

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6410

Petition of Green Mountain Power Corporation for)
Consent to Enter into a Revolving Credit Agreement)
and Related Energy Purchase Option Agreement)

Order entered: 8/31/2000

I. INTRODUCTION

In this Order, we consider a request by Green Mountain Power Corporation ("GMP" or the "Company") for consent, pursuant to 30 V.S.A. § 108 ("Section 108"), to enter into a Revolving Credit Agreement ("RCA") with KeyBank National Association ("KeyBank") and a related Energy Purchase Option Agreement ("Option Agreement") between GMP and Energy East Corporation ("Energy East" or "EE"). With respect to the RCA, the Public Service Board ("Board") concludes, as it did recently regarding a similar credit agreement between GMP and Fleet Bank,¹ that, considering the duration and dollar amounts involved, the RCA does not trigger the threshold of Board review under Section 108; the Board, therefore, does not need to either approve or deny the consent sought by GMP. This Board's approval is not required prior to GMP's entry into the credit agreement.

II. BACKGROUND

On August 11, 2000, GMP filed a petition pursuant to Section 108 with the Board seeking approval of a proposed RCA between GMP and KeyBank and of a related Option Agreement between GMP and Energy East.² The Company filed the testimony of Nancy Rowden Brock, Chief Financial Officer of GMP, in support to the Motion. The Company requested expedited review and approval of the petition.

GMP waived its right, under 3 V.S.A. § 811, to a hearing, to comment on a Hearing Officer's Proposal for Decision, and to appeal an order granting the requested consent.³

1. See Order of 8/10/2000 in Docket 6015. In that Order, we concluded that the proposed amendment to the revolving credit agreement involved a short-term loan of insufficient size to trigger the applicability of Section 108. Thus, there was no need for the Board to either approve or disapprove the amended agreement.

2. Petition at pp. 4-5. GMP requests that, in the alternative, the Board "grant such other and further relief, if any, as may be necessary and appropriate under the provisions of 30 V.S.A. or the regulations of the Board."

3. *Ibid*; Petition at ¶ 8.

On August 22, 2000, the Department of Public Service filed comments with the Board recommending that the petition be approved without hearings, and waiving its rights under 3 V.S.A. § 811 to review a Proposal for Decision, to file exceptions, and to present briefs and oral argument regarding the matter, provided that the recommendations and conditions contained in the Department's § 202(f) Determination are adopted.⁴

The Department determined, pursuant to its responsibility under 30 V.S.A. § 202(f), that the proposed Credit Agreement is consistent with the *Vermont Electric Plan* provided that any distribution activities financed by the proceeds from the proposed financing will meet the requirements of the *Vermont Electric Plan*. The Department also determined that the proposed Agreement is consistent with the *Vermont Electric Plan* provided that the terms of the Option Agreement are as set out in the MOU between GMP and Energy East, and "only to the extent" the Option Agreement is construed to be an "evidence of indebtedness" as contemplated by 30 V.S.A. § 108. The Department's Determination noted that it did not imply approval of the capital structure resulting from any financing, or the use of the funds raised by the financing, and that it did not imply approval of rate recovery of any costs which result from the Option Agreement.

III. FINDINGS

Pertinent to the petition and associated agreements, the Board finds the following:

1. On August 3, 2000, GMP and KeyBank agreed to the primary terms and conditions of an RCA.⁵ Under the terms of the RCA, GMP will deposit not less than \$15,150,000 in a certificate of deposit ("the CD") at KeyBank and pledge the CD to secure a \$15,000,000 credit facility. All borrowings under the RCA are repayable within 364 days of the closing of the RCA. Brock pf. at 2.

2. On August 2, 2000, GMP and EE executed a Memorandum of Understanding ("MOU") containing the principal terms and conditions of an Option Agreement. The

4. Letter of 8/22/00 from James Volz to Susan M. Hudson.

5. A "letter of intent" prepared by KeyBank and signed by Ms. Brock was filed with the petition; a copy of an executed agreement was not filed. GMP's petition stated it would file a copy of the Revolving Credit Agreement as soon as it is executed.

consummation of the transaction contemplated in the MOU is subject to the execution and delivery of definitive transaction documents and approval by the GMP Board of Directors. Exhibit B to petition.

