

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 5923

Investigation into Town of Hardwick Electric )  
Department's Integrated Resource Plan filed )  
on June 3, 1996 )

Order entered: 12/15/99

**I. BACKGROUND**

The Town of Hardwick Electric Department ("Hardwick") filed its second Integrated Resource Plan ("IRP") on June 3, 1996. No technical hearings have been held on that IRP. However, at the November 21, 1996 prehearing conference, and the August 22, 1997 status conference in this docket, and in a Motion for Partial Summary Judgment filed on June 23, 1997, the Vermont Department of Public Service ("DPS") raised several concerns. The issues raised by the DPS fall into the general categories of (1) perceived flaws in the implementation of Hardwick's approved 1994 IRP; and (2) whether Hardwick's filing in this docket constitutes an IRP. The parties' positions on these issues are explained in more detail in the following section.

At the November 21, 1996 prehearing conference, the parties agreed to put this docket on hold until the Public Service Board ("Board") issued a final order in Docket 5854, *Investigation into the Restructuring of the Electric Utility Industry in Vermont*, as this order could impact what should be included in an IRP. A final order was issued in Docket 5854 on December 30, 1996.

On January 13, 1997, Hardwick and the DPS filed a stipulation agreeing to a continuance in this docket until May 30, 1997, or 30 days after the DPS completed its plan for acquiring energy efficiency resources during the transition period to a restructured electric power industry. The DPS filed this plan with the Board on May 23, 1997.

On July 13, 1999, the Clerk of the Board 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, *Investigation into the Department of Public*

Service's Proposed Energy Efficiency Plan, 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."<sup>1</sup>

On September 30, 1999, the Board issued an Order approving the settlement proposal in Docket 5980.

## **II. DISCUSSION**

Discussion in this docket has focused on two general issues: (1) perceived flaws in the implementation of Hardwick's approved 1994 IRP; and (2) whether Hardwick's filing constitutes an IRP. Both issues are impacted (although only one is resolved) by the settlement in Docket 5980. The parties' positions on these issues are described below, followed by an explanation of the Docket 5980 settlement's relevant provisions.

### **A. Issue 1: Perceived Flaws in Hardwick's Implementation of its 1994 IRP**

The DPS argued that Hardwick had not acquired, and was not acquiring, all cost-effective DSM resources, and therefore not providing its ratepayers with least-cost service as it is required to do under 30 V.S.A. § 218c.<sup>2</sup> Specifically, the DPS stated that Hardwick's rates include \$45,625 per year primarily for DSM, but Hardwick spent only \$9,431 on DSM in 1995 and \$2,594 in 1996.<sup>3</sup> In addition, the DPS raised concerns with the DSM programs Hardwick was proposing to implement in the future.<sup>4</sup>

Hardwick confirmed that the DPS's figures for DSM spending in 1995 and 1996 were accurate.<sup>5</sup> Hardwick proposed an explanation for why those figures were so low, and stated that it was anticipating increasing DSM spending to approximately \$50,000 per year in 1998 and 1999.<sup>6</sup>

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1. 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.

2. Tr. 8/22/97, p. 27 (Adler).

3. 8/20/97 Letter from Aaron Adler to Susan M. Hudson, p. 1.

4. Tr. 8/22/97, at 16-18 (Adler).

5. 8/27/99 Letter from William B. Piper to Susan Hudson.

6. 9/30/97 Letter from William B. Piper to Susan Hudson.

