

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6140

Investigation into the Reform of Vermont's)
Electric Power Supply)

CONSOLIDATED COMMENTS AND
PROCEDURAL RECOMMENDATION OF
ASSOCIATED INDUSTRIES OF VERMONT,
CENTRAL VERMONT PUBLIC SERVICE CORPORATION,
CITIZENS UTILITIES COMPANY, AND
GREEN MOUNTAIN POWER CORPORATION

I. INTRODUCTION

At the Technical Conference convened by the Public Service Board (the "Board" or "PSB") on Friday, December 18, 1998, the Board requested that participants submit comments regarding the Report of the Working Group on Vermont's Electricity Future (the "Working Group's Plan" or the "Plan") and recommendations as to the sequence and activities that should be undertaken in this investigation. This filing sets forth the consolidated comments and procedural recommendations of Associated Industries of Vermont ("AIV"), Central Vermont Public Service Corporation ("Central Vermont" or "CVPS"), Citizens Utilities Company ("Citizens"), and Green Mountain Power Corporation ("Green Mountain" or "GMP") (together the "Parties ") and supplements and amends their prior filings in this proceeding. This filing also

asks that the Board rescind its Technical Conference Order dated January 5, 1999 in light of the procedural recommendations set forth herein.

II. SUMMARY

This investigation was opened by the Board “to create a regulatory environment and a procedural framework that will call forth, for disciplined review, the best proposals for reducing current and future power costs in Vermont.” Docket No. 6140, Order of 9/15/98 at 3. In its Order opening this investigation, the Board expressed its hope that as a result of these efforts, Vermont would be able to define an acceptable course for the reform of existing power supplies and create the framework that would enable utilities and other interested parties to pursue the plans and to present them for regulatory approval in an open, public process. Id.

Concurrent with the Board’s efforts, Governor Dean convened the Working Group on Vermont’s Electricity Future (the “Working Group”) and directed it to “determine the best structure for the electric industry in Vermont so as to achieve the lowest current and long-term electric costs for all classes of Vermont's electric consumers.” Executive Order creating the Working Group dated 7/22/98 at 1. As part of its charge, the Working Group was directed to provide advice “on how to accomplish this purpose and achieve the goals identified in the Vermont State Energy Plan: safety, adequacy, reliability, security, sustainability, environmental soundness, efficiency, affordability, and economic vitality.” Id.

On Friday December 18, 1998, the Working Group presented its Plan to Governor Howard Dean, M.D.. On that same day, the Plan was presented to the Board as a part of this investigation. Among its recommendations and conclusions, the Working Group’s Plan endorses

a Comprehensive Restructuring Settlement Framework that calls for a market-based restructuring of existing long-term power supply arrangements, customer choice in the selection and provision of electric power suppliers, the outsourcing of demand side management (“DSM”) efforts and consideration of the consolidation of existing utilities to improve the efficiency with which distribution services are provided to Vermont consumers.

The adoption of the recent rate settlements for CVPS and GMP provides what could be as short as a nine to twelve month window of opportunity for Vermont to take decisive action to move forward to implement the Working Group’s strategies. Given the urgency of this situation, Vermont must take prompt advantage of this window and act quickly to take the actions that are necessary to reorganize the incumbent industry into the competitive, cost-effective structure contemplated by the Working Group’s Plan.

As a first step, the Parties propose that the Board alter its Order re: Technical Conferences, dated December 11, 1998 and rescind its Second Order Re: Technical Conferences, dated January 5, 1998. Those Orders contemplate the commencement of a series of technical workshops to consider a variety of policy options. When the Parties proposed in certain respects that the Board embark on such an approach, we believed that the Board would act concurrently with the fact finding endeavors of the Working Group. For a variety of good reasons, including their obligations with respect to the CVPS and GMP rate investigations, the Board was unable to maintain that schedule. Now that the Working Group’s Plan is before the Board, the Parties recommend that the Board give priority to considering the Plan’s principal recommendations, and approve the procedures necessary for their implementation.

