

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6140

Investigation into the Reform of Vermont's)
Electric Power Supply)

AND

PSB Docket No. 6140-A

Investigation into the principles, authority and)
proposals for reform of Vermont's electric)
power supply)

Order entered: 01/19/99

PROCEDURAL ORDER

INTRODUCTION

On January 5, 1999, the Public Service Board ("Board") issued a procedural order which established dates for further technical conferences¹ and solicited comments and recommendations regarding next steps in this investigation. Several parties filed comments², which were varied in their recommendations. Generally, the comments followed five themes³:

1. Supporting or opposing the recommendation of the Working Group on Vermont's Electricity Future ("Working Group") that the Board adopt the Comprehensive Restructuring Settlement Framework which was contained in the Working Group's Report to Governor Howard Dean M.D. ("*Report*");

1. A technical conference on the topic of consolidation was set for January 19, 1999; a technical conference on the topic of auctions and asset sales was set for February 2, 1999.

2. Comments were filed by: Burlington Electric Department; Associated Industries of Vermont, Central Vermont Public Service Corporation, Citizens Utilities Company, and Green Mountain Power Corporation; International Business Machines Corporation; the Northeast Center for Social Issue Studies; U.S. Generating Company; Vermont Electricity Consumers Coalition; Vermont Electric Cooperative Inc., Vermont Electric Power Producers, Inc.; Vermont's "Fourteen Electric Municipals" Vermont Independent Power Producers Association; and Washington Electric Cooperative, Inc.

3. We will not attempt, here, to recount all of the recommendations. The comments submitted to the Board by participants are available on the Board web site: http://www.state.vt.us/psb/6140/Index_6140.htm.

2. Proposing that the Board's Order in Docket 5854 be reviewed to ensure that the principles and recommendations it sets out still work under voluntary restructuring and today's conditions;
3. Commenting in support of public or consumer ownership of some portion of Vermont utilities;
4. Recommending topics and agendas for further technical conferences; and
5. Advising the Board to, or not to, open a contested case proceeding regarding the consequences of a potential utility bankruptcy.

Among the comments offered, Central Vermont Public Service Corporation *et al.* ("CVPS *et al.*") recommended that the Board endorse the Report of the Governor's Working Group of Vermont's Electricity Future ("*Report*"), and that the Board indicate its approval for a set of investigations that would lead to implementation of the power supply reform and industry restructuring plan recommended therein. CVPS *et al.*'s request echoes the Working Group's *Report*, which recommended that the Board set a prompt hearing to determine if the Comprehensive Restructuring Settlement Framework contained in, and recommended by, that *Report* is acceptable and, if so, to establish an immediate schedule for the creation of the dockets necessary to accomplish this proposal within one year to eighteen months.

The Department of Public Service ("Department") stated its expectation that, pursuant to the Working Group's *Report* and in response to recent rate Orders, Vermont's electric utilities will promptly engage in intense research and negotiations to produce the comprehensive proposals needed to reform Vermont's power costs. Accordingly, the Department recommended that the Board avoid, in this docket, scheduling technical conferences that would interfere with or hamper negotiations. Further, the Department recommended that:

In our view, the order necessary to accomplish this Working Group recommendation need not and, given the needs of ongoing negotiations, should be narrow and should address only two questions: the Board's authority to approve regulatory securitization and the Board's willingness to consider such proposals, in principle. To address the rest of the Working Group's recommendation, such an order should also consider whether anything is necessary to accommodate proceedings to consider approval of any comprehensive restructuring settlement that may be proposed. In fact, no particular "immediate schedule" seems needed, beyond an order such as the

one just described, since any specific dockets needed can be opened and commence proceedings in a matter of days after a comprehensive restructuring settlement is filed.

DISCUSSION

Upon review of all of these recommendations, we conclude that it is now appropriate to lay the foundation for the development of meaningful power supply reform proposals. We intend to do so on two parallel tracks: first, a series of technical conferences in this docket to air issues and increase the collective expertise of participants regarding specific components of power supply reform; and second, in a new contested case docket, a sequence of proceedings to provide for the rigorous examination of any specific proposals for power supply reform, industry consolidation or industry restructuring.

In this second track, we will initially consider basic principles, legal authorities, and other stage-setting issues including (a) the degree to which the Principles that the Board adopted in Docket 5854 should be re-affirmed in this proceeding, so as to apply to our review of any specific proposals in this Docket; and (b) the Board's legal authority to consider and approve proposals for administrative securitization of above-market power costs as part of an open access proposal.

A prehearing conference in Docket 6140-A will be convened at 9:30 A.M. on February 2, 1999, to discuss the scope, goals, and process of this new, separate investigation.

