Appendix A. Item 1

MEMORANDUM OF UNDERSTANDING

With respect to the above-referenced docket, the Vermont Department of Public Service and those entities on behalf of which a signature appears at the end of this document stipulate and agree as follows:

1. In this document, the following definitions will apply:
   a. "ACE" means "Account Correcting for Efficiency" as established by the Public Service Board's order in Docket No. 5270.
   b. "Board" or "PSB" means the Vermont Public Service Board.
   c. "Contract Administrator" means the contract administrator described in subparagraph 5.b, below.
   d. "Core Programs" means the seven statewide energy efficiency programs outlined in the Plan (the term "Plan" is defined below): Commercial and Industrial Market Opportunities Program, Commercial and Industrial New Construction Program, Dairy Farm Program, Residential New Construction Program, Low Income Program, Efficient Products Program, and the Emerging Markets Initiatives Program.
   e. "Court" means the Vermont Supreme Court.
   f. "DPS" or the "Department" means the Vermont Department of Public Service.
   g. "DSM" means demand-side management.
   h. "DU" means electric distribution utility.
   i. "DUP" means distributed utility planning.
   j. "EEU" means the energy efficiency utility described in subparagraph 5.c, below.
   k. "Fiscal Agent" means the fiscal agent described in subparagraph 5.a, below.
   l. "IRP" means integrated resource plan.
   m. "MCDU" means a municipal or cooperative electric distribution utility.
   n. "MOU" means this Memorandum of Understanding among the Parties.
   o. "Parties" means the Department and those entities on behalf of which a signature appears at the end of this document.
   p. "Plan" means *The Power to Save: A Plan to Transform Vermont's Energy-Efficiency Markets* (May 23, 1997).
   q. "State" means the State of Vermont.
   r. "System-wide Programs" means all DSM programs, including but not limited to the Core Programs, except for those DSM programs offered or required to be offered by a DU as a result of DUP.
   s. "T&D" means transmission and distribution.
   t. "TWG" means the Transition Working Group described in the EEU Transition Planning Framework document which is Attachment A to this MOU.

EEU and Core Programs: Approval and Structure

2. The Parties agree that the Board should approve and order, in accordance with the terms of this MOU, a single mechanism – an EEU – for delivery of statewide DSM programs.

3. The EEU will deliver the Core Programs consistent with the core program proposals contained in the Plan. Subject to refinement by the EEU in accordance with paragraph 4, below, the Board in this docket should approve the Core Programs outlined in the Plan. Over time, the EEU may develop and propose additional System-wide Programs subject to Board approval.

4. In implementing the Core Program designs set out in the Plan, the EEU will: emphasize lost opportunity markets for all customer segments and retrofit markets for low income and dairy farm customers, stress market transformation strategies, coordinate with regional and national efficiency efforts, target under-served market segments, seek to maximize and facilitate customer contribution to measure costs consistent with principles of sound program design, and promote development of innovative approaches to energy efficiency. The EEU will refine the designs set out in the Plan during the course of implementation, and may revise and modify them in consultation with the advisory committee(s) established pursuant to paragraph 5.d, below.

5. The Parties agree that there shall be an EEU, a Fiscal Agent, and a Contract Administrator. Each of these entities shall be selected by the Board through a competitive process and shall be on contract to the Board. In addition, as described below, the Board shall appoint an advisory committee and the EEU may assemble additional advisory committees.

   a. The Fiscal Agent shall receive all moneys paid and/or collected by DUs to or for the EEU and shall disburse them as directed by the Board to the EEU and as provided in paragraph 11, below, with respect to DPS evaluation of System-wide Programs approved for EEU implementation. The Fiscal Agent shall keep accurate accounts of all moneys it receives and disburses. The Fiscal Agent shall be an agent of and report to the Board, and shall be independent of the EEU.

   b. The Contract Administrator shall be the day-to-day manager of the Board's contract with the EEU.
      i. The Contract Administrator is an administrative function which shall assist the Board with, and oversee, the details of managing the Board's contract with the EEU. The Contract Administrator shall be an agent of and report to the Board, and shall be independent of the EEU.
      ii. A person or entity may make a written complaint concerning the EEU's performance under the terms of its contract with the Board to the Contract Administrator, who shall seek to resolve the complaint through negotiation involving the complainant and the EEU. If no such resolution occurs within thirty (30) days of the filing of a written complaint, the Contract Administrator shall refer the complaint to the Board for review.