3. The MOU contemplates that, upon execution of the Option Agreement, EE shall immediately make an option payment of \$15 million ("the Option Payment") to GMP in exchange for an option, exercisable within the first year of the Option Agreement, to purchase energy from GMP for up to 15 years commencing in or about August 2001. *Id.*; Brock pf. at 3.

4. Under the terms of the MOU, GMP will deposit the Option Payment in the CD at KeyBank to secure the Credit Facility. Brock pf. at 3; Exhibit B at ¶¶ 2-3.

5. In addition, the RCA and Option Agreement contemplate that GMP will pledge its corporate property as collateral for the Credit Facility.⁶ Brock pf. at 3.

6. As its principal source of working capital, GMP currently relies on a \$15 million revolving credit facility provided pursuant to an agreement with Fleet Bank. Brock pf. at 4; Docket 6015, Order of 8/10/2000.

7. The book value of GMP's assets is approximately \$300 million.⁷ Twenty percent of that amount is approximately \$60 million. GMP Annual Report to Shareholders, 1999, page 24.

8. The portion of GMP's long-term debt payable in calendar years 2000 and 2001 are, \$6.7 million and \$9.7 million, respectively. In addition, relatively small sinking fund payments and purchase obligations exist with respect to GMP's preferred stock. GMP Annual Report to Shareholders, 1999.

9. The combination of the GMP's existing \$15 million revolving credit facility with Fleet Bank, the current portion of GMP's debt payments, and the proposed \$15 million credit facility with KeyBank may require GMP to make debt payments of approximately \$40 million during the next year.⁸ Findings 2, 5, 7, above.

10. GMP's current debt obligations, including both the Fleet Bank and KeyBank \$15

6. The letter of intent between KeyBank and GMP indicates that the CD would serve as collateral to secure the Credit Facility. A pledge of other corporate property is not stated among the primary terms and conditions. See Exhibit B to petition, page 2.

7. "Total Assets" as of 12/31/99 are reported to be \$299.751 million. GMP Annual Report to Shareholders for 1999.

8. The Fourth Amended Agreement runs from June 21, 2000, to June 20, 2001, while the Annual Report discloses required payments only on a calendar year basis.

million credit facilities, equate to approximately 13% of assets. Findings 6, 8, above.

11. Paragraph 4 of the MOU, which sets forth the principal terms and conditions of the MOU, states:

"EE shall give GMP not less than 60 days' notice of its intention to . . . cancel EE's option and require GMP to return the [Option Payment] plus interest . . . to EE on the Commencement Date".

Exhibit B.

12. The MOU was signed on August 2, 2000. It defines the Commencement Date as being an indeterminate day in the month of August 2001. Exhibit B.

IV. DISCUSSION AND CONCLUSIONS

Based on information contained in the petition, the accompanying documents, and other public information available to the Board and the parties, the combination of the Fleet Bank credit facility (a maximum of \$15 million), the proposed KeyBank credit facility (also a maximum of \$15 million) and the current portion of existing debt is less than 20% of the book value of the Company's assets. Furthermore, the indebtedness under the KeyBank credit facility is payable within one year. Accordingly, we conclude that the requirement to seek Board consent under §108 is not triggered by execution of the proposed KeyBank Credit Agreement.⁹ Nor, with respect to the Credit Agreement, do we deem it necessary to grant any other relief under 30 V.S.A. or the regulations of the Board.

Next, we consider whether the Option Agreement should be considered an "evidence of indebtedness", under the meaning intended in § 108, and if so, whether the Option Agreement, in combination with the Credit Agreement and other current debt obligations of GMP, require approval under § 108. The MOU describes the Option Agreement, but the Option Agreement, itself, has not been executed. Necessarily, then, our interpretation is based on the MOU. Paragraph 4 of the MOU contemplates that EE would have the right to cancel, on 60 days' notice, its option to purchase energy from GMP and demand GMP to return the Option Payment (plus interest) upon the "Commencement Date," *i.e.*, roughly one year from initiation.¹⁰ Under that scenario, the Option Payment would, in effect, convert to short-term debt. This aspect of the

9. For an analysis of the threshold for Board review of financings under 30 V.S.A. § 108, see Docket 6015, Order of 8/10/2000.