TECHNICAL CONFERENCES

The first track will be to continue the current series of technical conferences in Docket 6140. We will press forward with conferences on asset auctions and open seasons, and on securitization.⁴ We also, by this Order, re-schedule for February 3rd the technical conference on mergers and industry consolidation. Conferences on other topics, as discussed in our previous scheduling orders are likely as well. These technical conferences are intended, principally, to increase the Board's and participants' expertise on these complex issues in anticipation of any formal power supply reforms or industry restructuring proposals. We note

4. A technical conference regarding securitization, which we intend to schedule shortly, will consider issues such as those described in our 12/11/98 Order, with the exception of examining the Board's legal authority to implement "regulatory securitization." That issue will be addressed in the separate, contested-case proceeding.

that Vermont Electric Cooperative, Inc. ("VEC") proposes several additional workshops, which the Board will consider in selecting topics for additional technical conferences.⁵

NEW CONTESTED-CASE DOCKET:

(a) Principles

The second track of this proceeding will be a parallel, contested-case docket. In that docket, which we will open today, we will initially consider how the principles that were developed through the Restructuring Roundtable and later adopted by the Board in Docket 5854, may be applied to determinations to be made in these proceedings. The goal of such a review is to maintain continuity in the Board's approach to industry restructuring. The 5854 Principles were adopted after a long period of study, discussion, and hearings involving many of the participants in this proceeding, and it may well be appropriate to apply the principles developed for comprehensive restructuring to a plan for power supply reform and/or the voluntary transition to retail competition.⁶ We believe that a timely review of these principles – one that is conducted before any such proposal is submitted for consideration by the Board – will be useful in informing the parties to the negotiations for power supply reform or the voluntary implementation of retail choice.

(b) Legal authority

A second topic that we intend to address in the contested-case docket is the Board's legal authority to issue orders that would provide for administrative securitization. Early resolution of this issue will provide parties with guidance that should prove helpful, and perhaps essential, to their power supply reform efforts.

5. See the 1/8/99 Comments of VEC at pages 11-12.

6. The Board is not pre-supposing that a retail competition will be implemented. However, we note – as did the Department – that the Working Group envisioned voluntary retail access as a part of their comprehensive restructuring package, and some Vermont utilities have indicated their willingness to include voluntary retail access in such a package. An early determination by the Board regarding the necessary components of voluntary retail access plan may facilitate development and Board review of any such proposal. The Department recommended that the Board convene a technical conference on this matter, and offered to file an outline of the issues that should be addressed at such a technical conference and, potentially, in a Board rule or order. We will consider this proposal at the February 2, 1999, prehearing conference.

(c) Review of particular proposals

In the new, contested-case docket, the Board will also consider specific and formal proposals for power supply reform, industry consolidation or changes in ownership structure, industry restructuring, or some combination of these elements. At the February 2, 1999, prehearing conference, we will consider the scope, goals and process for this investigation, including the types of reform, restructuring or consolidation proposals that would fall within the scope of this investigation.

The Department, in its January 8, 1999, comments stated that it is prepared to file by February 15 an outline identifying the issues that should be dealt with and a draft proposal addressing them, should the Board desire. We intend to discuss this offer at the February 2 prehearing conference. One possible procedure, which we ask parties to consider in anticipation of the prehearing conference, is to proceed in two steps – first, that all parties that so desire file shortly an outline identifying issues that should be considered through formal, contested-case procedures, and second, that all parties file by February 15 a draft proposed schedule to deal with the issues so identified.

At this point, we offer preliminary guidance on these matters, which may assist parties in preparation for the February prehearing conference. First, proceedings in this track of the docket will be conducted as a contested case. If more than one proposal is offered, the Board will develop appropriate procedures for consideration of issues which overlap between or among proposals. Thus far, two proposals filed in response to our January 5, 1999, procedural order would be appropriate for consideration in this track of the docket, should the proponents wish to pursue formal consideration, enabling orders, or adoption by the Board. Those are the "Comprehensive Restructuring Settlement Framework" promoted by CVPS *et. al.*,⁷ and WEC's

7. CVPS *et al.* recommended that the Board convene a technical conference to take additional comments on the actions proposed by the Working Group's Plan, and issue an order by early February 1999 adopting that Plan. It is not feasible for the Board, through a single technical workshop, to conclude that it should endorse the framework that was proposed by CVPS *et al.* and recommended by the Working Group. A proposal of this significance requires a thorough review supported by sworn testimony and tested by the cross-examination of witnesses. The Board is prepared to review a comprehensive settlement framework, as may be proposed by CVPS *et al.* or some other entity, in such a manner. Only through such a process will the Board be prepared to endorse such a comprehensive proposal.

proposal for "Consumer Ownership of Vermont Utilities".⁸ Parties are welcome to submit for formal review by the Board additional proposals for power supply reform, industry restructuring, voluntary implementation of retail competition, or consolidation or changes in the ownership structure of Vermont utilities. We invite parties to indicate, either at the February 2, 1999, prehearing conference, or in writing, whether they intend to submit any such proposals⁹, for either preliminary or comprehensive review.