In this way, the Board can provide all concerned parties the opportunity to comment on the strategy outlined by the Working Group's Plan and then decide whether the direction called for in the Plan is consistent with the best interests of Vermont, its electricity consumers and the utility industry. Such an initial early determination will signal to Vermont's purchase power providers and others that policy has indeed coalesced and that renegotiations with the Vermont utilities to rearrange the obligations are timely and in all parties' best interests. We are convinced that without such an indication by the Board, power providers are likely to continue their posture of non-action that they have displayed for the past 2 years. (See: Hydro-Quebec Letter of 12/18/98). We propose that the Board take all actions necessary to render this initial judgment by early February, 1999.

III. DISCUSSION

The Working Group's Plan recommends that Vermont move rapidly into a restructured competitive environment for the provision of electric service to stabilize and lower committed costs. Toward that end, the Working Group accepted a Comprehensive Restructuring Settlement Framework and incorporated it within its Report. The principal elements of the Plan are:

“a financial restructuring whereby the Hydro-Quebec and IPPs above market power contracts are bought down.

a process whereby utilities consolidate within the context of a global regulatory settlement and financial restructuring, and

a global regulatory settlement whereby new retail rates, the consolidation of the Vermont utilities and financial restructuring of Vermont's utilities are approved by the State.”

Report of the Working Group dated 12/18/98 (the “Report”) at 14.

To accomplish the financial restructuring as contemplated, substantial capital (including material amounts of debt capital) will have to be raised and this can only be accomplished if the capital markets believe that Vermont will support the effort. As the Working Group notes:

“[e]ach process is dependent on and must be performed on parallel paths with each of the other components. . . . The Working Group believes that consolidation is advantageous only in the context of the entire restructuring plan. The Public Service Board will ultimately have to determine if consolidation of Vermont’s utilities without restructuring could or should occur without a definitive regulatory settlement and financial restructuring.”

Id. On the basis of its efforts, the Working Group concludes that its Plan is both feasible and a practical alternative to utility bankruptcies. Id.

In order to move forward with its Plan, the Working Group recommends that:

“within the context of the current Public Service Board Docket 6140, the Board review the report of this Working Group, the Comprehensive Regulatory Framework herein, and as elaborated on by the companies themselves, and set a prompt hearing to determine if the procedure is acceptable and, if so, to establish an immediate schedule for the creation of the dockets necessary to accomplish this proposal within one year to eighteen months.”

Report at 15. The dockets referred to by the Working Group are listed in the Procedural Outline that Central Vermont provided to the Board by letter dated December 22, 1998. The Procedural Outline describes the various dockets that will be necessary to implement the Working Group’s Plan as well as the statutes under which the Board is authorized to act on the various Plan terms and conditions. A proposed order that clarifies and adopts the Procedural Outline is attached as Exhibit I and made a part of these comments.

As indicated in the proposed order, a variety of issues must be determined in the move to reduce committed costs by restructuring Vermont’s electric utility industry. In these dockets, the Board will be asked to adjudicate all of the elements called for by the Working Group and settle

the existing accounts of the incumbent utility providers. All outstanding claims will be put to rest by the mitigation efforts contemplated in the Working Group's Plan, and the Board must also decide all other claims regarding current and future resource arrangements including claims concerning prudence, used and usefulness, DSM effectiveness, Docket No. 5330 Condition No. 8 compliance and other matters, if any, that must be resolved in order to restructure Vermont's electric industry. Stated simply, the books must be closed as they relate to past actions and the emerging entities must begin their new roles with the assurance that the rates approved in the dockets will remain in force in order to permit the new entities the reasonable opportunity to maintain financially viable businesses that provide essential transmission and distribution services to Vermont customers.

Many of the very same issues would be resolved in a bankruptcy proceeding, were CVPS and GMP to seek the protection of a federal Bankruptcy Court. But, in that federal forum Vermont regulators would have little or no opportunity to shape the outcome and less chance of successfully reducing committed power costs¹. In either case, the electric utilities that emerge from the restructuring process must: (i) be sufficiently financially viable to attract the debt and equity capital that they must issue to implement the financial restructuring; and (ii) have sufficient financial resources to provide reliable service to consumers.

Toward this end, the Parties request that the Board amend its process and begin to implement the Working Group's Plan. The Working Groups's efforts have been thorough and are a significant step in moving Vermont forward towards a restructured electric utility industry that will be designed by

1. Customer choice of electric providers in utility service territories is unlikely to be an issue that would be resolved in a bankruptcy proceeding, however.

