STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6158

Investigation of Village of Lyndonville Electric)
Department's tariff filing requesting a 6.54%)
rate increase to take effect November 1, 1998)

Order entered: 6/7/2000

ORDER RE: EXTENSION OF STAY OF PROCEEDING
AND TEMPORARY RATES

I. INTRODUCTION

On September 15, 1998, the Village of Lyndonville Electric Department ("Lyndonville") filed with the Public Service Board ("PSB" or "Board") revisions to its tariffs reflecting a 6.54% increase in its rates (or $368,318 in annual revenues), to take effect on a service-rendered basis commencing November 1, 1998, for bills rendered on and after December 1, 1998. The proposed rate increase has, pursuant to 30 V.S.A. § 226(b), been in effect on a temporary basis since November 1, 1998. For the upcoming year, it will produce additional annual revenues in the amount of $368,318. Notice of the proposed rate increase was provided to customers via publication in the Caledonian-Record newspaper.

On October 16, 1998, the Vermont Department of Public Service ("DPS"), pursuant to 30 V.S.A. § 225, filed a letter recommending that the Board open an investigation into the justness and reasonableness of Lyndonville's tariff filing. The Board ordered such an investigation on October 30, 1998, and appointed Ennis John Gidney, Chief Economist, as Hearing Officer in this proceeding.

On November 10, 1998, a prehearing conference was held in this docket. Appearances were entered by William B. Piper, Esq., and Trevor R. Lewis, Esq., of Primmer & Piper, P.C., for Lyndonville, and Aaron Adler, Esq., for the DPS.

On November 10, 1998, Lyndonville submitted the prefiled testimony of Charles J. Underhill.

On March 30, 1999, the DPS filed a Memorandum of Understanding ("Exhibit Joint-1" or "MOU") between Lyndonville and the DPS. A copy of the MOU is attached hereto as

Appendix I. The MOU seeks a Board order providing that this docket ". . . should be stayed effective December 15, 1998, with any further proceedings in this docket to be held after September 1, 1999, or such other date as the parties may agree or the Board may order." MOU at 2, ¶ 3. Under the MOU, during the period of the stay the current rates, including the 6.54 percent temporary rate increase, will remain in effect. Through the MOU the parties also seek to settle a majority of issues in the case and narrow the number of issues left for resolution when the stay expires and the case resumes. The MOU proposes a resolution of all issues except those concerning Lyndonville's power supply costs, demand-side management ("DSM") issues and transmission and distribution ("T&D") issues. The MOU states that with respect to all other issues ". . . the cost of service filed by Lyndonville represents a just and reasonable revenue requirement." MOU at 2, ¶ 2. Any order approving the MOU would stay this case, not finally resolve it; therefore, the MOU provides that the surcharge would continue to be subject to refund upon final resolution of this docket, pursuant to 30 V.S.A. § 226(b), dating back to its implementation on November 1, 1998.

On May 25, 1999, a technical hearing was held in the Board's hearing room. The parties entered into evidence the MOU and sworn testimony supporting the cost of service resulting in a continued "temporary surcharge" of 6.54 percent or $368,318, effective for service rendered on or after November 1, 1998, until the Board issues a final order in this docket. The Board issued an Order approving the MOU on July 30, 1999.

On January 6, 2000, the DPS filed an Amendment to Memorandum of Understanding ("MOU Amendment") between Lyndonville and the DPS. The Amended MOU seeks a Board order approving an extension of this proceeding through September 1, 2000. Further, the MOU Amendment states that, upon a showing of good cause by either party, the Board may order a further extension of the stay for up to three additional months, or until December 1, 2000.

On May 8, 2000, in response to a request from the Board, the parties filed a Second Amendment to Memorandum of Understanding ("Second MOU Amendment") between Lydonville and the DPS to reflect the settlement among the parties in Docket 5980, which reduced the temporary surcharge of 6.54 percent to 5.60 percent. The Second MOU Amendment states that the compliance filing made by Lyndonville on December 16, 1999,

which specified a temporary surcharge of 6.54 percent and was made prior to the settlement among the parties in Docket No. 5980, "was and is reduced to 5.60 percent, effective on bills rendered on and after February 1, 2000."[1]

I have reviewed the MOU Amendment, Second MOU Amendment and previous filings in this Docket and conclude that continuation of the temporary rate increase, as provided in the MOU Amendment as modified by the Second MOU Amendment, is reasonable. In addition, on all issues for which parties have proposed a final resolution (i.e., all issues except power supply costs and T&D), approval of the MOU Amendment will result in rates that are just and reasonable and will promote the general good of the state. Accordingly, I recommend that the MOU Amendment, as modified, be approved by this Board.