c. The EEU shall be an organization, independent of any gas or electric utility over which 30 V.S.A. § 203 confers jurisdiction upon the Board, selected by the Board following a competitive bid process to assume responsibility for the implementation and ongoing design of the Core Programs and such additional System-wide Programs as may be approved by the Board. The EEU shall not be an agent of any DU.

i. The Board's contract with the EEU shall include performance objectives, termination conditions, and periodic renewal provisions. The initial contract with the EEU shall be for a three-year term.

ii. The Board's contract with the EEU shall include appropriate terms to ensure that confidential information provided to the EEU, including but not necessarily limited to customer-specific information supplied by a DU, is not disclosed by the EEU to unauthorized entities or personnel.

iii. The State shall have ownership of that intellectual property, including but not necessarily limited to logos, databases, trademarks, service marks, copyrightable material, computer software, surveys, survey results and program designs, which is acquired or developed by the EEU for use in Vermont and is necessary to the success of the Core Programs and/or any other System-wide Programs approved by the Board for EEU implementation. The Board's contract with the EEU shall specify that property which shall be owned by the State. Such contract also shall state that, upon termination of the contract without renewal, the Board may authorize a different entity selected to be the EEU to use such property. Customer-specific or proprietary information contained in any such property to be owned by the State shall be considered exempt from public disclosure pursuant to 1 V.S.A. § 317(b)(9) and/or (10).

iv. The EEU may deliver System-wide Programs directly and/or through subcontracts, and in any case shall be responsible for the effective implementation of the Core Programs and any other System-wide Programs approved by the Board for EEU delivery.

v. The Board's contract with the EEU shall include appropriate terms to insure and indemnify the State from claims, causes of action and damages that may accrue on account of the actions of the EEU or its subcontractors. To the extent necessary, the Board's contract with the EEU shall also include appropriate terms with respect to the insurance and indemnification of DUs with respect to such claims, causes of action, and damages. The Parties agree that the issue of such insurance and indemnification should be addressed during the transition planning process described in Attachment A and that any disputes concerning this issue will be resolved by the Board.

d. Advisory Committee(s) shall be entities through which substantive public and utility input on program design, annual re-allocation of funds within programs as provided for in paragraph 19, below, and other issues can be offered to the EEU. The Board shall appoint an advisory committee to the EEU which shall consist of representatives from DUs, consumers, the DPS, and others deemed necessary by

the Board. Other advisory committees, including but not necessarily limited to advisory committees for specific programs or market segments, may be developed by the EEU which will select the members of such committees.

6. Municipal and Cooperative Electric Distribution Utility Implementation Option. An individual MCDU shall have an option to apply to be the implementing contractor for one or more of the Core Programs within the MCDU's service territory. However, the Emerging Markets Initiatives Program may not be implemented by a DU. The following procedures and provisions shall pertain to such application:

a. The MCDU must file with the Board and Department a written declaration of its intent to apply to deliver one or more Core Programs within sixty (60) days of the date of a Board order approving this MOU.

b. The MCDU must identify in the above-described declaration each Core Program which the MCDU seeks to implement.

c. The EEU will respond to the above-described declaration by providing the applicant MCDU with the following information: the funds available to support the delivery of the relevant Core Programs in the MCDU's service territory, based on the budgets for each year for which an approved EEU budget is available; for each relevant Core Program, an estimate of the eligible market potential in that service territory; and an estimate of that portion of the EEU budget that is appropriate to fund service territory-specific implementation. The existence or provision of such estimates shall not create any liability or obligation on the part of the EEU. For the purpose of this paragraph, the phrase "relevant Core Programs" means each Core Program which the MCDU has identified in the above-described declaration.

d. The MCDU must submit to the EEU a complete proposal to deliver one or more of the Core Programs identified in the above-described declaration within sixty (60) days of the date on which the MCDU receives the data described in subparagraph 6.c, immediately above. Any such proposal must contain a binding commitment to deliver such programs in an efficient, effective, timely, and competent manner in full compliance with the Core Programs as approved by the PSB and as amended from time to time in accordance with this MOU.