Vermonters rather than a federal bankruptcy judge and creditors' and equity holders' committees. The Working Group's Plan is a practical and feasible plan that builds on the Board's own efforts and should result in a reduction of committed power costs that maximizes benefits for Vermont's consumers. If the Working Group's approach is acceptable to the Board, the Parties are prepared to act quickly to begin to implement it.

While the Board should proceed carefully, it should be mindful of the fact that the Working Group's Plan is modeled on designs articulated in the Board's Order in Docket No. 5854, as well as the experience of other neighboring jurisdictions that have already restructured their electric industry. Consequently, the Board should not need to engage in unduly long proceedings before it takes the first step, which involves an initial approval of the Working Group's Plan. By virtue of the fact that Vermont will be among the last of the jurisdictions in the Northeast to restructure its electric industry, the Board has the benefit of its neighbors' experience to guide it.

At the same time as the Board is considering implementation of the Working Group's Plan, Central Vermont, Citizens and Green Mountain will be working to develop the petitions and other materials necessary to request that the Board open the dockets called for in the Procedural Outline. Given the significance of these efforts, and their inter-connectivity, we believe that it is important to begin these companion proceedings as quickly as is possible. As the Working Group acknowledged, Vermont's inaction has cost all parties dearly with its deleterious impact on Vermonters, its electric consumers and infrastructure. And, as previously noted, the recent rate settlements for CVPS and GMP provide barely a year in which to act. To catch up with the New England/New York region and to ensure that Vermont remains competitive with its neighbors, Vermont must act now.

For these reasons, the Parties recommend that the Board take the following steps to lower committed power costs and reform Vermont's utility industry²:

1. Convene a technical conference to take additional comments on the actions proposed by the Working Group's Plan;
2. Issue an order by early February 1999 adopting the Working Group's Plan as the most sensible way to ensure that Vermonters remain in charge of restructuring Vermont's electric utility industry;
3. Defer further proceedings (technical hearing/conferences) earlier proposed in this docket and called for by the Second Order re: Technical Conferences, dated 1/5/99; and
4. Commence proceedings as requested by the petitioners in the various dockets to be opened to implement the Working Group's Plan.

In this way, the Parties believe that the Board will most effectively signal utilities and the other entities that must participate in the restructuring and mitigation efforts that Vermont, under its own power, is ready to restructure its electric utility industry. This approach will signal to all interested parties that the time for a comprehensive resolution that reduces committed power costs is now.

2. It is intended that the process described below would lead to the issuance of the proposed order that is attached as Exhibit I of these comments.

IV. REPLY TO THE STATEMENT OF PRINCIPLES OF THE ELECTRICITY CONSUMERS AND
CONSUMER ASSOCIATIONS, DATED DECEMBER 29, 1998

On December 29, 1998, a coalition of consumer interest groups (the “Coalition”)³ filed a Statement of Principles (the “Statement”) with the Board arguing that “although some elements of the Working Group Report are promising, the Working Group Report, as presented, should not be adopted.” (Statement at 1). For the reasons described herein, the Parties urge the Board to reject the Coalition’s recommendations. What follows is a point by point rebuttal of the Coalition’s arguments.

a. The Working Group Did Not Conclude That Utilities Should Get Full Recovery of Their Stranded Costs.

At page 1 of their Statement, the Coalition argues that the Working Group concluded that utilities should get full recovery of their stranded costs. However, this assertion is not supported by the text of the Working Group’s Report or Co-Chairperson Gilbert’s presentation before the Board.

The Report nowhere states that utilities are entitled to the full recovery of their stranded costs. Instead, the Working Group argues that the approaches of the past (including backward looking regulatory proceedings) are no longer a productive means for lowering committed power costs or restructuring Vermont’s electricity utility industry. Instead, what is needed is a strategy that will result in emerging distribution companies that are financially viable, investment grade and capable of fulfilling their new roles in a safe, reliable and efficient manner.

Towards this end, the Report endorses a plan to reduce committed power costs through restructuring, refinancing, divestiture, auctions, consolidations and other market based mechanisms.

