granted Vermont Marble's request and excluded testimony on issues related to external environmental costs. On October 2, 1995, the

1. DPS letter of 10/22/99.

DPS filed a response in opposition to Vermont Marble's motion *in limine* and asked that the Board consider its filing as a motion for reconsideration as well.

On October 4, 1995, the parties filed a partial stipulation ("Stipulation")² resolving all other remaining outstanding issues in Vermont Marble's IRP.³ This was not a complete settlement, since no agreement had been reached on the issue of externalities.⁴ An evidentiary hearing on the Stipulation was held on October 5, 1995. Appearing at that hearing were Edward V. Schwiebert, Esq., for Vermont Marble, and Andrew Raubvogel, Esq., for the Department.

At the October 5, 1995 hearing, the parties were also granted an opportunity to argue the externalities issue further. After hearing argument, in a bench ruling, the Hearing Officer denied the Department's motion for reconsideration. The Hearing Officer explained that the basis for granting the motion *in limine* was made clear in the Order issued on September 29, 1995, and in a similar Order in Docket 5825 issued on September 14, 1995, in which the Hearing Officer granted the Village of Ludlow Electric Light Department's motion *in limine* to exclude similar testimony on environmental costs. For reasons stated in that Order and the Order in this Docket, the Hearing Officer declined to grant the Department's motion for reconsideration.

On May 23, 1997, the Board opened an investigation into the Department's proposed energy efficiency plan (Docket 5980). On June 4, 1999, the Clerk of the Board sent a letter to the parties asking for a recommendation as to how to proceed in this Docket. On June 24, 1999, the Department and Vermont Marble requested that this Docket be held in abeyance until after the Board issued a decision in Docket 5980. On July 13, 1999, the Clerk sent all parties to this Docket a memorandum announcing the Board's intention to place this and other IRP dockets on hold pending its evaluation of a settlement proposal in Docket 5980, as "an Energy Efficiency Utility offers a potential path for resolution of most of the issues raised by current IRPs on file at the Board."⁵ On September 30, 1999, the Board issued an Order approving a memorandum of understanding ("MOU") among the parties in Docket 5980.

2. Exh. VMPD-2.

3. Exh. VMPD-1.

4. Tr. 10/5/95 at 48.

5. Page 2 of 7/13/99 Memorandum from the Clerk of the Board to Parties in Docket Nos. 5270-CUC-3, 5270-ROCH-1, 5822, 5826, 5832, 5923, 6217, and interested persons.

C. Effect of the Settlement in Docket 5980 on Unresolved Issues in This Docket

The settlement among the parties in Docket 5980 included the MOU that was signed by all Vermont electric distribution utilities (including Vermont Marble) and several other parties, as well as twenty-three bilateral agreements between the DPS and individual parties. One of these bilateral agreements is between the DPS and Vermont Marble.⁶

The MOU and bilateral agreements in Docket 5980 provide for the creation of a state-wide energy efficiency utility ("EEU"), funded through charges on electricity usage, and directed to design and deliver comprehensive energy efficiency services to Vermont households and businesses. Under the terms of the MOU, the EEU will now be responsible for delivery of system-wide Demand Side Management ("DSM") programs in Vermont Marble's service territory.⁷ Specifically, the Board's Order approving the settlement recognized that the MOU called on the Board to find that:

the EEU structure and System-wide Program proposal outlined [in the Settlement MOU], when approved by the Board and implemented in accordance with the MOU, shall be considered to fulfill the future obligations of each [distribution utility] which signs this MOU to plan for and conduct System-wide Programs under 30 V.S.A. §§ 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any requirements to plan for and conduct System-wide Programs contained in a Board order specific to a [distribution utility] which signs this MOU. . . .⁸

The MOU also provides that all past disputes over whether utilities met their obligations under 30 V.S.A. § 218c to implement energy efficiency programs will be resolved by the establishment of the EEU. Specifically, the MOU states:

. . . the establishment, funding, and support of the EEU in accordance with this MOU, if the MOU with attachments is approved in its entirety by the Board, shall be considered to resolve all claims based on actions or failures to act prior to January 1, 2000, that a [distribution utility] which signs this MOU failed to satisfy its DSM obligations to customers under 30 V.S.A. §§ 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any requirements to plan for and conduct System-wide Programs contained in a Board order specific to a [distribution utility] which signs this MOU. This resolution shall include any claims accruing prior to January 1, 2000,

6. Docket 5980, filing of 5/21/99.

7. The EEU began operation as of March 1, 2000.

8. MOU, ¶ 16. "System-wide Programs" is defined in the MOU to mean "all DSM programs, including, but not limited to, the Core Programs, except for those programs offered or required to be offered by a distribution utility ("DU") as a result of distributed utility planning." MOU, ¶ 1.

founded upon such obligations, including, but not limited to, claims of imprudence or non-used and usefulness based upon failure to satisfy such obligations.⁹

The MOU also asks the Board to initiate a collaborative process to establish guidelines for distributed utility planning ("DUP") by Vermont distribution utilities. The collaborative would seek to provide to the Board recommendations on, among other things, guidelines for use in DUP activities by individual electric utilities, and procedures for revising IRP filings to reflect the principles and practices of DUP.¹⁰ In addition, the MOU provides that "the date for the filing of [each electric distribution utility's next] IRP will be agreed upon or determined by the Board as part of [this collaborative] process."¹¹

In addition, the MOU resolves the issue of externalities for system-wide DSM programs. However, the settlement on this issue is not precedential for any other matter. Specifically the MOU states:

The Parties agree that an externalities adder of 0.7cents/kWh is adopted to replace the five percent adder as a rebuttable presumption for System-wide Programs only, provided that such replacement adder is non-precedential as to any other matters including, but not limited to, supply purchases and DUP (including DSM programs offered as a result of DUP). For planning and implementation of System-wide Programs, the DPS shall develop externality adders to be used for fuel-consuming measures which are comparable and consistent with the end-use externality adders contained in the Plan modified to be comparable and consistent with the above-described replacement externalities adder. However, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described above, each DU will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.¹²

As requested in the MOU, on September 30, 1999, the Board opened an investigation into the establishment of DUP guidelines (Docket 6290). This generic proceeding will be a forum for examining, among other things, the externality values to be applied in distributed utility planning.