OPERATIONAL DETAILS OF A RETAIL CHOICE MARKET STRUCTURE

The Department, in its January 8, 1999, comments states that if voluntary retail access is anticipated to be a component of a package of reforms that may be submitted to the Board for approval, then it is not too soon to begin work on understanding how voluntary retail access should operate. The Department recommends that task forces be initiated to consider such issues¹⁰, and VEC recommends that the Board conduct or sponsor a two-day seminar at which NEES Global, a consulting company, share its experience regarding implementation of retail choice in other jurisdictions. Such a seminar may assist parties in identifying operational issues that must be resolved to implement retail choice smoothly.

Before acting on the Department's recommendation, we would like to better understand the nature and scope of issues that require resolution or definition¹¹, the lead time necessary for refinement and resolution of such operational issues, and also the likelihood that such a package will be submitted to the Board for approval. We note that several parties, including the Department, have urged the Board to avoid or defer consideration, in this docket, of non-essential matters that may divert human resources and managerial focus away from the

8. See 1/8/99 submission of WEC in Docket 6140.

9. In soliciting any such indications, we do not intend to preclude subsequent proposals.

10. The Department offered as examples of such operational provisions to be developed: billing and disclosure requirements, certification requirements for retailers, and consumer education and protection issues.

11. We note that Vermont Electric Cooperative offered a detailed outline that identifies many such issues. While VEC was careful to state that its issue outline and plan for customer choice are not to be interpreted as VEC's final position on any of the topics, and that such an outline was presented for discussion purposes only, we observe any that Vermont utility that proposes a voluntary transition to retail choice should be prepared to resolve many of the operational issues raised in VEC's outline.

immediate and critical task of power supply reform. We are sensitive to this concern. Parties should be prepared to discuss these proposals (formation of task forces, and the NEES Global seminar) at the January 22, 1999, status conference.

BOARD INVESTIGATION INTO IMPLICATIONS OF A POTENTIAL UTILITY BANKRUPTCY

Finally, several parties commented upon the Board's declaration that it intended to open a separate investigation (which was tentatively designated as Docket 6140-A) regarding bankruptcy issues.¹² Resolution of the power supply and restructuring issues facing the Board will likely require an examination of critical legal and financial issues relating to the consequences of a potential bankruptcy proceeding and/or power purchase contract default involving one or more Vermont utilities. In order for the Board to be better prepared to consider such issues, the Board intends to hire legal and technical experts for consultation, as suggested in the Agreement on Joint Request to Hire Experts filed by the parties in Docket 6107. In addition, not later than May 1999, the Board will convene a status conference to set a schedule for examining bankruptcy issues.¹³

ORDER

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

1. Pursuant to 30 V.S.A. §§ 10 and 209, a status conference in Docket 6140 is scheduled for **Friday, January 22, 1999**, commencing at 10:00 A.M., at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont.

2. Pursuant to 30 V.S.A. §§ 10 and 209, a **technical conference on mergers and industry consolidation** will be held on **Wednesday, February 3, 1999**, in Docket No. 6140, commencing at 9:30 A.M., at the Public Service Board Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont.

12. See the Board's Order of 12/11/98.

13. We also note that the Working Group's report, which CVPS *et al.* recommend we endorse and adopt the conclusions, including those regarding utility bankruptcy. As with any other factual matter upon which the Working Group's report is based, we must form an independent judgment based on evidence which is subject to the scrutiny of all parties to this investigation.

3. Pursuant to 30 V.S.A. §§ 2, 203, and 209, a new, contested-case investigation (PSB Docket No. 6140-A) is opened into the principles, authority and proposals for reform of Vermont's electric power supply.

4. Pursuant to 30 V.S.A. §§ 10 and 209, a **prehearing conference** will be held in Docket No. 6140-A on **Tuesday, February 2, 1999**, commencing at 9:30 A.M., at the Public Service Board Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont.

5. All Vermont electric distribution utilities are ordered to participate in the investigation in Docket No. 6140-A. Other persons or entities wishing to participate in this proceeding shall file motions to intervene.

6. The Clerk of the Board shall provide copies of this Order to all Vermont electric utilities, to Vermont Electric Power Producers, Inc., on behalf of the independent power producers operating in Vermont, and to interested members of the public.

Dated at Montpelier, Vermont, this 19th day of January, 1999.

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

OFFICE OF THE CLERK

Filed: January 19, 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.