3. The Electricity Consumers and Consumer Associations represents that they consist of: AARP-Vermont, the Vermont Electricity Consumers Coalition, the Vermont Public Interest Research Group, the Vermont Chamber of Commerce, the Vermont Grocers Association, the Vermont Retail Association, the Vermont Ski Areas Association, Rural Vermont, International Business Machines Corporation, the Barre Granite Association, the Bennington County Industrial Corporation, and the Manchester & the Mountains Regional Chamber of Commerce.

This restructuring process will involve significant pain but, at the end of the day, the emerging distribution companies must be able to pay their debts when due (including the costs associated with the capital required to implement committed contract buy outs and buy downs). If this objective cannot be achieved, the remainder of the Working Group's recommendations cannot be delivered. If it can be achieved, Vermont will have taken a dramatic step to stabilize the electric utility industry and lower committed costs. Accordingly, the Parties (*recognizing that they have borne financial pain as a part of this process and with no assurance of the full recovery of their stranded costs*) believe that the actions called for by the Plan are appropriate and that their accomplishment would serve the best interests of Vermont and its consumers.

b. The Working Group Was Correct to Reject Utility Bankruptcies as the Centerpiece of State Electricity Policy.

Also at page 1 of the Statement, the Coalition argues that the Working Group is wrong to reject utility bankruptcy as a planning objective. In response, the Parties maintain that rejection of bankruptcy is the right strategy at this time.

The Working Group concluded that bankruptcy, and the uncertainty it engenders, is not a productive policy option for Vermont, will not assure the rapid reduction of committed costs and should not be the center piece of State electricity policy. This conclusion is predicated on the Working Group's findings that: (i) Vermont's electric industry is essentially "one company"; (ii) bankruptcy cannot be viewed as an isolated event; (iii) the bankruptcy of one investor-owned utility would have a detrimental impact on Vermont's municipal utility companies; (iv) bankruptcy would inject years of delay and significant costs into the restructuring process; (v) national and international markets expect that Vermont and its industries will meet their legitimate obligations and not resort to bankruptcy as a means to solve their problems; and (vi) importantly, a federal bankruptcy court and not Vermont

would control the outcome of the bankruptcy proceedings. (Report at 10-11). The reason that the Working Group concluded that bankruptcy is bad public policy is based on its conclusion that the risk of grave unintended consequences, cost, time delays and loss of State control are too great to make it the most productive means of accomplishing the goal of reducing committed power costs and restructuring the electric utility industry⁴. A conclusion arrived at after conducting what is to date the most credible study of the policy implications of utility bankruptcy undertaken in Vermont to date.

New Hampshire is a painful example of the risks of bankruptcy. In the late 1980s, when New Hampshire denied Public Service Company of New Hampshire (“PSNH”) the rate relief it needed to pay its debts when due, PSNH sought protection from creditors in the federal Bankruptcy Court. The resultant restructuring took more than four (4) years before the restructuring transaction finally closed. During that time period, the Bankruptcy Court approved payments from PSNH’s estate of over \$50 million to lawyers and bankers, including special fee enhancements to the Equity Committee’s financial advisor. In its Order dated November 30, 1989, presiding Judge Yacos found that even though Section 1129(a)(6) of the Federal Bankruptcy Code provides for regulatory approval of the rates to be charged by the reorganized debtor “after confirmation of the plan”, the Federal Bankruptcy Code preempts state regulatory authority with respect to all of the other elements of the plan such as (i) the transfer of the franchise, (ii) the mortgaging of property, (iii) the issuance of securities; and (iv) the contracting with affiliates. See 108 B.R. 854, 884 (Bkrcty. D.N.H., November 30, 1989)⁵. Moreover, at the end of the PSNH saga, PSNH was sold to an out-of-state company, retail rates were increased substantially and

4. Commentators including Vermont’s Treasurer, James Douglas, suggest that these consequences can include a negative impact on the State’s bond rating.

5. In short, the bankruptcy of CVPS and/or GMP would mean that the DPS and the PSB would lose control of the reorganization process, as did their counterparts in New Hampshire. As Judge Yacos said: “[t]he very fact of the PSNH chapter 11 filing demonstrates beyond dispute that in this instance the state regulatory system failed to effectively balance all economic interests.” *Id.*, at 890.

the problem remains fundamentally unsolved to this very day. In New Hampshire, industry-wide restructuring is still held up in federal court, in substantial part on account of Northeast Utilities' claims arising out of its purchase of PSNH through the bankruptcy process.

