

Appendix B. Item 3

BILATERAL AGREEMENT BETWEEN THE DEPARTMENT OF PUBLIC SERVICE
AND INTERNATIONAL BUSINESS MACHINES CORPORATION

The following document records the agreement between the Department of Public Service (the "Department") and International Business Machines Corporation. ("IBM") regarding the above-captioned proceedings.

1. Core MOU. IBM and the Department agree that this bilateral agreement incorporates the document which was filed with the Public Service Board on April 30, 1999 and is entitled Memorandum of Understanding and captioned as applying to the above-referenced proceedings ("MOU"). Said MOU sets forth the agreement of the Department and IBM, 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 to perform least cost distribution planning (called Distributed Utility Planning or "DUP"). It is the purpose of this document to supplement the MOU and to record specific terms, provisions, and conditions with respect to IBM. Terms defined in the MOU shall have the same meaning when used herein, except that the term "Parties" in this bilateral agreement means the Department and IBM.
2. C&I Customer Credit Program. IBM and the Department agree that, in addition to the Core Programs to be offered by the EEU, the EEU shall offer a "C&I Customer Credit Program," the terms of and eligibility for which are set forth in Attachment A to this bilateral agreement. Energy savings obtained through such Program shall be attributable to the EEU. In accordance with paragraph 26 of the MOU, the C&I Customer Credit Program shall be available to all eligible customers in the territory of each DU which signs the MOU.
3. Copy of Annual EEU Re-allocation Request. The Parties agree that the EEU shall send to IBM a copy of the annual EEU request described in ¶ 19 of the MOU, at the same time the EEU files such request with the Board and sends a copy to the Department and each DU. The Parties also agree that the EEU should send a copy of such request to any other party to this docket which requests in writing to the EEU to be sent such a copy.
4. Resolution of All Issues. The MOU and this bilateral agreement resolve all issues raised by IBM in this proceeding. IBM agrees not to challenge the bilateral agreement between the Department and GMP filed in this docket on April 30, 1999 along with the MOU.
5. Bottom-Line Settlement. 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, including Attachment A hereto, as written and in their entireties, 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.

ATTACHMENT A TO DPS-IBM BILATERAL

C & I CUSTOMER CREDIT PROGRAM

General: The C&I Customer Credit Program (Program) recognizes that certain commercial and industrial customers already may be committed to, and possess considerable expertise regarding, energy efficiency. These customers actively practice energy efficiency because it makes business sense for them to do so. The C&I Customer Credit Program provides these customers with a choice as to whether they wish to remain eligible to participate in the Statewide Core Programs or whether they prefer to forego that eligibility and pursue electric energy efficiency measures on their own.

Eligibility: Commercial and industrial customers that meet the following criteria are eligible for this program:

1. the customer has never accepted financial incentives from a Vermont utility sponsored DSM program; and
2. the customer has demonstrated a commitment to pursuing cost effective energy efficiency on its own by:
 - (a) certification under ISO (International Standards Organization) standard 14001; and
 - (b) becoming a partner in the Climate Wise program sponsored by the U.S. Department of Energy and the U.S. Environmental Protection Agency.

If the ISO standard or Climate Wise program changes, revised eligibility standards may be negotiated. A customer that elects to participate in this program will not be eligible to participate in the Statewide Core Programs sponsored by the Energy Efficiency Utility ("EEU").

**Program
Design:**

Eligible customers that elect to participate in the Program will receive a refund for all "Qualified Expenses;" provided that total "Qualified Expenses" in any period may not exceed 100 percent of "Available Funds," as defined below.

For purposes of the Program, "Qualified Expenses" are defined as follows:

For "market-driven" projects:

One hundred percent (100%) of the incremental costs associated with identifying, investigating, analyzing, designing, implementing and/or installing societally cost effective electric efficiency projects at facilities owned, operated or controlled by the customer. These costs may include the customer's internal design and engineering labor, outside design, engineering and installation labor and equipment costs; provided however, that Qualified Expenses for costs other than incremental installation labor and equipment costs shall only be eligible for refund up to either 25% of the total incremental installation labor and equipment costs, or actual non-installation-labor and non-equipment incremental costs, whichever is less.

Incremental costs are defined as the difference between the actual cost of the equipment, installation labor, engineering, design, and commissioning and the cost of the equipment, installation labor, engineering, design, and commissioning that would meet the current design and construction standard practice (the "baseline cost").

