

Appendix B. Item2

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE
AND THE CITY OF BURLINGTON ELECTRIC DEPARTMENT

This bilateral agreement entered into by and between City of Burlington Electric Department ("BED") and the Vermont Department of Public Service (the "Department" or "DPS") supplements the core Memorandum of Understanding filed on April 30, 1999 in this docket ("MOU"). Said MOU sets forth the agreement of the DPS and BED, as well as other parties to the captioned proceedings, with regard to the formation and structure of and the efficiency services to be rendered by the Energy Efficiency Utility ("EEU") as well as the responsibility of distribution utilities in Vermont, including BED, to perform least cost distribution planning ("Distributed Utility Planning" or "DUP"). This bilateral agreement incorporates the MOU. Terms defined in the MOU shall have the same meaning when used herein, except in this bilateral agreement the term "Parties" shall mean the DPS and BED.

1. BED agrees to commit \$410,000 for calendar year 2000 to fund Core Programs within its service territory, and otherwise, whether those programs are delivered by BED, the EEU or a subcontractor of either. Of this amount, \$5,353 is specifically dedicated to funding BED's share of the Emerging Markets Program. BED agrees to commit more funds if necessary to meet its obligations with respect to delivery of the Core Programs within its service territory. The Department agrees that BED may be able to meet its obligations with respect to delivery of the Core Programs within its service territory for less than \$410,000 in calendar year 2000, or for less than the established budget for any subsequent year. BED acknowledges and agrees that a significant objective of the Core Programs is to maximize the acquisition of energy efficiency resources given the budgets provided. Notwithstanding paragraph 57 of the MOU, BED shall file proposed budgets for delivery of the Core Programs within its service territory for years 2001 and 2002 as part of its filing under paragraph 2, below.
2. The Department agrees to make a presumption that BED should have the right to implement the Core Programs in its service territory, subject to DPS and Board review of a BED proposal which shall be filed by the deadline set for responses to the request for proposals ("RFP") for the EEU.
 - a. Such BED proposal shall:
 - i. List the Core Programs BED proposes to implement.
 - ii. Describe in detail, subject to subparagraph 2b below, how BED intends to implement those programs.
 - iii. Notwithstanding paragraph 26 of the MOU, state whether BED proposes that the "C&I Customer Credit Program" described in such paragraph 26 should be implemented within BED's service territory and, if so, describe in detail how BED proposes to implement such program.
 - iv. Describe how BED will coordinate with the EEU.
 - v. Describe how BED will ensure consistency of program delivery between itself and the EEU.
 - vi. Include an itemized budget for implementation which includes, at a minimum:

- (1) payments for the Emerging Markets Program;
 - (2) payments for programs BED chooses not to deliver; and
 - (3) payments for administrative and fixed costs of the EEU.
 - vii. Explain how the funds to implement the Core Program or Programs and contributions to the EEU are proposed to be secured and managed by BED. BED and the DPS agree that, to the greatest extent feasible, BED will use existing sources to fund its implementation of Core Programs and contributions to the EEU.
 - viii. Include proposed budgets for 2001 and 2002.
 - ix. Include a proposal for how BED will evaluate and report on its performance in implementing the Core Programs.
 - x. Include a proposal for how BED's performance will be reviewed and evaluated by the Board, including a specific term after which a thorough review will be conducted and a Board decision about renewal of BED's approval to implement Core Programs will be made.
 - b. BED's proposal shall be made with as much specificity as possible based upon information reasonably available to BED at the time of the filing. To the extent detailed numbers or specifics of program implementation are not reasonably available, BED will identify the process it will use to refine budgets and respond to specific program features, and will identify the principles it will use in making such decisions.
 - c. The Department shall have the opportunity to review BED's proposal and provide comments and recommendations to the Board.
 - d. This paragraph 2 shall apply to BED notwithstanding paragraph 6 of the MOU.
 - e. The process and presumption set forth in paragraphs 2 through 4 of this bilateral agreement shall apply to any future Statewide Program approved by the Board for the EEU, and BED shall file a proposal in accordance with this paragraph within 60 days of such Board approval. A copy of BED's proposal shall be sent to the DPS and the EEU, which shall have the opportunity to provide comments and recommendations to the Board.
3. The Board, after notice and opportunity for hearing, shall approve BED's proposal if it finds that the anticipated benefits of BED's delivery of Core Programs within its service territory outweigh the risks or potential inefficiencies of such delivery. In reviewing BED's proposal, the Board shall consider at least the following:
 - a. The commitment and capability of BED to implement programs;
 - b. The extent to which BED customers will be afforded Core Program services comparable to other utility customers in the state;
 - c. The preservation of administrative efficiencies and program benefits of statewide delivery, giving due consideration to the benefits of BED delivery within its service territory; and
 - d. The adequacy of BED's proposed budgets and allocations. The Department agrees that the funding level committed to in paragraph 1, above, for calendar year 2000 is adequate and will not contest the same before the Board.