As the Working Group found, in Vermont the close interrelationship between Vermont's municipal, cooperative and investor-owned utilities (including the "step-up" and related obligations under the HQ/VJO Contract, the Highgate Transmission Interconnection Agreement, the Phase I and Phase II Support Agreements, the McNeil Joint Ownership Agreement; and the Vermont Yankee arrangements) virtually assures that the bankruptcy of either GMP or CVPS will provoke significant and serious unintended consequences, delay, costs and expense that will paralyze the industry for years.

As the Board is aware, bankruptcy always remains an option. The Working Group recognized this fact. As the Working Group recommends:

"In order to avoid the adverse consequences of a utility bankruptcy to the State of Vermont, the Attorney General should continue to pursue the full development of the positions of the State in the event of a bankruptcy petition affecting one or more electric company."

Report at 11. However, and importantly, bankruptcy should not form the basis of Vermont's reform policies if Vermont government wants to help to reduce committed power costs and play a leadership role in restructuring Vermont's electric utility industry.

- c. The Working Group's Report is a Plan to Stabilize power costs and provide Savings for Consumers.

At page 2 of the Statement, the Coalition argues that the Working Group's Plan is fundamentally flawed because it does not provide a plan to reduce HQ Contract costs. This assertion is baseless. It appears that the Coalition did not read the Working Group's Report. The Report expressly endorses a strategy to use market mechanisms including refinancing, negotiation, divestiture, auctions

and leverage (including bankruptcy leverage) to maximize the mitigation value that can be achieved through a rapid restructuring of Vermont's electric utilities.

The Plan describes each of the mitigation tools that will move Vermont towards maximum achievable mitigation and a new competitive industry. This Plan is a market-based plan for a work-out of the utilities' current financial commitments. It is a consensual workout -- in essence a bankruptcy-like proceeding -- but one in which Vermont and Vermonters (including the Board and Department) stay in control. As Mike Ranger of DLJ explained at the Technical Conference, the work-out described in the Plan creates incentives for utilities and their power suppliers to work together and to quickly agree on consensual arrangements that create power cost mitigation. (Tr. of 12/18/98 at 131-132). Bankruptcy, on the other hand, is an adversarial legal process where parties bound by fiduciary relationships litigate claims under the strictures of contract law. This approach is not guided by state policy but is instead designed to maximize returns for creditors. *Id.* For example, in the PSNH bankruptcy proceeding, the federal bankruptcy judge awarded the financial advisor to the Equity Committee a \$1 million fee enhancement over its \$2 million base fee amount because it negotiated a plan that provided "in excess of \$50 million in value" for the benefit of 11,000 holders of preferred stock and 45,000 holders of common stock. See 160 B.R. 404, 437 (Bkrcty, D.N.H.)

Rejecting bankruptcy and adopting constructive consensual market methods is the appropriate Vermont strategy to reduce the costs of committed resources, including power purchased under the HQ/VJO Contract. It is the best way to meet the challenge to reduce Vermont's committed power costs issued by the Board's Order opening this proceeding.

- d. The Principles Advanced by the Coalition Do Not Provide a Framework for Reforming Vermont's Committed Power Supplies.

Also at page 2, the Coalition advocates that the Board adopt its “principles” as guidelines for evaluating the Working Group’s Plan. However, the so-called “principles” described in the Statement are either satisfied by the Working Group’s recommendations or are not constructive⁶.

For example, no participant to this proceeding can reasonably contend that the success or failure in mitigating committed power costs and the resultant rate effects should be judged against national averages in the near term given the vast differences in regional electricity resources and other structural constraints (*i.e.* Vermont does not benefit from: (i) large hydro resources; (ii) cheap local coal, oil or natural gas; and (iii) being geographically situated to optimize solar production and capabilities). Rather, as the Working Group recommends, Vermont should act to halt its eroding regional advantage. (Report at 6). Maintaining rates in Vermont that are competitive with the rates paid in the New England/New York region is what has been the historic benchmark and what should serve as an appropriate near-term objective.