D. Resolution of this Docket

9. MOU, ¶ 53.

10. One objective of distributed utility planning is to explore options for using DSM and distributed generation to reduce the cost of maintaining the reliability of power delivery, by avoiding or deferring transmission, distribution, and other network investments.

11. MOU, ¶ 32.

12. MOU, ¶ 51.

The agreements in Docket 5980 affect issues raised in this Docket and in the partial Stipulation. Vermont Marble's future obligation to provide system-wide programs (as defined in the MOU) is deemed satisfied by the ongoing implementation of the core programs by the EEU.¹³ Also, under the terms of the MOU in Docket 5980, the outstanding issue of externalities for system-wide programs has been resolved. The issue of the appropriate externality adder to use in DUP DSM will be examined in Docket 6290 and until resolved in that case, under the terms of the MOU in Docket 5980, all electric utilities will use an externality adder of five percent for DUP DSM.¹⁴

Given the MOU and the Board's Order in Docket 5980, I sent a letter to the parties to this Docket on September 30, 1999, asking them how to proceed in this matter. On October 22, 1999, the DPS filed a letter in which it states that Vermont Marble and the Department support the following recommendations as to how to resolve this Docket:

- acknowledge the timely filing of Vermont Marble's IRP;
- accept and approve the partial Stipulation;
- acknowledge that Vermont Marble has made all the compliance filings required under the terms of the Stipulation;
- make no determination to approve or disapprove Vermont Marble's IRP; and
- allow for the date for the filing of Vermont Marble's next IRP to be determined in Docket 6290.

Vermont Marble was timely in the filing of its IRP. The Stipulation details a number of conditions and agreements with which Vermont Marble agrees to comply in the future. In fact, since the filing of the Stipulation, Vermont Marble has submitted the required compliance filings as required under the terms of the Stipulation.¹⁵

In the Stipulation, Vermont Marble agrees to a number of procedures and analyses for determining the least-cost upgrades to its transmission and distribution system. The Company agrees to analyze the cost-effectiveness of converting its distribution system to 12.47 kV and whether it would be cost-effective to employ conservation voltage regulation on its distribution system. Vermont Marble also agrees to analyze the feasibility of supplying its distribution system directly from its 46 kV transmission system. In

13. DPS letter of 6/25/99; Docket 5980, MOU at ¶¶ 1r, 16.

14. Docket 5980, MOU at ¶¶ 30c, 51.

15. Compliance filing re ¶ 2 was filed on 12/1/95; compliance filing re ¶ 3 was filed on 12/1/95; compliance filings re ¶ 4 were filed on 1/22/96 and 4/1/96; compliance filings re ¶ 5 were filed on 3/25/96 and 11/1/96; compliance filing re ¶ 6 was filed on 4/1/97; compliance filing re ¶ 11 was filed on 2/16/96; compliance filing re ¶ 12 was filed on 11/1/95; compliance filing re ¶ 14 was filed on 2/1/96.

addition, the Company agrees to develop a procedure for acquiring transformers in a least-cost manner and to analyze the optimal placement, sizing and number of capacitors on its system. Vermont Marble further agrees to make a number of improvements to its load forecasts in its next IRP, as well as to use relevant forecasts of the power supply market in future power supply purchases.

As to DSM programs, the Stipulation sets out provisions related to energy efficiency programs that would be offered by Vermont Marble in the future. However, since the date of the Stipulation, the ongoing implementation of core programs by the EEU is deemed to satisfy Vermont Marble's obligation to provide system-wide core programs.¹⁶

The partial Stipulation between the parties resolves most issues that were raised in this Docket. The central issue that was left for determination by the Board -- externalities -- has been resolved by the MOU in Docket 5980 for system-wide programs and, otherwise, the issue can be left for resolution in other Dockets.¹⁷ I recommend that the Board approve the Stipulation without making any determination as to the approval of Vermont Marble's IRP. I recommend that this Docket be closed, and that the date for Vermont Marble to file its next IRP be set in Docket 6290. I also recommend that the Stipulation be attached to this Order.

The foregoing is reported to the Public Service Board in accordance with the provisions of 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 10th day of May, 2000.

s/Sandra A. Waldstein

Sandra A. Waldstein
Hearing Officer

16. DPS letter, 6/25/99.

17. The parties have reserved their right to take positions on externalities that differ from those they had advocated in this Docket and they are not precluded from raising the issue of externalities in other proceedings.

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 Recommendation is accepted.
2. The Stipulation between Vermont Marble and the DPS filed on October 4, 1995, is approved.
3. The date for filing Vermont Marble's next IRP will be set in Docket 6290.
4. This Docket is closed.

Dated at Montpelier, Vermont, this 5th day of June, 2000.

s/Michael H. Dworkin)

) PUBLIC SERVICE

s/Suzanne D. Rude)

) BOARD

s/David C. Coen)

) OF VERMONT

OFFICE OF THE CLERK

FILED: June 5, 2000

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 mail) of any technical 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.