B. Issue 2: Does Hardwick's Filing Constitute an IRP?

The DPS argued in its June 23, 1997 Motion for Partial Summary Judgment that Hardwick violated the Board's Order approving Hardwick's 1994 IRP<sup>7</sup> because the 1996 IRP filing does not include a load forecast, a supply plan, or any documentation regarding transmission and distribution ("T&D"), as were specifically required by that Order.<sup>8</sup> The DPS also argued that Hardwick's filing did not constitute a least cost integrated plan within the meaning of 30 V.S.A. § 218c(a).<sup>9</sup>

Hardwick responded to the DPS's comments by admitting that its filing did not include a load forecast or a supply plan.<sup>10</sup> It explained that these items were omitted because Hardwick believes the electric industry will be restructured soon, and that Hardwick will no longer have power supply responsibilities once that happens.<sup>11</sup> Hardwick stated that one of the issues it believed the Board needed to resolve was what components should be included in an IRP for a distribution-only utility, but that it hoped this issue would be decided in a generic proceeding, rather than in this docket.<sup>12</sup> Hardwick also stated that it believed its filing did constitute an IRP within the meaning of 30 V.S.A. § 218c.<sup>13</sup>

Hardwick filed its T&D Study (one of the missing filings mentioned by the DPS in its Motion for Partial Summary Judgment) with the Board on April 10, 1997. To date, a T&D Implementation Plan has not been received by the Board.

C. Docket 5980

The settlement in Docket 5980 includes a Memorandum of Understanding ("MOU") that was signed by all Vermont electric distribution utilities (including Hardwick) 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 Hardwick.

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7. December 2, 1994 Order in Docket 5270-HDWK-1.

8. DPS Motion for Partial Summary Judgment, 6/23/97, pp. 3-4.

9. *Id.*, p. 12.; tr. 11/21/96, at 7 (Adler).

10. Tr. 11/21/96, at 26 (Piper); tr. 8/22/97, at 12 (Piper).

11. Tr. 11/21/96, at 11-13 (Piper); 7/17/97 Letter from William B. Piper to Susan Hudson, p. 2.

12. Tr. 11/21/96, at 12-13 (Piper); 7/17/97 Letter from William B. Piper to Susan Hudson, p. 2.

13. Tr. 11/21/96, at 10 (Piper).

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, once the EEU is delivering DSM programs, the distribution utilities will be relieved of their obligations to design and implement energy efficiency programs (except for those associated with distributed utility planning).<sup>14</sup> 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. . . .<sup>15</sup>

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, 219b; 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 founded upon such obligations,

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14. One objective of distributed utility planning ("DUP") 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.

15. 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] as a result of [DUP]." MOU, ¶ 1.

including but not limited to claims of imprudence or non-used and usefulness based upon failure to satisfy such obligations.<sup>16</sup>

The MOU also asks the Board to initiate a collaborative process to establish guidelines for distributed utility planning 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. 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."<sup>17</sup> On September 30, 1999, the Board issued an Order opening an investigation into the establishment of guidelines for distributed utility planning by Vermont electric distribution utilities (Docket 6290).

*D. Effect of the Settlement in Docket 5980 on Issues in This Docket*

As explained above, the implementation of the EEU in accordance with the settlement in Docket 5980 will relieve the distribution utilities of their obligation to deliver system-wide DSM programs. In other words, Hardwick will not be responsible for delivering system-wide DSM programs once the EEU is operational. In light of this fact, and the short time remaining before the EEU is operational, there is no longer a need to resolve the DPS's concerns about the system-wide DSM programs Hardwick was proposing to implement in the future.

In addition, the implementation of the EEU resolves all claims based on actions prior to January 1, 2000, that a utility failed to satisfy its DSM obligations to customers under 30 V.S.A. § 218c or under Board order. In other words, the dispute in this docket regarding Hardwick's past DSM performance is resolved.

As requested in the MOU, on September 30, 1999, the Board opened an investigation into the establishment of DUP guidelines. This generic proceeding will be a forum for examining, among other things, how IRP filings should be revised to reflect the principles and practices of DUP. In the present docket, Hardwick requested that the Board examine in a

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16. MOU, ¶ 53.

17. MOU, ¶ 32.

generic proceeding what a distribution utility should include in an IRP. While the DUP investigation is not intended to be a wholesale reexamination of IRP guidelines as I believe Hardwick would like, it will provide distribution utilities with some guidance on at least one component of their future IRPs.