The Coalition “principles” do not contain any implementation strategies and the Coalition parties have not demonstrated how to implement their “principles”. In short, they are purely conceptual and, indeed, largely negative in tone. They look backward rather than forward. As the Working Group found, Vermont’s failure to take action and move forward has cost Vermont consumers. The Coalition’s guidelines does nothing but prolong State inaction and will likely lead to a further erosion of consumer opportunities and mitigation savings.

“Principle” No. 4 urges the Board to reject bankruptcy as state policy only after evidentiary hearings. However, as Commissioner Sedano argued at the December 18, 1998 Technical Conference, now is not the time for the Board to conduct a contested case proceeding regarding utility bankruptcy.

6. We note that the Board began its efforts to restructure Vermont’s electric utility industry by developing a set of principles, that those principles were adopted by the Board’s Orders in Docket Nos. 5854, and that the Working Group’s Plan meets the criteria of those principles. Now is not the time to reconsider or reinvent these efforts as suggested by the Coalition.

(Tr. of 12/18/98 at 137-141). The adoption of the recent rate settlements for CVPS and GMP provide only a limited window of opportunity for Vermont to take decisive action to move forward on the Working Group's strategies. If those efforts fail, bankruptcy remains an option. But if they succeed, bankruptcy is not necessary. Moreover, it is not reasonable to ask utilities to take positions in a contested case concerning bankruptcy at the same time that they are likely to be arguing over such questions in negotiation efforts with mitigation partners. Id., at 140. Accordingly, the Board should defer such a proceeding until such time as more constructive strategies have been given an opportunity to succeed.

Therefore, the Parties urge the Board to give little credence to the unsupported assertions advanced by the Coalition. Their Statement does not move Vermont forward in its efforts to coalesce around a strategy for the reform of Vermont's power supply and the reduction of committed power costs. The Coalition's efforts are bereft of any constructive suggestions for action. Rather than engendering even more uncertainty into this process, the time is now for the Board to act.

IV. CONCLUSION

We encourage the Board to take the actions requested herein in an effort to help to achieve the goal of reducing Vermont's committed power costs and to begin to implement the Working Group's Plan. Time is of the essence. The Parties are committed to work toward the resolution of the issues before the Board in this proceeding and those called for herein.

DATED at MONTPELIER, VERMONT this 8th day of January, 1999.

Respectfully Submitted,

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cc: Parties of Record

PROPOSED ORDER

It Is Hereby Ordered, Adjudged, and Decreed by the Public Service Board of the State of Vermont that:

1. The Comprehensive Restructuring Settlement Framework as described in the Report of the Working Group on Vermont's Electricity Future (the "Working Group's Plan" or the "Plan") is a reasonable and appropriate path for the reform of Vermont's electric utility industry and we urge Central Vermont Public Service Corporation, Citizens Utilities Company, Green Mountain Power Corporation and their committed power suppliers to embark on the path subject to proceedings called for herein.

2. To implement the omnibus settlement prescribed under the Working Group's Plan, the Board will commence proceedings as requested by the incumbent utilities to:

- a. Approve the "buy down" of the Hydro Quebec/Vermont Joint Owners contract under 30 V.S.A. §248, approve the issuance of the securities necessary to finance the "buy down" of the Hydro Quebec/Vermont Joint Owners contract, other above market costs except as provided below, transition costs and all of the elements that will support that financing. This proceeding will also commence a "rate case". The proceeding will lead to:
- approval of and the declaration of the prudence and used and usefulness of a renegotiated HQ/VJO Contract under 30 V.S.A. §248, and amendment of the Certificate of Public Good issued by the Board in PSB Docket No. 5330 to remove condition No. 8 subject to the outsourcing of utility DSM activities described below.
 - a Board order pursuant to 30 V.S.A. § 108, consenting to the issuance of securities, the proceeds of which will be used to buy down the HQ contract and recover other costs, excluding the costs associated with the Small Power Producer ("SPP") contracts executed pursuant to PSB Rule 4.100.
 - a Board order, issued pursuant to 30 V.S.A. § 218, approving a rate path in an amount sufficient to support the financing and the operations of utilities (any costs resulting from SPP contract buy downs/buy outs and the establishment of

an Energy Efficiency Utility (“EEU”) will be passed through and picked up by this rate path).

