

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-361

JANUARY TERM, 2003

	}	APPEALED FROM:
	}	
Brent Miller	}	Public Service Board
	}	
v.	}	
	}	DOCKET NO. 6579
Village of Morrisville Water and	}	
Light Department	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff Brent Miller appeals from the Vermont Public Service Board' s June 27, 2002 order requiring defendant, Village of Morrisville Water and Light Department, to remove electric utility equipment from plaintiff' s property by June 30, 2003. Plaintiff argues that the Board exceeded its statutory authority by " staying" its final order for one year. We affirm.

Plaintiff purchased the property in question in 1982, subject to a fifty-foot-wide " right-of-way" reserved on behalf of the sellers. The sellers subsequently conveyed to defendant the right to enter and place an " electric transmission or distribution line or system" on plaintiff' s property. Apparently relying on this conveyance, defendant installed electric poles and lines on plaintiff' s property in 1992, both within and outside the sellers' reserved right-of-way. In October 2001, plaintiff asked the Vermont Public Service Board to order defendant to remove its equipment from his property. The Board issued an order in June 2002 directing defendant to comply with plaintiff' s request, but stayed defendant' s obligation " for a period of time not to extend beyond June 30, 2003, pending resolution of this dispute by agreement of the parties, or otherwise, or initiation of eminent domain proceedings." Plaintiff then filed a motion for reconsideration, arguing in part that the Board lacked the authority to grant a year-long stay of its order. The Board rejected plaintiff' s argument, explaining that its order did not operate as a stay, but rather obligated defendant to act by a specific date, unless such action became unnecessary. Plaintiff then brought this appeal.

The decisions of the Vermont Public Service Board " enjoy a strong presumption of validity" and are subject to a deferential standard of review in this Court. In re Green Mountain Power Corp., 162 Vt. 378, 380 (1994). This Court will " accept the Board' s findings and conclusions unless the appealing party demonstrates that they are clearly erroneous, and, in reviewing those findings and conclusions, we defer to the Board' s particular expertise and informed judgment." In re Citizens Utilities Co., 171 Vt. 447, 450 (2000). Here, the Board acted reasonably in setting a one-year compliance deadline. In reaching its decision, the Board took into consideration defendant' s assertion that it could use its eminent domain powers to acquire a utility easement in the property, as well as defendant' s concerns about interrupting service to a year-round customer who relied on the line to receive service. The Board also noted that plaintiff, having waited eight years before approaching defendant about this matter, had not given any indication at the hearing that the equipment must be immediately removed, nor presented any evidence to support such an assertion. The

Board reasonably concluded that the public interest would not be best served " if the Equipment is removed only to be reinstalled, or if a customer' s electric service is unnecessarily interrupted."

The Public Service Board has jurisdiction over " lines" of electric utilities, 30 V.S.A. § 203, and may " render judgment and make orders and decrees . . . [t]o restrain any company . . . from violations of law." Id. § 209(a)(6); see also id. § 9. It must hear complaints with respect to " any claimed unlawful act" of a utility. Id. § 208; North v. City of Burlington Elec. Light Dep' t, 125 Vt. 240, 242 (1965). The Board granted relief akin to an injunction and has wide discretion, similar to a court, to mold the decree to the circumstances of the case. See Richardson v. City of Rutland, 164 Vt. 422, 427 (1995). Given the delay in enforcement and the likely unnecessary expense to the utility and harm to an innocent third party, we conclude that the Board acted within its discretion.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice