

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 4905

Petition of Vermont Electric Power)
Company, Inc., for a Certificate)
of Public Good, pursuant to 30)
V.S.A. §248, for authority to)
construct a back-to-back direct)
current converter terminal in)
Highgate, Vermont, and an)
associated transmission corridor in)
Franklin and Highgate, Vermont)

Order Entered: 6/19/84

I. INTRODUCTION

On June 8, 1984, the Vermont Independent Power Producers' Association (VIPPA) filed a "Supplementary Motion to Recuse," asking that the Board "disqualify and remove itself from hearing and passing judgment in this matter. The motion alleges that the Board is prejudiced with respect to the case. It cites our statement that this project "must be ready for commercial operation in late 1985 in order for Vermont utilities to be in a position to take full advantage of it." It is claimed that this statement contains implicit conclusions regarding future demand for service and economic factors, see 30 V.S.A. §248(a), and it is further asserted that "It is apparent that the Board's conclusions in this matter are based on material, conversation or other information outside of these proceedings." For the reasons set forth below, we deny the motion.

II. DISCUSSION

A.

The statement in question does not in any respect indicate an opinion as to the merits of the petition here under consideration. We have, in fact, reached no "conclusions in this matter." The statement was made, to begin with, in a separate, albeit it related, proceeding under General Order No. 45. General Order No. 45 provides that utilities must submit to the Board certain kinds of contracts prior to their execution. General Order No. 45 does not require us to pass on the merits of contracts thus submitted and, in practice, we rarely do so. This General Order No. 45 proceeding was no exception in this regard. The only action we took was to reduce the forty-five notice period ordinarily required, thus permitting the Petitioners to execute on an expedited basis certain contracts for and related to the construction of the project. That action carried no implication whatever that subsequent approvals required for completion of the project would be granted. Indeed, our order so stated. It expressly provides that it "does not constitute nor imply the waiving or granting of any other approval required from the Board for the proposed project, including siting or financing approval."

The statement which VIPPA claims to show prejudice on our part was intended, of course, to show the reason why we

were willing to assent to a shortening of the notice period. It merely gave recognition to several events of considerable importance for Vermont's future power supply: first, that PASNY contracts (under which Vermont receives its least expensive base load power) terminate in 1985 and are unlikely to be renewed with respect to most of the power that is presently supplied; and second, that Vermont Yankee (which supplies what is for companies that serve the vast majority of Vermont's ratepayers the second least expensive power) will be shut down for extensive and extended repairs beginning in September, 1985. What we intended by the statement, and what we think is its plain meaning -- when read in context -- is merely that if the project is built, it must be completed by late 1984 in order for Vermont utilities to take maximum advantage of it. It is manifestly not an assertion that the project ought to be built.

The assumptions underlying the statement (i.e., those relating to PASNY contracts and to Vermont Yankee) were valid when the statement was made. So far as we are aware, they remain true today, but those are not conclusions which are binding on the parties in this case. Any party wishing to present evidence to show that they are incorrect now is certainly free to do so in this proceeding. We would be the last to contend that facts and assertions regarding electric power supply are fixed or static. In short, we continue to maintain an open mind as to the merits of this proceeding, and

we cannot agree that what we said in the General Order No. 45 proceeding even remotely suggests otherwise.

B.

There is another reason why we think the motion must be denied. If the Board were to recuse itself, there would be nobody to pass judgment upon the project. It is uncertain what would follow from recusal -- that is, whether the project could proceed because there was nobody to exercise jurisdiction under Section 248, or whether it could not proceed for lack of a certificate of public good. In either case, the result would be anomalous, to say the least, given the policy of Vermont, embodied in Section 248, to have such projects reviewed by a public body and to authorize their completion if they are in the public interest and to prohibit them if they are not.

Given that public policy, we think that the Board (as opposed to a single member thereof) should not recuse itself merely because it had displayed bias in the past, even if that had been the case. Rather, at a minimum, it would have to be shown that the Board was incapable of impartial consideration throughout the course of the proceedings. How such a showing might be made is quite problematical, but nothing raised by the instant motion would justify such a conclusion.

C.

VIPPA's motion requests that if it is denied, we certify an interlocutory appeal under 30 V.S.A. §12 and Vermont Rules of Appellate Procedure, Rule 5(b). Permission for such an appeal may be granted only if the ruling sought to be appealed "involves a controlling question of law as to which there is substantial ground for difference of opinion and

. . . immediate appeal may materially advance the termination of the litigation." Whether or not the other two criteria of the rule may be satisfied, we are of the opinion that there is no substantial ground for difference of opinion as to the issue raised by VIPPA's Supplemental Motion to Recuse.

III. ORDER

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

1. The Supplemental Motion to Recuse filed on June y, 1984, by the Vermont Independent Power Producers' Association is denied; and

2. The Motion for Interlocutory Appeal of the foregoing denial is also denied.

Dated at Montpelier, Vermont, this 19th day of
June, 1984.

s/V. Louise McCarren

s/Rosalyn L. Hunneman

s/William E. Markcrow

PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

FILED: June 19, 1984

ATTEST: s/Susan M. Hudson
Clerk of the Board