e. The EEU shall accept a proposal made by an MCDU in accordance with subparagraphs 6.a through 6.d, immediately above, if it is judged that the MCDU demonstrates the capability and commitment to implement the Core Program(s) identified in the proposal in an efficient, effective, timely, and competent manner. In the event the EEU does not accept an MCDU proposal made in accordance with this paragraph 6, the EEU shall state in writing the reasons why it found the MCDU's proposal unacceptable. Within ten (10) days of the EEU's rejection of the

proposal, the MCDU may make a written complaint to the Contract Administrator, who shall seek to resolve the complaint through negotiation between the MCDU and the EEU. If no such resolution occurs within thirty (30) days of the filing of the written complaint, the Contract Administrator shall refer the complaint to the Board for review of the EEU's decision concerning the MCDU's proposal. If, upon review, the Board determines that the MCDU demonstrates the capability and commitment to implement one or more of the Core Program(s) identified in the proposal in an efficient, effective, timely and competent manner, the Board shall direct the EEU to accept the proposal for each program so demonstrated, with any modifications the Board may require.

f. With respect to any Core Program which is to be implemented by an MCDU under this paragraph 6, the EEU will enter into a contract with the relevant MCDU for implementation of the Core Program. Such contract shall include performance requirements which are clear and are consistent with: (a) the requirements that would apply to a non-MCDU subcontractor to the EEU, and (b) the goals and needs of the program(s) to be implemented by the MCDU and the eligible potential in the MCDU's service territory.

g. Notwithstanding any other provision of the MOU, for each program implemented by an MCDU under this paragraph 6, the MCDU is not relieved of its DSM obligations under 30 V.S.A. §§ 218b, 218c and the Board's orders in Dockets 5270 and, if applicable to the MCDU, 5330.

7. Separately from the process outlined in, and without receiving any of the benefits of, paragraph 6, above, concerning the MCDU implementation option, an MCDU, or a DU which is not an MCDU, may: (a) respond to and bid on any request for proposals ("RFP") issued by the EEU for a subcontractor to deliver energy efficiency services for the EEU and (b) at any time make a proposal to the EEU to subcontract to deliver energy efficiency services for the EEU.

8. The EEU shall track and monitor the results of its System-wide Program activities, including but not necessarily limited to customer class, geographic region, and DU service-territory-specific data on program delivery, costs, and estimated energy and demand savings. The EEU shall file with the Board, with a copy to the Department and each DU, an annual report describing and stating the methods and results of its tracking and monitoring activities, provided that any customer-specific data which would be disclosed by such report is subject to appropriate confidentiality protections against disclosure to unauthorized entities or personnel.

9. The EEU shall make available customer-specific data, including but not necessarily limited to information regarding customer implementations, to the DU serving the relevant customer(s), if requested by the DU and subject to appropriate confidentiality protections against disclosure to unauthorized entities or personnel. Such information

shall be limited to information necessary, and shall be used by a DU solely, for DUP and related load forecasting and DSM program planning and implementation, for determining and addressing whether the EEU's activities have been or will be consistent with the distributional equity principle set out in paragraph 45, below, and/or for ratemaking including ACE or any alternative mechanism or ratemaking strategy which may be approved by the Board. Such information shall not be used for marketing or promotion except directly as part of DUP-related load forecasting and DSM program planning and implementation, and shall not be used by a DU to obtain a competitive advantage over any other entity or person. Disclosures under this paragraph shall be subject to appropriate safeguards and protections. In connection with the provision of information under this paragraph, each DU and the EEU shall provide reasonable notice and shall act in good faith to accommodate the reasons considerations of the EEU and the DU. The provisions of this paragraph shall apply to any System-wide Programs approved by the Board for EEU implementation.

