

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: 9/28/99

PROCEDURAL ORDER RE: MOTION TO COMPEL AND FOR STAY
AND NOTICE OF ORAL ARGUMENT

On September 24, 1999, Concord Hydro Associates ("CHA") and Dodge Falls Associates, L.P. ("DFA") filed an Emergency Motion to Compel Discovery and for Stay of Filing Deadline. In their motion, CHA and DFA seek an order compelling the production of documents relating to an alleged conflict of interest of the law firm Downs, Rachlin & Martin, PLLC ("DRM"). The motion also requests a stay in the current deadline of September 29, 1999, for CHA and DFA to file a motion to disqualify that law firm from serving as counsel to the sixteen petitioning electric utilities.

On September 28, 1999, the petitioning utilities filed a Memorandum in Opposition to the CHA and DFA motion.

I have reviewed and considered the respective parties' arguments, and conclude that the Motion for Stay should be denied, and that I will hear oral argument on the Motion to Compel Discovery. I deny the Motion for Stay for the following reasons. First, at the September 21, 1999, prehearing conference, CHA and DFA agreed to the September 29 deadline for filing a motion to disqualify, without indicating that their ability to file the motion by that date would depend on the availability of the documents that they now seek in discovery. Second, CHA and DFA have failed to demonstrate, or even assert, that they are unable to prepare their motion

to disqualify without those documents.¹ Third, granting the requested stay would undoubtedly delay this proceeding, which CHA and DFA have failed to justify at this time. Fourth, if I conclude, after hearing oral argument, that the Motion to Compel should be granted, I will allow CHA and DFA to supplement their motion to disqualify, if the compelled discovery provides a basis for such supplementation.

I will hear oral argument on the Motion to Compel Discovery, pursuant to 30 V.S.A. §§ 8 and 10, on Tuesday, October 5, 1999, at 2:30 P.M., at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont.

SO ORDERED.

Dated at Montpelier, Vermont, this 28th day of September, 1999.

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

OFFICE OF THE CLERK

FILED: September 28, 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.

1. CHA and DFA should be in possession of the pertinent facts regarding DRM's prior work on behalf of CHA, and should be able to identify any resulting conflict of interest that they believe to be presented by DRM's representation of the petitioning utilities in this docket. Thus, even if the documents that CHA and DFA have requested might be relevant to a motion to disqualify – an issue that I do not decide in this Order – they are not necessary to the preparation of the motion.