

July 3, 2023

Vermont Public Utility Commission
Case No. 23-1870-PET

Dear Commissioners,

Thank you for the opportunity to comment on Case No. 223-1870-PET, as requested by the Commission's Procedural Order of June 9, 2023.

Some time ago, I participated in the Public Service Board's Docket #5611, an investigation into environmental externalities. There is one memory that I would like to share with you:

The investigation lasted many months and involve utilities, environmental groups, and of course, the Department of Public Service (PSD, then DPS). Beginning in September 1992, Docket #5611 was a series of workshops on the general problem of environmental externalities and included greenhouse gas regulation. It was a thorough investigation using the best available information from the best universities and think tanks. I've lost track of the number of day-long meetings we had. It was a lot.

We met at the NECI conference room, and as I recall, we paid a few dollars each time for a competent meal that fueled the discussions that followed morning presentations from professors and think tank fellows.

Utilities sent their technical staff of planners and engineers. Other parties contributed policy advisors.

A memorable moment came toward the end of the investigation phase, after months of reviewing and discussing all kinds of issues related to electricity, toxic and greenhouse gas emissions, and relationships to other sectors, such as transportation and buildings.

Utility lawyers had shown up because the objective of the Docket was a negotiated rule. As I recall, the lawyers sat down and listened to a summary of the months of information gathering. Then they asked something to the effect of, "Well, this is all very good, but it's not our business to solve environmental problems, so why should we do it?" The hearing officer, Michael Dworkin – his chair creaked as he turned to look at the lawyers – paused before saying, "Prudence." And then he elaborated with an economy of words, "Prudent anticipation of future environmental regulation."

I know this was a memorable turn because I wasn't the only person to write about it (in a paper for a class taught by Louise McCarren). Jonathan Raab, the meeting facilitator, wrote an article on prudent anticipation in *Maine Policy Review*.

Well, “prudence” seemed to silence the utility representatives that day, and not long after — in utility years — their utilities ran into difficulty with an imprudent take-or-pay Vermont Joint Owners (VJO) contract with Hydro-Québec (H-Q). Bankruptcies and mergers swept through the industry, felling Citizens and even the mighty Central Vermont Public Service (CVPS). Green Mountain Power (GMP) lost its fabulous headquarters – a sad reminder of the importance of prudence.

As the proceeding came to a conclusion, the Vermont Environmental Externalities Rule, as drafted by GMP’s Karen O’Neill, contained a specific acknowledgment that biomass plants, typified by McNeil and Ryegate, are not qualifying renewable resources.

“Qualified renewable resources will exclude non-sustainable (open-loop) yield biomass, conventionally fired biomass, and hydroelectricity.” — Vermont Environmental Externalities Rule, [Draft 7](#), May 5, 1993, §X.113, p. 15.

I tell this story because the perpetual entities involved in Docket #5611 appear to have forgotten about prudence and forgotten that Vermont once properly considered biomass to be excluded from qualifying renewable resources. I am just a human being with a limited existence, but BED, GMP, VGS, PSD, VEIC/EVT, and PUC are perpetual entities. Their corporate memory ought to be considerably better than mine.

A number of questions should be answered in the process of considering this case, 23-1807-PET:

Q1: Have the perpetual entities adequately informed regulators and public bodies about the abandoned and proposed thermal projects related to McNeil?

Q2: When and how did the perpetual entities forget about prudence and prudent anticipation?

Q3: When and how did the perpetual entities forget about formal solicitations?

Q4: When and how did the perpetual entities forget about their responsibility to do broad risk assessments?

Q5: When and how did the perpetual entities forget that open-loop biomass is not a qualifying renewable resource?

Q6: When and how did the perpetual entities forget that conventionally-fired plants are not a qualifying renewable resource?

Q7: When and how did the perpetual entities forget that formal solicitations and broad risk assessments are fundamental to integrated resource planning?

Q8: Has the PUC taken notice of, and adequately considered, filings to and proceedings before the Green Mountain Care Board and the district commissions of the Natural Resources Board?

Q9: Is BED and VGS's use of shell companies and complicated contract arrangements in the public interest?

Q10: Has the PSD adequately represented the public's interest, and if that advocacy is found lacking, what should be done to compensate?

Q11: In the event that expenditures in support of either the abandoned high-pressure hot water project or the proposed steam transmission line are determined to have been imprudent, who should bear the cost, Burlington ratepayers and taxpayers, or management and equity holders of the perpetual entities?

All have a duty or mission to act in the public interest.

Regulated utilities, including energy efficiency utilities, must make prudent decisions that prudently anticipate future environmental regulation. Government has the responsibility to ensure that happens and hold the utilities accountable when it doesn't.

These are long-horizon decisions. Just because utilities can get away with doing things one way today, doesn't mean they are going to be good decisions for the future. Combustion, regardless of purpose, is bad for humans and the planet. It's a dead-end with only stranded costs littering the cul-de-sac. The perpetual entities should not go there.

The questions presented above should be answered prior to allowing BED to expend any funds in support of the so-called "DES" proposal, which is in reality a steam transmission line connecting two regulated entities. Commissioners, please regulate them.

Thank you for considering these comments.

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