

99 FERC ¶ 61, 111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Barton Village, Inc.
Village of Enosburg Falls Water & Light
Department,
Village of Orleans,
Village of Swanton, Vermont

Docket Nos. EL92-33-004,
EL92-33-005, EL92-33-006,
and EL92-33-007

v.

Citizens Utilities Company

ORDER ACCEPTING PROPOSED RATES FOR FILING WITHOUT
SUSPENSION OR HEARING AND DISMISSING COMPLAINT

(Issued April 26, 2002)

This proceeding involves a longstanding dispute between a group of municipal electric companies in Vermont (Villages)¹ and their public utility power and transmission supplier, Citizens Utilities Company (Citizens). In a series of prior orders, we held that certain agreements governing transactions between the parties were jurisdictional and thus should have been filed with the Commission by Citizens, but denied refunds to the Villages.² While these orders were generally affirmed on appeal, the court remanded the issue of Citizens' pre-1983 power agreements, which we had not addressed.³ Therefore,

¹Barton Village, Inc., the Village of Enosburg Falls Water and Light Department (Enosburg) the Village of Orleans, and the Village of Swanton, Vermont (Swanton).

²Barton Village, Inc., *et al.* v. Citizens Utilities Company, 63 FERC ¶ 61,329 (1993), *reh'g denied*, 68 FERC ¶ 61,005 (1994), *reh'g denied*, 73 FERC ¶ 61,303 (1995).

³Barton Village, Inc. v. FERC, 106 F.3d 442 (D.C. Cir. 1996) (unpublished
(continued...))

on April 5, 1999, the Commission issued an order directing Citizens to file any heretofore unfiled pre-1983 agreements.⁴

In this order, the Commission accepts for filing Citizens' rates for the period in question without suspension or hearing, and grants waiver of the prior notice requirement, as requested by Citizens. Thus, no refunds are required, and the remaining portion of the Villages' complaint is dismissed. The public is served by our review of Citizens' rates, and the termination of this proceeding.

Background

In 1991, the Commission established an amnesty window for all unfiled rates, charges and related agreements for ongoing services, and stated that agreements for ongoing services filed after the amnesty period would be subject to a refund obligation.⁵ In a subsequent order, the Commission determined that it would not be in the public interest to require filing of agreements under which jurisdictional service terminated prior to August 2, 1991, unless there was a pending complaint challenging a utility's failure to file such agreements.⁶

In their original complaint, the Villages alleged that Citizens failed to file agreements relating to services provided over Citizens' transmission system in northern Vermont until 1991. As the court indicated, the Commission's orders did not specifically address Citizens' pre-1983 agreements, which were subject to the "pending complaint" exception in Prior Notice. Therefore, in the Order on Remand, the Commission directed Citizens "to file any heretofore unfiled pre-1983 agreements, whether expired or not, that

³(...continued)
opinion).

⁴Barton Village, Inc., et al. v. Citizens Utilities Company, 87 FERC ¶ 61,031 (1999) (Order on Remand).

⁵Central Maine Power Company, 56 FERC ¶ 61,200, reh'g denied, 57 FERC ¶ 61,083 (1991) (Central Maine).

⁶Prior Notice and Filing Requirement Under Part II of the Federal Power Act, 62 FERC ¶ 61,139, order on reh'g, 65 FERC ¶ 61,081 (1993) (Prior Notice).

may be subject to the Villages' complaint."⁷ We went on to explain that once the agreements were filed and noticed, the opposing parties would have the opportunity to argue that the rates, terms, and conditions were not just and reasonable. However, the Commission observed, "because the agreements at issue are at least seventeen years old, we strongly encourage the parties to open a dialogue with an eye to settling their disputes."⁸

In spite of this admonition, relations between the parties deteriorated. On March 30, 1999, apparently in anticipation of the Order on Remand, the Villages filed a unilateral offer of settlement, seeking ten million dollars (plus interest) to satisfy their surviving claim. Not surprisingly, Citizens filed comments vehemently opposing the proposed terms.

On May 5, 1999, Citizens made its first attempt at compliance with the Order on Remand, filing various agreements from the period 1963-1982. Citizens acknowledged that the filing was incomplete, but asserted that it was still attempting to figure out the power sales agreements existing during this period, and prepare cost support.⁹ Citizens nonetheless asked the Commission to accept these filings, and to waive the prior notice requirement. Citizens also requested an extension of time to make further submissions, which was granted.