E. *Unresolved Issues*

One of the DPS's concerns about Hardwick's IRP filing was that it did not include any documentation on T&D planning. Since Hardwick's original filing was made, Hardwick has filed its T&D Study which identifies technically feasible investments to improve Hardwick's T&D system efficiency. However, Hardwick has not filed its T&D Implementation Plan.<sup>18</sup> A T&D Implementation Plan translates the recommendations in a T&D Study into practical steps, and it is important for Hardwick to develop and follow such a plan. The Board has long recognized that an IRP must address T&D issues, and has required utilities to file both T&D Studies and T&D Implementation Plans as part of their IRPs, or as compliance filings in the dockets in which their IRPs were considered.<sup>19</sup> Accordingly, I am recommending that the Board require Hardwick to file its T&D Implementation Plan with the Board and the DPS within 30 days of a Board order in this docket.

Another of the DPS's concerns with Hardwick's filed IRP was that it did not include a load forecast or a supply plan. Hardwick argued that it should not have to include them since electric restructuring was under consideration in Vermont, and once restructuring happened, Hardwick did not intend to continue to have power supply responsibilities. While the issue of what a distribution-only utility should include in its IRP is a broad one, and one that cannot be answered in this docket, I will note that today Hardwick is still an integrated "regulated electric utility". As such, it has a legal obligation under 30 V.S.A. § 218c to "prepare and implement a

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18. A T&D Implementation Plan includes a plan and schedule for implementing all cost-effective T&D investments identified in a T&D Study.

19. See, for example, May 15, 1995 Order in Docket 5270-HDPK-1; January 17, 1996 Order in Docket 5270-ENSB-1; January 17, 1996 Order in Docket 5270-JKSN-1; January 17, 1996 Order in Docket 5270-STOW-1; January 17, 1996 Order in 5270-SWNT-1; May 23, 1996 Order in Docket 5857; May 28, 1996 Order in Docket 5822; May 28, 1996 Order in Docket 5270-BRTN-1; and April 24, 1997 Order in Docket 5270-MRSV-1.

least cost integrated plan for the provision of energy services to its Vermont customers." The statute defines "least cost integrated plan" as

. . . a plan for meeting the public's needs for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on *energy supply*, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.<sup>20</sup>

This clear statutory language leads me to conclude that a complete IRP should include a load forecast and a power supply plan, among other items. However, given the age of the record in this case, and the fact that one of the results of the newly-opened investigation into the establishment of DUP guidelines will be filing dates for each electric distribution utility's next IRP, I do not believe it would be productive for the Board to order Hardwick to submit a load forecast and a power supply plan at this time. Rather, Hardwick should be specifically ordered to include these components in its next IRP.

The DPS has filed a Motion for Partial Summary Judgment in this docket. Given that I am recommending that this docket be closed without approval of the filed IRP, there is no need to rule on this motion.

The final issue that would have been decided in this docket is the filing date for Hardwick's next IRP. As mentioned above, this issue will be decided in Docket 6290, the Board's investigation into the establishment of guidelines for DUP, not in this docket.

### **III. CONCLUSIONS AND RECOMMENDATIONS**

I recommend that the Board close this docket, without approving Hardwick's filed IRP, upon receipt of Hardwick's T&D Implementation Plan.

As explained above, the DSM-related issues in this case are resolved.

Hardwick has filed its T&D Study, but not its T&D Implementation Plan. This is an important planning document, and I recommend that the Board require Hardwick to file it within 30 days of a final order in this case.

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20. 30 V.S.A. § 218c(a)(1) (emphasis added).

Hardwick's filed IRP does not include a load forecast or power supply plan. This is a serious deficiency, and a major reason why I believe the Board should not approve Hardwick's filed IRP. However, due to the age of the record in this case and the fact that Docket 6290 (the Board's investigation into the establishment of guidelines for DUP) will establish a filing date for Hardwick's next IRP, I do not believe it would be productive to require Hardwick to file those documents in this docket. Rather, I recommend that this docket be closed, and that Hardwick be directed, absent further Board order, to include a load forecast and power supply plan in its next filed IRP.