4. The Board may approve BED's proposal with modifications or conditions. If the Board approves BED's proposal, the Board shall take all appropriate steps to assure that the programs are properly implemented and meet standards equivalent to those for the EEU.
5. BED shall be invited to participate in all relevant advisory committees or subcommittees appointed by the Board and/or the EEU, including committees created for the market segments that BED proposes to service, and agrees to implement Core Program modifications as they are developed and adopted by the EEU under paragraph 4 of the MOU.
6. In its DSM implementation efforts other than implementation of any Core Programs approved for delivery by BED in accordance with paragraphs 1 through 4 above, BED shall remain subject to the provisions of 30 V.S.A. § 218c and Docket No. 5270, and traditional regulatory review of its DSM expenditures; however, with respect to implementation of Core Programs, BED shall only be subject to the same performance standards as the EEU in addition to traditional regulatory review of those expenditures.
7. For the purpose of Core Program implementation, BED shall have access to any intellectual property, including but not limited to logos, databases, trademarks, service marks, copyright material, computer software, surveys, survey results and program designs acquired by the EEU for use in Vermont and necessary to the success of the Core Programs and/or any other state-wide program approved by the Board for EEU implementation. BED shall have a right to such material subject to an agreement with the EEU defining the terms and conditions of such use which shall include a condition that such materials shall be used only in a manner consistent with the Core Programs' use of those materials.
8. BED shall have a position on the "Transition Working Group," and the DPS and BED agree to work in good faith to identify and define any aspects of BED's transition to the EEU that may differ from the transition plan as it would apply to other utilities. These unique transition plan features will be included as part of BED's filing under paragraph 2 above.
9. For reporting purposes, savings from any Core Programs implemented by BED shall be credited towards both BED's and the EEU's performance standards.
10. The effectiveness of this Agreement and the MOU in binding BED in any regard shall be contingent upon a finding by the Board that it is reasonable for BED to enter into this Agreement and the MOU. The Parties request that the Board make such a finding. Absent such a finding by the Board, this Agreement and the MOU shall be of no effect regarding BED and shall not bind the Department with respect to BED.

11. The Parties have made specific compromises to reach the MOU and this bilateral agreement. The Parties agree that should the Board fail to approve the MOU and this bilateral agreement in their entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall have the right to file prefiled testimony on all issues to be considered in Phase II of this docket and the Parties' agreements in this MOU and this bilateral agreement shall not be construed by any party or tribunal as having precedential impact on any testimony or positions which may be advanced in these proceedings.

12. The Parties agree that the MOU and this bilateral agreement resolve all issues raised to date by BED in this proceeding. Accordingly, the Parties agree that BED shall not seek the admission, into the record of this docket, of any prefiled testimony and exhibits not made part of the record during the Phase I technical hearings in this docket. This paragraph shall not preclude BED from raising issues that may arise subsequent to the Board's order approving the MOU and this bilateral agreement.