Notice of Citizens' filing was published in the Federal Register, 64 Fed. Reg. 28,461 (1999), with protests due on or before June 4, 1999. Both the Villages and the Vermont Department of Public Service (VDPS) filed timely protests, arguing that Citizens' filing was deficient.

On May 18, 1999, Citizens filed a letter with the Commission explaining that it had located certain materials which it believed contained information concerning the system power sales service to the Vermont Villages from 1963-1982. This filing was also noticed in the Federal Register, 64 Fed. Reg. 29,860 (1999), with protests due by June 17, 1999. Additionally, on May 26, 1999, Citizens filed a motion to dismiss the

⁷87 FERC at 61,107.

⁸Id. at 61,108.

⁹As part of the compliance filing, Citizens submitted the affidavit (the first of several) of Kevin W. Perry, Manager of System Operations at the Vermont Electric Division of Citizens, describing this effort.

Villages' complaint on the grounds, inter alia, that it was barred by the doctrine of laches and that the rates had been established as just and reasonable by the Vermont Public Service Board. Alternatively, Citizens argued that the Villages should bear the burdens of coming forward and of persuasion on the issue of whether the rates were just and reasonable.

The Villages and VDPS both protested Citizens' May 18 filing as insufficient to form a basis on which to review Citizens' rates, and opposed waiver of notice. The Villages and VDPS also both opposed Citizens' motion.¹⁰

On September 2, 1999, Citizens supplemented its prior filing with a submission purporting to fully comply with the directive of the April 5 Order, i.e., filing any previously unfiled pre-1983 agreements. The submission consisted of four volumes of billing information for system power sales to the Villages from 1963-82, and cost of service justification for the applicable rates.¹¹ Citizens stated that it was unable to supply backup workpapers for incremental system power supply costs for the period, but that it intended to file such information as soon as it could be compiled.¹²

Citizens explains in the September 2 filing that its exhibits, supporting work papers and other documentation relating to the cost support filed by Citizens were substantially derived from the annual reports of Citizens and its subsidiary Vermont Electric Division for the period in question.¹³ Citizens further maintains that the power supply costs include the energy, capacity and transmission costs attributable to each Village's use of Citizens' system power, and that the revenues billed are taken from the monthly billing information provided, which in most cases reflects the invoices from the actual sales. Citizens goes on to observe that it has developed the cost of service for the Villages based on the application of a levelized fixed charge applied to the gross plant

¹⁰On July 15, 1999, Citizens moved to supplement the record with another affidavit of Mr. Perry, to bolster certain aspects of its motion to dismiss. This motion was opposed by the Villages and VDPS.

¹¹Transactions from the pre-1963 period were apparently covered by agreements already on file with the Federal Power Commission, our predecessor.

¹²Citizens' filing included the Fourth Affidavit of Kevin W. Perry, which explained that it took over 2000 person hours to compile the submitted documents.

¹³Citizens' analysis is contained in the affidavit of William R. Hopkins, submitted with the September 2 filing.

balances at the end of each year, and that this rate design includes accounting for operating and maintenance expenses, taxes other than income, related administrative and general expense, depreciation, a rate of return based on its cost of capital, and federal income taxes. Citizens indicates that its rate of return for the period was based on state rate case decisions in 1964 and 1971.¹⁴ Citizens concludes that it has under-recovered its cost of service from the Villages over the disputed period, which is demonstrated by annual cost analyses for the period 1963 through 1982.

Notice of Citizens' September 2 filing was published in the Federal Register, 64 Fed. Reg. 47,790 (1999), with protests due on or before October 4, 1999. On September 23, 1999, the Villages filed a motion to stay the deadline for protests to Citizens' filing, pending the Commission's decision on the Villages' offer of settlement and Citizens' motion to dismiss. The Villages went on to complain that it was burdensome to respond to piecemeal compliance filing. Additionally, they alleged that Citizens' filing incorrectly refers "interchangeably" to "interchange sales" and "system power sales."¹⁵ According to the Villages, the rates for Citizens' interchange sales were already on file with the Commission, and Citizens "should document the extent to which Citizens' charges exceeded the filed rates that have been in effect since March 7, 1964."¹⁶

On October 1, 1999, Citizens made its final supplemental compliance filing, containing two volumes of information. Citizens described this information as including "copies of the available documentation for the 1963 through 1975 period" as well as "backup data in the form of invoices for incremental power supplies and transmission service."¹⁷ This compliance filing was noticed in the Federal Register, 64 Fed. Reg. 55,469 (1999), with protests due on or before October 21, 1999.