- explicit Board approval of a competitive transition charge (the "CTC") that will permit the utilities to collect the full amount of a regulatory asset established in connection with the buy down and buy out of above market costs and transition costs over a period of time.
 - approval of the CTC cost recovery mechanisms.
 - approval of the amount and characteristics of the regulatory asset associated with the restructuring (subject to the results of generation divestiture activities described below).
- b. Amend PSB Rule 4.100 to allow for the buy out/buy down of contracts entered into by and between Vermont’s Purchasing Agent and participating small power producers and approve the resulting modified contracts and related financings. This proceeding will be commenced as both a rulemaking and a contested case, and will lead to:
- issuance of a Board order, pursuant to Rule 4.100 and 30 V.S.A. § 209 (a)(8), approving and declaring the prudence and used and usefulness of all of the renegotiated contracts between the SPPs and Vermont’s Purchasing Agent the Vermont Electric Power Producers, Inc. (“VEPPI”).
 - a Board order issued pursuant to Rule 4.100 and 30 V.S.A. § 209 (a)(8), approving the modified contracts between the distribution companies and VEPPI.

- a Board order authorizing VEPPi to issue securities to buy down its SPP contracts. If the Vermont Public Power Supply Authority (“VPPSA”) can accomplish this financing in a less expensive manner, without delaying the implementation of the plan in 1999, VPPSA's financing ability may be utilized.
 - an order authorizing VEPPi or VPPSA, as appropriate, to charge all of the electric utility customers in Vermont an amount sufficient to service the securities that will be issued in connection with these contract modifications and an order that this charge be included on the bill delivered by the distribution company serving each of Vermont’s electricity consumers.
- c. Consider the consolidation of one or more of Vermont’s investor-owned utilities into a new company (“NewCo”) in the context of and subject to the global settlement and financial restructuring contemplated by the Working Group’s Plan. This proceeding would lead to:
- approval of any mergers pursuant to 30 V.S.A. §§ 104, 105, 107 and 311.
 - issuance of any relief, pursuant to 30 V.S.A. § 231 and 30 V.S.A. § 249, necessary to (i) confirm the utilities’ consent to retail choice of power suppliers, (ii) relieve NewCo of the obligation to supply capacity and energy, and (iii) establish NewCo as the exclusive electric distribution company within the combined service territory.
 - approval of tariffs pursuant to 30 V.S.A. §§ 209 and 218 to establish open access and customer choice including all administrative aspects related to unbundled competitive, transition period and default service.
- d. Authorize the implementation of a holding company under 30 V.S.A. § 107 for NewCo or any remaining utilities to:
- allow it to functionally unbundle its regulated and unregulated activities.
 - implement Articles of Association that contain so-called “fair price” provisions to assist the utility in remaining a stand-alone Vermont corporation.

- e. Authorize and approve the divestiture of utility owned generation assets. This will include:
- approval for: (i) a process that will be used by utilities to evaluate their generating assets to determine which are most appropriate for sale; and (ii) the auction process; and (iii) the identity of the purchasers.
 - approval of the mechanism for modifying the rate path and regulatory asset established in the rate case described above.
- f. Authorize the outsourcing of utility Demand Side Management (“DSM”) obligations to an EEU or like organization and amendment of least-cost planning requirements under 30 V.S.A. §§ 209(d), 218c and 218(b), and the Board’s Orders in Docket Nos. 5270 and 5330. In addition, this proceeding would provide for the approval of the associated DSM costs and authorization for them to be incorporated into the § 218 rate path described above in a revenue neutral fashion to the utility.

These proceedings shall all result in orders that are contingent on the issuance of final orders approving all aspects of the Working Group’s Plan. All final actions under these orders shall occur simultaneously at a financial closing as part of the omnibus settlement⁷.

DATED at Montpelier, Vermont , this __ day of February, 1999.

_____)
) PUBLIC SERVICE
)
 _____) BOARD
)
 _____) OF VERMONT
 _____)

7. Note that the expansion of the VELCO transmission system is not a necessary precondition to the implementation of the Working Group’s Plan and it is not an element that must take place prior to the Closing. The VELCO project can be developed at its own speed and any resulting mitigation can be addressed in subsequent proceedings.