For "retrofit" projects:

A portion of the total costs associated with identifying, investigating, analyzing, designing, implementing and/or installing societally cost effective electric efficiency retrofit projects at facilities owned, operated or controlled by the customer. These costs may include the customer's internal design and engineering labor, outside design, engineering and installation labor, and equipment costs; provided however, that Qualified Expenses for costs other than installation labor and equipment costs shall only be eligible for refund up to either 15% of the total incremental installation labor and equipment costs, or actual non-installation-labor and non-equipment incremental costs, whichever is less.

The portion of the above mentioned costs included as "Qualifying Expenses" shall be the amount necessary to allow the customer to realize an estimated 18 month simple payback on the customer's portion of the project investment. Payback shall be calculated based on anticipated energy and non-energy benefits, including, but not limited to, reductions in operating and maintenance costs, fossil fuel savings, electricity savings, environmental compliance cost savings, labor savings, and saving from avoidance of future equipment replacements.

Provided, however, that in the event the total "Qualifying Expenses" for either a market-driven or retrofit project exceed the net present value of the project's estimated electric avoided cost benefits (based on the statewide avoided costs of

electricity), the maximum rebate amount will be capped at the total net present value of the project's electric avoided cost benefits.

The determination of whether the project represents a "market driven" or "retrofit" project, the electric avoided cost benefits, the design and construction standard practice, and the amount needed to result in an 18 month payback on retrofit projects, shall be made by the EEU, in consultation with the customer. In the event the customer disputes any EEU determination, the customer may make a complaint to the Contract Administrator, who shall seek to resolve the complaint through negotiation. If no such resolution occurs within thirty (30) days, the Contract Administrator shall refer the complaint to the Board for review of the EEU's decision.

Available Funds:

"Available Funds" are defined as follows:

Seventy percent of the funds the customer has paid, or is projected to pay, to its distribution utility for EEU funding, for either the immediately preceding calendar year and the current calendar year, or the current calendar year and the immediately following calendar year, less any disbursements already obtained by the customer drawn on the same years' funds.

For purposes of the Program it is assumed that a customer's future year kWh consumption will be equal to the latest full calendar year kWh consumption, unless the customer and the EEU mutually agree on a different projection.

Any "Available Funds" not applied for by a customer prior to the end of the calendar year following the year funds are paid to the distribution utility will not be available to the customer under this Program.

Program Implementation:

No later than February 28th (29th if a leap year) of each calendar year, any customer may notify the EEU, in writing, that it intends to participate in the Program in that calendar year. In its written notice, the customer must demonstrate compliance with the eligibility criteria. Failure to make such notification will preclude the customer from receiving Program funds in that calendar year. The EEU may waive this notification requirement under special circumstances.

At any time following proper notification to the EEU of its intent to participate in the Program, a customer may submit a description of a cost effective energy efficiency project to the EEU along with a statement of whether the project is market-driven or retrofit; a list of Qualified Expenses associated with the project

along with supporting documentation; an estimate of energy and non-energy savings associated with the project and the project's expected lifetime; and a description of the "baseline" if a market-driven project.

The EEU will review the customer's submission, screen it for societal cost-effectiveness using the statewide screening tool and avoided costs, and notify the customer in writing within 30 days if: the project meets the cost-effectiveness screening criteria; the EEU needs additional data to screen or review the project; the EEU agrees with all the customer's assumptions and estimates; the EEU disagrees with any or all customer assumptions or estimates; and/or the EEU needs additional time to review the submission. In the event that any disagreements arise between the EEU and the customer, both parties will work in good faith to resolve the disagreements. The customer will provide to the EEU all necessary data to review its assumptions and estimates including, but not limited to, workpapers, drawings, contractor estimates, operating data and equipment specifications. The EEU will then make a final determination of the eligibility of the project, and the amount of Qualifying Expenses. In the event the customer disputes any EEU determination, the customer may make a complaint to the Contract Administrator, who shall seek to resolve the complaint through negotiation. If no such resolution occurs within thirty (30) days, the Contract Administrator shall refer the complaint to the Board for review of the EEU's decision.

If a customer chooses, it may proceed with a project prior to approval by the EEU, at its own risk.

Once the EEU approves a project, and the installation is complete and verified by the EEU, based upon a verification method mutually agreed to between the EEU and the customer, the EEU will issue a rebate payment to the customer.

The EEU will be obligated to maintain customer confidentiality under the same terms as are established for customer information provided by distribution utilities to the EEU. At the request of a customer, the EEU may execute a separate confidentiality agreement, upon terms mutually acceptable to the customer and the EEU, covering any aspect of a proposal submitted to the EEU for which the customer seeks special confidentiality treatment.