10. The EEU shall make all information in its possession available to the Board and Department on request.

11. The DPS will provide for formal evaluation of the Core Programs and any other System-wide Programs approved by the Board for EEU implementation. This evaluation will include but not necessarily be limited to assessment of market transformation accomplishments, with accompanying proposals for program change. The Fiscal Agent will reimburse the Department for these evaluation activities from the funds collected by such Agent. The DPS also will update avoided costs used in EEU program and measure screening and estimates of economically achievable energy efficiency potential as appropriate. Such updates shall be filed with and approved by the Board after an opportunity for other parties to file written comments and request a technical workshop. The Department intends to perform such updates as part of its core functions to the extent reasonably feasible. Any costs for preparation of such updates may be allocated to the DUs and, if so allocated, may be booked, deferred, and recovered by the DUs in accordance with traditional DSM cost recovery mechanisms. The Department shall allocate any costs of litigation regarding such updates in accordance with 30 V.S.A. § 21.

<u>Transition to EEU</u>

12. The Parties agree to the transition planning framework document appended as Attachment A, which sets out a strategy and process to plan for and accomplish the transition to the EEU from current DU DSM efforts. The Parties agree that the goals of such transition shall be: (a) to preserve effective program delivery, infrastructure and expertise related to Core Programs and DUP; (b) to restrain rate impacts of the transition caused for some DUs by changing from past DSM accounting and rate treatment to a pay-as-we-go approach; and (c) to enable an EEU which, as soon as possible, effectively delivers and attains savings from the Core Programs and other System-wide Programs as may be approved by the Board. The Parties shall work in

good faith to accomplish these goals and an effective transition to the EEU. As part of this effort, each DU in coordination with the Department shall develop, within 60 days following approval of this MOU, a budget for the DU's costs that it anticipates it will have to incur in support of the transition to the EEU structure. Costs incurred by a DU which signs this MOU, with respect to the development and implementation of the transition plan as contemplated in Attachment A, shall be eligible for recovery in the DU's next rate case pursuant and subject to traditional ratemaking principles and applicable DSM cost recovery mechanisms.

Future DU Activities and Obligations with Respect to System-wide DSM

13. Although the EEU is deemed to satisfy the system-wide DSM obligations of DUs which sign this MOU in accordance with paragraph 16, below, individual DUs voluntarily may design and implement their own System-wide Programs in addition to the Core Programs. Any such additional programs must not conflict with the System-wide Programs and services delivered by the EEU. In the event of dispute regarding whether any such additional program conflicts with an EEU-delivered program, the EEU, DPS, or relevant DU may refer the dispute to the Contract Administrator, who shall proceed as set out in subparagraph 5.b.ii, above. The costs of any such additional programs delivered by a DU will be borne by the DU and will be eligible for recovery pursuant and subject to traditional ratemaking principles and applicable DSM cost recovery mechanisms. However, in no event may a DU accrue and/or collect ACE in connection with such additional programs.

14. The Parties agree in principle that the Board has the authority, pursuant to 30 V.S.A. §§ 218(b) and 225(a), to consider and approve, modify, or disapprove a request by a DU to levy a charge on a participating customer's bill for the customer's contribution to the cost of measures installed under an energy efficiency program which the DU implements pursuant to 30 V.S.A. § 218(b).

15. DUs shall support and cooperate in good faith with the EEU to achieve the effective delivery of, and savings from, the programs implemented by the EEU in accordance with this MOU, including: providing customer information to the EEU in a reasonable manner and under appropriate provisions to prevent disclosure to unauthorized entities or personnel; customer referrals and contacts to EEU programs; and coordination of customer service, power quality, and any other DU functions which may intersect with EEU activities. In connection with such cooperation, coordination, and provision of information, the EEU and each DU shall provide reasonable notice and shall act in good faith to accommodate the reasonable considerations of the EEU and the DU.

16. This MOU is conditioned upon a Board finding that the EEU structure and System-wide Program proposal outlined herein, when approved by the Board and implemented in accordance with this MOU, shall be considered to fulfill the future obligations of each DU which signs this MOU to plan for and conduct System-wide Programs under 30 V.S.A. §§ 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any

requirements to plan for and conduct System-wide Programs contained in a Board order specific to a DU which signs this MOU.

EEU Budget and Funding

17. The Parties agree that the annual EEU budgets beginning January 1, 2000 through December 31, 2004 will be as set out in Attachment B.