Protests were filed by the Villages and VDPS concerning the September and October compliance filings. The Villages contend that Citizens' compliance filing "dump[ed] hundreds upon hundreds of raw pages of files into the record," but

¹⁴Citizens states that the return on equity (ROE) for the years 1963 to 1970 was 8.20%, and that the ROE for the years 1970 through 1982 was 10.50%, which were lower than the state-approved ROE for other major utilities in the state.

¹⁵Motion for Stay at 5.

¹⁶Id. at 8. VDPS filed a pleading supporting the motion for stay, while Citizens opposed it.

¹⁷Fifth Affidavit of Kevin W. Perry at 2.

nonetheless "remains incomplete."¹⁸ Additionally, the Villages reiterate their argument that Citizens had charged the Villages rates substantially in excess of the rates on file for interchange sales.¹⁹ The Villages further assert that while Citizens' invoices included charges for capacity deficiency service, it had failed to provide "agreements to back up the invoices," or information as to the terms and conditions of the service.²⁰

VDPS likewise protests that Citizens' filing was "admittedly incomplete" and did not provide "adequate evidence" to support a finding that the rates are just and reasonable.²¹ VDPS specifically contends that elements of the allocated cost of service study, "such as the use of 5% loss factor, had not been supported."²² VDPS also complains that it should not have to use "limited resources to analyze the now six volumes of (admittedly incomplete) data submitted by Citizens."²³

Discussion

In the Order on Remand, we clearly stated that Citizens was to file any heretofore unfiled pre-1983 agreements, whether expired or not. Citizens' motion to dismiss

¹⁸Villages' Protest at 3.

¹⁹Id.

²⁰Id. at 4. The Villages also asserted that the Vermont Public Service Board (Vermont Board) had ruled that Citizens' books and accounts are unreliable for ratemaking purposes, and thus provided no basis for the Commission to evaluate Citizens' charges. Our evaluation of Citizens' submissions is independent of and unaffected by any such findings by the Vermont Board.

²¹VDPS Protest at 2.

²²Id.

²³Id. On December 26, 2000, the Vermont Villages filed a motion to lodge a ruling by the Supreme Court of the State of Vermont affirming various opinions of the Vermont Public Service Board about which the parties had argued, as well as an audit report that had been filed by Citizens with that Board. The motion was opposed as irrelevant by Citizens. The Commission agrees that the proffered material is irrelevant, and we deny the motion.

directly contradicts this mandate and is thus denied.²⁴ Additionally, we appreciate the frustration of the Villages and the VDPS at the length of time it took Citizens to compile and submit its results.

On the other hand, we acknowledge that Citizens did have to locate and assess material of ancient vintage. More importantly, the Commission believes that, contrary to the protestors' assertions, the material submitted is sufficient for conducting a rate review. Moreover, all of the material was properly filed and noticed, giving the opposing parties ample opportunity to respond. We therefore deny the Villages' motion to stay as unnecessary.

On the merits, we conclude that Citizens' utilization of the cost data from the annual reports to calculate levelized rates for transmission, and a cost of service utilizing Citizens' incremental energy cost data and administrative and general expenses to support the overall power supply charges, provide legitimate methods for evaluating these old and long-since expired cost of service rates. Our review of the material at issue also leads us to conclude that Citizens did not collect excess revenues and that the rates appear to be cost-justified. Finally, we reject the Villages' allegations concerning interchange rates already on file, which are beyond the scope of its complaint.

In view of these findings, acceptance of the rates and waiver of the prior notice requirement is appropriate under the circumstances, and refunds are inappropriate. The Commission will thus dismiss the Villages' complaint.

The Commission orders:

(A) Citizens' rates submitted in these dockets are hereby accepted for filing, and waiver of the prior notice requirement is hereby granted, as discussed in the body of this order.

(B) Vermont Villages' complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

²⁴We also reject as unfounded Citizens' argument that the routine rules with respect to burden of proof should be altered in this case.

Linwood A. Watson, Jr.,
Deputy Secretary.