

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6335

Investigation into the proposed firm-)
transportation service tariff filed by Vermont)
Gas Systems, Inc., to take effect February 1, 2000)

Order entered: 3/16/2000

PROCEDURAL ORDER RE: SCOPE and SCHEDULE OF INVESTIGATION

Summary

In this procedural order, I review and grant the request of the City of Burlington Electric Department ("BED") for a scoping determination in this Docket. On the basis of comments provided by BED and other parties, and previous representations by the Public Service Board ("Board"), the scope of this docket will include the following issues:

- (1) the review of the proposed firm-transportation tariff for large commercial and industrial customers, filed on January 18, 2000, by Vermont Gas System, Inc. ("VGS");
- (2) the question of whether it is appropriate for VGS to offer a "transmission-only"¹ tariff; and
- (3) the broader issues of the applicability to this tariff of FERC Order 636² policies or other open-access policies.

I note that this is not a generic retail unbundling docket.³ However, upon the conclusion of this Docket, I plan to recommend that the Board open a generic docket or rulemaking on retail choice for the gas industry in Vermont.

Background and Positions of the Parties

On February 15, 2000, BED filed a letter with the Board in which it requested that I issue a scoping order in this Docket. Specifically, BED asked that "the Hearing Officer promptly issue a scoping order clarifying that the applicability of the requirements of FERC Order 636 in Vermont, and an interruptible transportation rate for transmission-only customers, are issues that will be addressed in this Docket -- but not necessarily solely in this Docket"4

I asked other parties to respond to BED's request by February 29, 2000. In a letter dated February 15, 2000, the Vermont Public Power Supply Authority ("VPPSA") indicated that it supported BED's request.⁵ On February 28, 2000, Central Vermont Public Service Corporation ("CVPS") also indicated its support for BED and VPPSA's positions.⁶

The Department of Public Service ("Department"), on the other hand, takes a narrower view and contends that the "focus of this docket is the firm transportation tariff proposed by VGS."⁷ The Department adds that it "would not be appropriate to develop an interruptible transportation rate for transmission-only customers in this docket."⁸ The Department also maintains that FERC's Order 636 does not apply to VGS's system because of VGS's status as a Hinshaw pipeline.⁹

4. BED Letter of 2/14/00 at 2. BED also raised an issue concerning the scheduling of one of its witnesses. I consider its scheduling request below.

5. VPPSA Letter of 2/15/00.

6. CVPS Letter of 2/28/00.

7. DPS Letter of 2/29/00 at 1.

8. *Id.*

VGS, referring to BED's February 15 letter, takes the position that BED has relied "on the fact that VGS's proposed tariff is a compliance filing for Docket No. 5934 and on the Board's statement that it intends to investigate whether VGS should offer a transmission-only tariff, made in Docket No. 6016."¹⁰ It is VGS's position that the task in this docket is to review the tariff that VGS has submitted. VGS also agrees with BED that the Board's investigation of a transmission-only rate should occur in this docket, although VGS adds that it does not believe that a transmission-only rate is appropriate.¹¹ Finally, while agreeing with the Department that FERC Order 636 does not apply here due to VGS's status as a Hinshaw pipeline, VGS argues that the "parties in this docket obviously have the right to argue that Order 636's *policies* should be applied in Vermont."¹²

Discussion

With respect to the legal question of whether FERC Order 636 applies to VGS, I conclude that, if it wishes, BED should file a motion with a supporting legal memorandum demonstrating that, as a matter of law, the FERC Order applies. BED has until the close of business, March 24, 2000, to do so. Parties may respond on or before the close of business, March 31, 2000. If BED chooses not to file such a motion, then this Docket will not consider the applicability of FERC Order 636 to VGS.

With regard to Order 636 policies, however, I reach a different conclusion. This Docket's review of a firm transportation tariff is a first step towards an open access regime, the very framework for the interstate gas industry envisioned and promulgated at the federal level by FERC Order 636. Thus, it is appropriate for BED or any other party to argue in this Docket that policies similar to those contained in FERC Order 636 ought to be considered here. In fact, I conclude that it is appropriate in this context to consider open access policies as they

its willingness to consider the matter in a subsequent Docket.¹⁴ The Department refers to the language of VGS's filing as support for the Department's position that review of a transmission-only rate would be inappropriate here. All other parties, including VGS, disagree. It is an open issue as to whether the cost basis for a firm transport tariff should be founded upon transmission costs only or, instead, upon transmission and distribution costs.¹⁵ I conclude, therefore, that it is appropriate to consider a transmission-only rate in this investigation.

Finally, there are two issues with respect to the schedule that need to be considered. First, BED has indicated that its expert witness is unavailable on June 15 or 16, two of the five dates on which technical hearings have been scheduled.¹⁶ As a solution, BED proposes that the "Board schedule technical hearings in this matter for the week of June 19, 2000."¹⁷ Because parties have already agreed to schedule the remaining three days of technical hearings during the week of June 19, as BED requested, *i.e.*, June 21, 22, and 23, I see no immediate reason to change the schedule here. I presume that BED's witness can testify during one of those three days. If this is not the case, however, then BED should notify the other parties and me. More generally, if the conclusions reached in this Order cause any party to feel the need to revise the schedule in this Docket, comments to that effect should be filed on or before March 24, 2000.

SO ORDERED.

DATED at Montpelier, Vermont, this 16th day of March, 2000.

s/David Farnsworth
David Farnsworth, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: March 16, 2000

ATTEST: s/Susan M. Hudson

Clerk of the Board

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