18. The budgets set out in Attachment B for calendar years 2003 and 2004 shall be subject to the following process: During calendar year 2002, the Department will conduct an evaluation of: (a) the economically achievable energy efficiency potential ("Potential") in the State, including but not necessarily limited to the Potential in the markets targeted by the Core Programs; (b) the record of the EEU to date in achieving the eligible Potential in each of the markets targeted by the Core Programs and in stimulating the transformation of markets to reduce barriers to energy efficiency acquisition; (c) the record of the EEU in distributing Core Program benefits geographically within the State; (d) the continued need to direct the resources of the EEU toward the markets targeted by the Core Programs and/or toward other markets, and (e) such other factors as the Department may deem relevant. On the basis of this evaluation, the Department will file a report with the Board, with a copy to the EEU and the DUs, which will include any recommendations for change, including but not limited to revisions to the budgets for calendar years 2003 and 2004. The Board will provide the EEU, DUs, all parties on the service list for this docket, and any other person or entity which qualifies for intervention under PSB Rule 2.209, an opportunity to submit comments and request a technical workshop prior to acting on the Department's report. Any costs for preparation of such evaluation and report may be allocated to the DUs and, if so allocated, may be booked, deferred, and recovered by the DUs in accordance with traditional DSM cost recovery mechanisms. The Department shall allocate any costs of litigation regarding such updates in accordance with 30 V.S.A. § 21.

19. Annually on or before September 1, commencing in the year 2000, the EEU shall file with the Board, with a copy to the Department and each DU, the EEU's request for re-allocations of funds between and among programs. Such request shall also address the issue of whether any anticipated unspent budget amount should be retained in a contingency fund or applied as a credit to the next year's system benefits charge or DU assessment, whichever is applicable (see paragraphs 21 and 24 below). In no event may such request seek a change, for any given year, in the total annual budget amount shown on Attachment B. The Board will provide the DPS, DUs, all parties on the service list for this docket, and any other person or entity which qualifies for intervention under PSB Rule 2.209, an opportunity to submit comments and request a technical workshop prior to acting on the EEU's request. In response to an EEU reallocation request, a DU may raise the issue of whether the EEU has made sufficient efforts, over time, to deploy measures to that DU's service territory and/or to particular customer classes within that territory in a manner consistent with paragraph 45, below.

20. As described in paragraphs 21 and 24, below, the mechanism for DU funding of the EEU budget will vary depending on whether, prior to January 1, 2000, the Vermont statutes are amended to include language, similar to that contained in presently pending S.137, enabling the Board to establish a separately stated systems benefits charge to fund system-wide energy efficiency programs.

21. In the event that the Vermont statutes are amended as described in paragraph 20, above, the Parties agree that the EEU budget should be funded through a separately stated, non-bypassable, volumetric system benefits charge on the bill from the DU to customers. During the period January 1, 2000 through December 31, 2002, this separately stated charge shall provide from each DU a funding level apportioned from the EEU budget to the DU either: (a) pursuant to a separate bilateral agreement between DPS and a DU which signs this MOU or (b) determined by the Board for each DU which is not signatory to this MOU. The Parties agree that the budgets set out in Attachment B were developed to strike a balance between an appropriate ramp-up of EEU funding and the avoidance of significant rate impacts. The Department may include recommendations concerning whether or not to move to a uniform state-wide charge in the report described in paragraph 18 above.

22. In the event that the EEU is funded by a benefits charge as described in paragraph 21, above, the Parties agree that the current rates of each DU will be reduced to reflect as much as possible the extent to which DSM costs in current rates are displaced by such a benefits charge. Any such reduction shall be made: (a) in a rate proceeding concerning the DU which is currently pending before the Board; (b) through a rate reduction which the DU shall file with the Board, pursuant to 30 V.S.A. § 225(a),to take effect in accordance with paragraph 23, below; or (c) through a petition filed with the Board by the DPS. Notwithstanding the foregoing, for each municipal DU except the City of Burlington Electric Department, the amount of such reduction shall be the greater of: (1) the amount of DSM costs in rates as approved in the municipal DU's most recent rate case or (2) the municipal DU's 1999 budgeted figure for DSM as provided by the municipal DU to the Department on March 8, 1999.

