

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6270

Investigation into petition of 16 Vermont electric )  
utilities for alteration, modification and )  
construction of power purchase agreements )  
between qualifying facilities and Vermont )  
Electric Power Producers, Inc., and for )  
Amendment of Vermont Public Service Board )  
Rule 4.100

Order entered: 11/17/99

**ORDER RE: MOTION TO CONTINUE NOVEMBER 22, 1999, FILING DEADLINE**

In the Prehearing Conference Memorandum and Procedural Order issued in this docket on October 1, 1999, I established November 22, 1999, as the deadline for filing dispositive motions. On November 3, 1999, Dodge Falls Associates, L.P., Ryegate Associates, Winooski One Partnership, Hydro Energies Corporation, Ottauquechee Hydro Company, Inc., Moretown Energy Company, and Missisquoi Associates (collectively, "Movants") filed a Motion to Continue the November 22 deadline. On November 5, 1999, Vermont Marble Power Division of OMYA, Inc. filed a letter in support of the motion to continue. On November 9, 1999, the Vermont Department of Public Service ("DPS") and fifteen of the sixteen petitioning utilities<sup>1</sup> filed oppositions to the motion to continue. On November 15, 1999, John Warshow and Mathew Rubin, who have previously requested intervention, submitted a filing in support of the motion to continue. On November 16, 1999, the Movants filed a response to the DPS and the utilities' filings.<sup>2</sup>

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1. Green Mountain Power Corporation, the sixteenth petitioning utility, is represented by separate counsel.

2. Also on November 16, the utilities filed a motion to disregard the Movants' November 16 response. (The utilities' motion also requests that I disregard another filing that the Movants submitted on the same date regarding the scope of evidence at the hearing on the motion to disqualify; I do not here address the propriety of that second filing.) The utilities contend that the Movants' response was untimely, in light of the November 9 deadline that I had previously imposed for responses to pending motions. I deny the utilities' motion to disregard this response, because the response was not to a motion, but instead to

(continued...)

The Movants contend that a continuance is justified by the slower-than-expected resolution of the pending motion for disqualification of counsel for the petitioning utilities. The Movants argue that the disqualification motion must be decided before the utilities' counsel can participate on substantive issues. The Movants also contend that a continuance is necessitated by the difficulties of the Movants and other parties in obtaining documents, including records of the Public Service Board ("Board"). Among these difficulties, according to the Movants, has been the utilities' failure to coordinate a compilation of Board materials as the utilities had earlier proposed. On these grounds, the Movants propose that the deadline for filing dispositive motions be suspended indefinitely, with the Movants and other Qualifying Facility intervenors filing weekly status reports of their progress in obtaining documents; under this proposal, the Board would retain the ability to impose deadlines if appropriate.

Both the DPS and the petitioning utilities contend that the Movants have failed to demonstrate good cause for an extension to the filing deadline. The DPS and the utilities assert that the extrinsic evidence that the Movants seek to compile is not necessary to a determination of the legal issues that would be presented in dispositive motions, because those issues will be resolved by reference to the contracts at issue and Board orders, rules, and other sources of law.

In their response to the DPS and the utilities, the Movants maintain that under Vermont law, extrinsic evidence will be relevant to the dispositive motions. The Movants also contend that additional preliminary matters, including interventions, notice to lenders and lessors, and the participation of the municipal utilities, should be resolved prior to the filing of dispositive motions.

I conclude that the November 22 deadline should be continued to allow resolution of the pending motion to disqualify counsel prior to the submission of dispositive motions. The potential disqualification of counsel is a preliminary matter that should be resolved before substantive issues are addressed in this docket. Because I have determined that the

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2. (...continued)  
memoranda that the utilities and the DPS had filed.

November 22 deadline should be continued for this reason, I need not, and do not, reach the other grounds that the Movants assert for a continuance. However, I expect the Movants and other parties intending to file dispositive motions to continue diligently their research in preparation for the filing of those motions, including their efforts to assemble those documents that they believe necessary.

Therefore, the deadline for filing dispositive motions is hereby extended to two weeks after the date of issuance of an order on the pending motion to disqualify counsel for the utilities. Responses to dispositive motions will be due three weeks after those motions are filed.<sup>3</sup>

SO ORDERED.

Dated at Montpelier, Vermont, this 17<sup>th</sup> day of November, 1999.

s/Kurt R. Janson  
Kurt R. Janson  
Hearing Officer

OFFICE OF THE CLERK

FILED: November 17, 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.*

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3. If the motion to disqualify counsel is granted, this response deadline will likely need to be revised.