Based upon the evidence of record, including the agreement contained in the MOU Amendment, I hereby report the following findings and conclusions to the Board in accordance with 30 V.S.A. § 8.

II. Findings Of Fact

1. On September 15, 1998, Lyndonville filed with the Board revisions to its tariffs reflecting a 6.54 percent increase in its rates, or an increase in annual revenues of $368,318, to take effect on a service-rendered basis commencing November 1, 1998, for bills rendered on and after December 1, 1998. Lyndonville's Cost of Service.[2]

2. The DPS and Lyndonville engaged in settlement discussions which resulted in a Memorandum of Understanding. The MOU was filed with the Board on March 30, 1999, and approved in the Board's Order issued on July 30, 1999. DPS letter of March 30, 1999; MOU; MOU Amendment at 1.

3. On January 6, 2000, the DPS and Lyndonville filed an MOU Amendment with the Board which sets forth amendments to the MOU. MOU Amendment at 1.

4. In the MOU the parties agreed, inter alia, to a stay of proceedings in this case until after September 1, 1999, and to the continued collection of the retail rate increase filed by Lyndonville on September 15, 1998, through a surcharge of 6.54%. MOU Amendment at 1.

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1. Second Amendment to Memorandum of Understanding, May 8, 2000, at 1.

2. The parties stipulated the admission of the filed cost of service in their filing of the Joint Proposal for Decision on June 7, 1999.

5. On May 8, 2000, the parties filed a Second MOU Amendment which reduced the surcharge to 5.60 percent in order to reflect the compliance filing made by Lyndonville in Docket 5980 on December 16, 1999. Second MOU Amendment at 1.

6. The purpose of the stay was to permit Lyndonville to participate in efforts to mitigate power supply costs, including those associated with the Hydro-Quebec contract ("HQ Contract"). MOU Amendment at 1-2.

7. In the time since the Board approved the MOU, Lyndonville and the other Vermont Joint Owners ("VJO"), have commenced an arbitration based upon the claim that Hydro-Quebec breached its contract obligations, and are requesting relief including recission of the contract. The ruling from the arbitration panel could have significant impacts upon this docket. The schedule in the arbitration proceedings has been extended and it is now unlikely that the arbitration will be concluded prior to the end of June 2000. MOU Amendment at 2.

8. Lyndonville, along with other Vermont distribution utilities, has filed a petition with the Board seeking reduction of the above-market costs of the State's contracts with the Vermont Independent Power Producers in Docket No. 6270. The resolution of Docket 6270, which could have a significant impact on the instant proceeding, is not likely to occur before the end of June of 2000. MOU Amendment at 2.

9. The parties agree that the treatment of DSM expenditures is governed by the approved Memorandum of Understanding in Docket No. 5980 and nothing in the MOU Amendment modifies that.[3] MOU Amendment at 3.

10. On December 3, 1999, Green Mountain Power Corporation ("GMP") and the DPS entered into a Second Amendment to Memorandum of understanding which stays Docket No. 6107 until September 1, 2000. The parties agree that the stay of this proceeding should similarly be extended through September 1, 2000, or such later date as the parties may agree or the Board may order. MOU Amendment at 3.

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3. While the MOU in Docket 5980 effectively resolves all claims based on a Vermont distribution utility's actions or failures to act prior to January 1, 2000, regarding DSM obligations, the MOU specifically allows the DPS to investigate or challenge the existence of proper treatment of claimed DSM expenditures or related amounts.

11. The parties agree that upon a showing by either party of good cause for further extending the stay after September 1, 2000, the Board may order the stay to be extended for an additional three months or until December 1, 2000. MOU Amendment at 3.

12. The parties request that the Board convene a status conference after August 1, 2000. MOU Amendment at 3.

13. The parties agree that the rates approved by the Board on July 30, 1999, should remain in effect until the Board issues a final rate decision or until a new rate filing is made by Lyndonville. MOU Amendment at 3.

14. The parties agree that, except as expressly provided in the MOU Amendment, all of the terms and conditions of the MOU, as approved by the Board, should continue in full force and effect. MOU Amendment at 3.

III. Discussion

The MOU filed by the parties on March 30, 1999, resolves most of the contested issues in this docket. Three issues were unresolved at the time the MOU was filed: (1) power supply costs; (2) DSM expenditures; and (3) T&D system issues. The parties agree that the treatment of DSM expenditures are governed by the approved Memorandum of Understanding in Docket No. 5980; thus power supply and T&D issues remain unresolved by the MOU Amendment.