23. In the event that the EEU is funded, under an amendment to the Vermont statutes similar to that contained in presently pending S.137, through a separately stated systems benefits charge, then the effective date of any reduction in the rates of each DU, made pursuant to paragraph 22, above, shall be the same as the first date on which the benefits charge goes into effect. Should a subsequent year's allocation to a DU of the EEU budget require a reduction in the rates of the DU, then the effective date of such reduction shall be the same as the first date on which the subsequent year's allocation goes into effect.

24. The Department believes the above-described benefits charge requires authorizing legislation, and the Department's agreement to paragraph 21 of this MOU is contingent

on enactment of enabling legislation containing language concerning such a benefits charge similar to that included in S.137 presently pending before the Vermont General Assembly. If such enabling legislation is not in statute prior to January 1, 2000, then the Parties agree that an assessment on individual utilities shall be made in the same amount as would be placed, to fund the EEU, in the above-described benefits charge. A DU shall not be expected to pay the entirety of such assessment to the EEU on the first day of each calendar year but rather shall pay such assessment according to a reasonable schedule: (a) developed through the TWG process outlined in Attachment A; (b) agreed upon between the EEU and the DU; or (c) ordered by the Board. If a DU seeks to state such assessment as a separately identified charge on the bill, the DU may: request Board approval of such a separately identified charge in a rate proceeding concerning the DU which is currently pending before the Board; or (b) file a rate design tariff change with the Board pursuant to 30 V.S.A. § 225(a). In either event, the Department agrees that the Board has authority to approve such a separately identified charge, to support the establishment of such a charge for a DU which requests such establishment and signs this MOU, and to work in good faith with each DU which signs this MOU to reach a mutually acceptable separately identified charge for such assessment. A DU's payment of the assessment described in this paragraph shall not be contingent on Board approval of a request by the DU for approval of a separately identified charge.

25. The Parties agree that, following the authorization of any separately identified customer charge which includes the funding for the EEU, a bill insert shall be included in the initial two bills, which contain such charge, from each DU for which such charge is authorized to each customer. Subject to consultation with the DU and the Board, the Department shall provide this insert to each DU for which such charge is authorized. This insert shall explain the reasons for the charge, the nature and purpose of the EEU, and such other matters as are relevant to the charge. In the event that a DU desires to print the text of said insert on the front of another item for distribution to its customers in a manner so as to avoid incremental postage, the DU shall coordinate with the DPS to determine the appropriate placement of the insert.

26. The Department and International Business Machines, Inc. ("IBM") are negotiating concerning a potential "C&I Customer Credit Program." The Parties agree that any such program, if presented to and approved by the Board, shall be available to all eligible customers of a DU which signs this MOU. The Parties also agree that application of any such program, if presented to and approved by the Board, shall not change the DU's allocation of the EEU budget during calendar years 2000 through 2002.

27. Subject to the transition goals and obligations identified in paragraph 12, above, and Attachment A, a DU may terminate implementation of its individual System-wide Programs as of December 31, 1999. On and after January 1, 2000, the EEU shall assume full responsibility for the implementation and delivery of any System-wide

Programs approved for EEU implementation by the Board. Upon reasonable notice to the DU, the EEU may contract with a DU to provide DSM services on or after January 1, 2000. If for any reason an EEU has not been established by January 1, 2000, the Contract Administrator shall be authorized to enter into such contracts with DUs, upon reasonable notice, until the establishment of an EEU, and each DU shall work in good faith with the Contract Administrator in accordance with the transition goals and obligations set out in paragraph 12, above. Except for each DU's obligation to fund DSM implemented pursuant to DUP, funding of the EEU in accordance with this MOU or order of the Board shall satisfy the obligation of each DU which signs this MOU to fund any System-wide Programs after December 31, 1999.