10. The specific day of the month in August 2001, which would be established as the Commencement Date, is left blank in the MOU. That date is intended, it appears, to be approximately one year after execution of the Option Agreement.

Option Agreement, *i.e.* the earliest possible date by which repayment would be required, would be important to determining whether the Option Agreement creates a current debt obligation for GMP. Whether or not such a conversion would require Board approval under § 108 would depend on whether the \$15 million repayment, in combination with other current obligations (discussed above) exceeded 20% of GMP's assets at the time. At this juncture, if one accounts for the Option Payment as a current obligation, the combination of the existing Fleet line of credit (\$15 million), the KeyBank line of credit now proposed (also \$15 million), repayment of the EE Option Payment (also \$15 million), and other current obligations (which we estimate to be on the order of \$5 million) amount to approximately \$50 million, which is somewhat less than the 20% of GMP's approximately \$300 million assets.¹¹ To the extent that the Option Payment can be considered a contingent liability, we find that the requirement to seek Board consent under § 108 is not triggered by the execution of the GMP/EE MOU.¹²

We do, however, find need to comment on the MOU that describes a proposed Energy Purchase Option Agreement. Board General Order No. 45 ("G.O. 45"), section 1(f), requires an electric utility to give the Board notice in writing, at least ninety days *in advance*, of the execution of any contract for the sale of capacity in, or energy from, any electrical generation or transmission facility located within the State of Vermont.¹³ Section 4 of G.O. 45 states that, for the purposes of that General Order, a letter of intent signed by, or on behalf of, two or more parties is deemed to be a contractual commitment. Section 3 of G.O. 45 provides that the Board will consider a written request for a reduction in the 90-day period of advance notice.

The MOU between GMP and EE expresses the parties' intent to enter into an Option Agreement, the principal terms and conditions of which are defined in the MOU. It appears that GMP did not provide ninety days advance notice of entering the letter of intent, as seems appropriate under G.O. 45, Section 4. GMP has not requested a reduction in the 90-day period of advance notice, as it might have done under Section 3 of G.O. 45. However, in light of paragraph 11 of the MOU, which acknowledges that the "commencement of the Option

11. If this estimate is in material error, we hereby order GMP to file more accurate information by September 8, 2000.

12. Similarly, the MOU characterizes the Option Payment, in the event that the Option Agreement commences, as prepayment by EE to GMP for future deliveries of energy. See Exhibit B, paragraph 7. We find that GMP's commitment to deliver energy is not a pledge of corporate property, per se, such as would require consent of the Board. However, whether or not GMP's potential obligation to deliver pre-paid energy should be viewed as an "evidence of indebtedness" may be another matter, but one that would be premature to now consider.

13. PSB General Order No. 45.

Agreement and the Agreement shall be subject to EE's and GMP's receipt of all requisite regulatory and third party approvals," the Board concludes that an investigation of the MOU is not now necessary. We remind GMP of its obligation under G.O. 45, to notify the Board prior to execution of the power supply agreement(s) with EE contemplated in Exhibit B to the Petition.¹⁴

VI. ORDER

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

1. Board approval of the proposed Revolving Credit Agreement between Green Mountain Power Corporation and KeyBank National Association, as described in the petition, is not required under 30 V.S.A. § 108.
2. GMP shall, pursuant to its obligation under Board General Order No. 45, notify the Board of its intent to execute the Energy Purchase Option Agreement.
3. This docket is closed.

DATED at Montpelier, Vermont, this 31st day of August, 2000.

s/Michael H. Dworkin	_____)	
))	PUBLIC SERVICE
s/David C. Coen	_____)	
))	BOARD
))	OF VERMONT
	_____)	

OFFICE OF THE CLERK

FILED: August 31, 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 mail) 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.

14. The MOU is not entirely clear whether GMP and EE intend to enter, separately, an Option Agreement and a power supply agreement, or instead to enter a single agreement that incorporates both the option to purchase power and the power supply agreement itself.

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.