The parties have proposed a stay until September 1, 2000, for all outstanding issues during which time the 5.60 percent temporary rate increase (or $315,219 in annual revenues) will remain in effect (subject to potential refund based on the final resolution of this case). In the meantime, Lyndonville will continue participating in statewide and individual efforts to mitigate its power supply costs, including those associated with the HQ Contract. Given that Lyndonville and the DPS have agreed that approval of the MOU Amendment will enable Lyndonville to continue to pursue power supply reform, including mitigation options with respect to the HQ Contract, I believe it is reasonable to defer this issue for future resolution.

With respect to T&D expenditures, the parties have agreed that this issue should be reserved for future resolution.

IV. CONCLUSION

I have reviewed the MOU Amendment, the Second MOU Amendment, and the agreement between the parties contained therein, and find that the agreement between Lyndonville and the DPS recommending continuation of the stay and suspension of this case and the temporary surcharge of 5.60 percent is reasonable, because it will allow Lyndonville to continue to pursue mitigation of its power supply costs, will promote the general good of the state and, except with respect to power supply costs and T&D issues, will resolve all issues included in the rate filing. I, therefore, recommend that the MOU Amendment, as modified, be approved by this Board.

The 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 31st day of May, 2000.

s/Ennis John Gidney
Ennis John Gidney
Hearing Officer

V. BOARD DISCUSSION

On May 23, 2000, the Department filed comments in support of the Hearing Officer's Proposal for Decision ("PFD") and requested the PFD be amended in order to further clarify one statement. On May 26, 2000, Lyndonville filed a letter with the Board stating that it had no comments on the PFD. After review of the PFD, the MOU and the two amendments to the MOU, we accept the recommendation of the Hearing Officer with the following amendments and clarifications.

The Department's comments request that the third sentence in the first paragraph under the Discussion section on page five of the PFD be amended to read as follows: "The parties agree that the treatment of DSM expenditures is governed by the approved Memorandum of Understanding in Docket No. 5980. Moreover, through its reduction of the temporary surcharge in accordance with that agreement, Lyndonville has removed from consideration all DSM expenditures it had requested in this docket. Thus, power supply and T&D issues remain unresolved in this docket." The purpose of the amended language is to clarify that Docket No. 5980 does not resolve all DSM expenditures in this or any other rate case. As the Department notes in its comments, this fact is acknowledged by the Hearing Officer in footnote three at page four of the PFD. The amended language clarifies an important issue in this docket and results in no substantive change to the Hearing Officer's PFD. Therefore, we accept this as recommended by the Department.

In addition to the clarification requested by the Department, there are two additional areas of the PFD that we wish to clarify. First, finding number ten in the PFD indicates that a stay in this proceeding may be extended "as the parties may agree or the Board may order." It is clear from a reading of the MOU Amendment at page three, numbers five and six, and finding eleven in the PFD, that any such extension of the stay of this proceeding will require a Board order in addition to the agreement of the parties. Second, finding number thirteen in the PFD indicates the rates approved by the Board on July 30, 1999, should remain in effect until a final decision by the Board is issued or Lyndonville submits a new rate filing. The rates approved in our Order of July 30, 1999, were subsequently amended to reflect the settlement among the parties in Docket 5980, which reduced the temporary surcharge of 6.54 percent to 5.60 percent. The rates referred to in finding number thirteen of the PFD are the rates *as amended, i.e.*, the rates that reflect the 5.60 percent surcharge.

VI. ORDER

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

1. The Findings and Conclusion of the Hearing Officer are adopted.

2. The Amendment to Memorandum of Understanding dated December 31, 1999, between the Village of Lyndonville Electric Department and the Vermont Department of Public Service as modified by the Second Amendment to Memorandum of Understanding dated May 8, 2000, is accepted.

3. Lyndonville may continue to impose a temporary surcharge, subject to refund, in an annual amount of $315,219. This temporary surcharge shall be implemented by means of an increase of 5.60 percent for all existing rates which shall be shown as a "temporary surcharge" on customer bills until a final resolution is reached in this docket.

4. This docket shall remain with the Hearing Officer, Ennis John Gidney.

5. The Hearing Officer shall convene a status conference after August 1, 2000, to set a further procedural schedule in this Docket.

DATED at Montpelier, Vermont, this 7th day of June, 2000.

s/Michael H. Dworkin	)	
	)	PUBLIC SERVICE
	)	
s/Suzanne D. Rude	)	BOARD
	)	
	)	OF VERMONT
s/David C. Coen	)	

OFFICE OF THE CLERK

Filed: June 7, 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 in writing) 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.