

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5980

Investigation into the Department of Public)
Service's proposed Energy Efficiency Plan)

Order entered: 2/22/99

ORDER RE: MOTIONS TO CLARIFY

On February 2, 1999, Green Mountain Power Corporation, Central Vermont Public Service Corporation, and Citizens Utilities Company (together, the "Utilities") filed a motion seeking clarification of our Phase I Order of January 19, 1999, in this docket. Specifically, they ask the Board to affirm that the Phase I Order "is not a final order requiring a party to appeal at this time in order to preserve and/or exercise that party's right to appellate review of any portion of the Order."¹ The next day, fourteen of Vermont's municipal utilities² (the "Municipals") filed a letter in support of the three companies' motion.

The Utilities argue that, depending on its outcome, a final Order after Phase II may very well obviate the need for an appeal of the Board's recent jurisdictional order. They reason that "resolution of the outstanding issues . . . will have significant implications for a number of potential appellate issues, including, but not limited to, the Board's authority to create an [efficiency utility] taking any particular form and/or order utilities to finance such an entity."³ They state that they "would prefer not to pursue an appeal at this time, especially in light of the hope that [they] and the Department will be able to agree on the essential elements of a statewide efficiency utility, for presentation to and approval by the Board."⁴ Such a settlement

-
1. Utilities' Motion at 1.
 2. There are fifteen municipal electric utilities in Vermont. Only the Burlington Electric Department did not join in the filing.
 3. Utilities' Motion at 2.
 4. *Id.* at 3.

would, they argue, "necessarily moot any potential appellate issues, and would avoid the costs and uncertainties associated with taking an appeal."⁵ They also contend that an appeal at this time would unnecessarily delay progress because, during the appeal's pendency, the Board's jurisdiction over the docket would be suspended.⁶

In joining in the motion, the Municipals state their concern that "the Phase I Order [will] be treated as a final order subject to appeal, and which, absent appeal, will be binding. The Municipals prefer not to take an appeal at this time over such a narrow (and presently rather abstract) issue of the Board's legal authority, but they also do not want to be considered to have waived any rights as to that issue."⁷

On February 16, 1999, the Department of Public Service ("DPS") filed a detailed response in opposition to the motions. The DPS offers five reasons why the motion should be denied, briefly summarized as follows:

- The motions contradict the utilities' prior statements arguing for early final resolution of the Board's jurisdiction to order the creation of an energy efficiency "utility."
- Settling the question of the Board's authority, prior to taking up the substantive issues, was a significant reason for the two-phase procedure to this docket, an approach which the utilities strongly endorsed.
- The Hearing Officer recommended that the jurisdictional decision in Phase I be final for the purposes of appeal. No party challenged that recommendation before the full Board.
- The movants have made only a "conclusory case and have not proven that the issues left open for Phase II affect the Board's jurisdiction. . . . Moreover, because the Phase II issues are separate from the question of the Board's jurisdiction to order the new entity, an appeal would not divest the Board of jurisdiction to issue an order on the Phase II issues."
- Final resolution of the jurisdictional issue must be achieved as soon as possible. Uncertainty only inhibits the delivery of comprehensive energy efficiency services to Vermont's ratepayers.⁸

The Department concludes by asking that we deny the motion, enter an order on jurisdiction that is final for the purposes of appeal, determine that there is no just reason for delay in

5. *Id.*

6. *Id.*

7. Municipals' Motion at 1-2.

8. DPS Response at 1-11 (summarized at 1-2).

appeal of our jurisdictional determination, and expressly state that judgment on jurisdiction is entered and is final for purposes of appeal to the Vermont Supreme Court.⁹

We find the Department's observations persuasive. In our Phase I Order of January 19, 1999, we concluded that, under current law, the Board has authority to order the creation and funding of a state-wide energy efficiency "utility," and we adopted the Hearing Officer's conclusions and recommendations on this point. One of those recommendations was that the Phase I Order be treated as a final Board Order, for purposes of reconsideration and appeal.¹⁰ We expressly reaffirm today that it is our intent that the Phase I Order be treated as final; any appeals from that Order must be filed in accordance with the statutory framework for all final Board orders.

Early in this proceeding, and at the urging of the Utilities and Municipals, the Hearing Officer and the Board took up the question of the Board's jurisdiction to approve and implement an efficiency utility. Because the Utilities and Municipals argued, in varying degrees, that the Board lacked jurisdiction to approve the DPS's plan, they contended that this question should be resolved before the detailed substantive work was done. We conclude, as those parties urged, that any jurisdictional disputes should be resolved as soon as possible. We also wish to avoid further delay in developing and delivering energy efficiency programs for the benefit of Vermont electric consumers.

Therefore, any party seeking to appeal our Phase I Order may do so, as provided in 30 V.S.A. § 12. Such an appeal does not limit the Board's authority to conduct further proceedings in this docket.¹¹

9. *Id.* at 11.

10. Phase I Order at 39, 56.

11. The Board retains enforcement and general supervisory authority with respect to an appealed order. 30 V.S.A. § 12; see, e.g., *Investigation into Citizens Utilities Company*, Dockets 5841/5859, Order of 12/4/98.

We understand that the parties are engaged in settlement negotiations. Our review of the schedule set out in the Hearing Officer's procedural order issued February 19, 1999, reveals that ample time exists to conclude those negotiations prior to the deadline for appealing our final Phase I Order.

SO ORDERED.

Dated at Montpelier, Vermont, this 22nd day of February , 1999.

| | | |
|-----------------------------|---|----------------|
| <u>s/ Richard H. Cowart</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/ Suzanne D. Rude</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/ David C. Coen</u> |) | |

OFFICE OF THE CLERK

FILED: February 22, 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.