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 29<sup>th</sup> day of November, 1999.

s/Ann Thompson  
Ann Thompson  
Hearing Officer

#### **IV. BOARD DISCUSSION**

The DPS raised two issues in the comments it filed on the Hearing Officer's Proposal for Decision. We will address each of these in turn.

First, the DPS requested a change in the specific language used to characterize the effect of the implementation of the Energy Efficiency Utility. It was concerned that the phrase used by the Hearing Officer ("once the EEU is delivering DSM programs, the distribution utilities will be relieved of their obligations to design and implement energy efficiency programs (except for those associated with distributed planning)") could be interpreted to mean that the utilities' obligations to deliver System-wide DSM programs (as defined in the MOU in Docket 5980) would disappear. We wish to make clear that this interpretation would be incorrect. Rather, the utilities' statutory obligation will remain, but the System-wide program component of that obligation will be considered satisfied while the EEU is implementing the DSM programs approved by the Board for EEU implementation.

The second issue raised by the DPS relates to the Hearing Officer's recommendation that the Board require Hardwick to include a load forecast and a power supply plan in its next IRP. While supportive of this recommendation, the Department would like the Board to also specifically require that the load forecast and power supply plan portions of Hardwick's next IRP must meet all requirements pertaining to load forecasting and supply planning contained in the Board's order of December 2, 1994, in Docket 5270-HDWK-1. The DPS is concerned that without such explicit language, this Order could be interpreted to allow Hardwick to continue avoiding compliance with the December 2, 1994 Order without being required to demonstrate why those requirements should be changed or affording the DPS an opportunity to present evidence and argument in response to any such demonstration by Hardwick.

Once again, we wish to make clear that this interpretation would be incorrect. The Hearing Officer's silence on this point should not be interpreted as a recommendation that the Board allow Hardwick to continue avoiding compliance with its Orders. As the Hearing Officer noted, the statutory obligation and regulatory mandate are clear; Hardwick's arguments for non-compliance are simply not compelling. The same logic (i.e., that there was no need to comply with 30 V.S.A. § 218c and the Board's December 2, 1994 Order in Docket 5270-HDWK-1) would lead to a decision that Hardwick need not purchase power for its customers.

Indeed, the town's continuing failure to treat supply-side options and demand-side options with parity is a serious concern.

With or without specific language to the contrary, the obligation the Board imposed on Hardwick in its December 2, 1994 Order in Docket 5270-HDWK-1 remains in force. Thus, no explicit statement should be needed. However, in light of the DPS's concern and Hardwick's record of non-compliance in this area, we explicitly order Hardwick to comply with the terms of the December 2, 1994, Order pertaining to load forecasting and supply planning when it files its next IRP. In the event Hardwick fails to do so, we invite the DPS to propose appropriate penalties or sanctions.

#### **V. ORDER**

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

1. The recommendations of the Hearing Officer are adopted.
2. The Integrated Resource Plan ("IRP") filed by the Town of Hardwick Electric Department ("Hardwick") on June 3, 1996, is not approved.
3. The filing date for Hardwick's next IRP shall be established in Docket 6290, the Board's investigation into the establishment of guidelines for distributed utility planning ("DUP").
4. Absent further order from the Board issued prior to the due date for Hardwick's next IRP, Hardwick shall include in its next IRP a load forecast and a power supply plan that meet all requirements pertaining to load forecasting and supply planning contained in the Board's December 2, 1994 Order in Docket 5270-HDWK-1.
5. Hardwick shall file its Transmission and Distribution ("T&D") Implementation Plan with the Board and the DPS within 30 days of this Order.
6. This docket shall be closed upon receipt of Hardwick's T&D Implementation Plan.

Dated at Montpelier, Vermont, this 15<sup>th</sup> day of December, 1999.

s/Michael H. Dworkin )  
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s/Suzanne D. Rude )  
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s/David C. Coen )

PUBLIC SERVICE  
 BOARD  
 OF VERMONT

OFFICE OF THE CLERK

FILED: December 15, 1999

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 of any technical errors, in order that any necessary corrections may be made.*

*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.*