DUP

28. The Parties agree that, upon approval of this MOU, DUs shall have the responsibility to engage in least cost transmission and distribution system planning and effectively implement such plans. Utility transmission and distribution planning activities shall be conducted under DUP. The DUP guidelines described in chapter eight and contained in appendix five of the Plan shall serve as a starting point for a collaborative to define the approach DUs should use to identify areas where strategic DSM and distributed generation may be able to achieve cost-effective delay or avoidance of T&D investments. DUs will develop any necessary increased capability to perform DUP and to maximize coordination among themselves and with the EEU for planning inputs and implementation capability. Except for the obligation to include DSM as part of DUP, the obligation of a DU which signs this MOU to plan for and deliver System-wide Programs shall be satisfied by the EEU, in accordance with paragraph 16, above.

29. Nothing in this MOU represents an admission or concession by any Party with respect to whether, prior to the approval of this MOU, a DU had or has an obligation to conduct and implement DUP.

30. The Parties agree that DUP raises a variety of issues that are new and more complex than other aspects of DSM and T&D planning, and that there is a need to further define, understand and resolve these issues. The Parties agree to enter into a formal collaborative process building upon, revising, and further specifying implementation procedures for the DUP guidelines discussed in the Plan. The collaborative will seek to recommend to the Board:

    a. Guidelines for use in DUP activities by individual DUs. The DUP guidelines contained in the Plan shall serve as a starting point for these efforts.

    b. Procedures for revising IRP filings by DUs to reflect the principles, and assist in the practice of, DUP, and to recognize the potential role of the EEU in assisting with implementation of DUP DSM.

c. Externalities and risk adjustments (including methodologies) to be used in DUP. As part of any agreements on externalities that may be achieved through the collaborative DUP process, those entities participating in that process also may seek to amend the externality adder agreed to in paragraph 51, below, for non-DUP DSM.

d. A streamlined procedure to recognize T&D projects that may be simply related to emergency or routine repairs and may require implementation prior to completion of the full DUP process. Such procedure must contain sufficient safeguards to ensure that the procedure is not used to bypass the DUP process.

31. The Parties request that, within 60 days of approval of this settlement, the Board open a proceeding under which the above-described DUP collaborative process will occur. The Parties agree to complete this collaborative process within 120 days of the opening of such a proceeding. At the end of the collaborative process, either the Parties will recommend an agreed-upon proposal to the Board or, to the extent they have not reached agreement, will file their own recommendations with the Board which will resolve any disputed issues after opportunity for hearing. In the event the collaborative process does not result in agreement concerning DUP guidelines, the Parties agree that the record in Docket 5980 may be incorporated in any proceeding opened pursuant to this paragraph. The Parties agree that such incorporation shall not be a basis for depriving any party of the opportunity to address any issue relevant to such proceeding.

32. Upon completion of the collaborative process provided for in paragraphs 30 and 31, above, each DU shall identify and create a written plan for a least cost strategy for providing T&D service, including alternatives to T&D upgrades in constrained T&D areas, to be incorporated in the DU's next IRP filed after the conclusion of such process. The date for the filing of such IRP will be agreed upon or determined by the Board as part of such process.

33. Accounting and ratemaking for a DU's DUP-related DSM activities shall be performed under existing DSM ratemaking rules and principles, including but not limited to the ACE mechanism. Prudence, used and usefulness and other ratemaking concepts shall apply as defined in Docket No. 5270.

34. When considering the cost-effectiveness of alternatives to a new T&D investment, a DU shall choose the optimal investment strategy, determined under the societal test as defined in Docket No. 5270, subject to the constraints that the chosen strategy produces positive electric system net benefits including T&D cost savings, energy and capacity, and that it will enable the DU to operate its electric system in a safe and reliable manner.

35. A DU shall be required to ensure that DSM implementation undertaken as part of DUP is conducted in a manner that does not create lost opportunities, including but not

limited to lost opportunities in the market segments targeted by the Core Programs, and appropriately inventories future potential savings. The Parties agree that DUP does not require a DU to secure DSM savings beyond those that will enable it to fulfill the DU's DUP planning and implementation responsibilities.

36. Subject to the simplified procedure to be addressed as part of the DUP collaborative (see subparagraph 30.d, above) T&D upgrades that address electrical system reliability, safety, T&D efficiency or routine maintenance should be accounted for in the DUP planning process.

37. The EEU budgets and funding mechanisms agreed to in paragraphs 17, 21, and 24 of this MOU are for the administration and implementation of System-wide Programs (including the Core Programs) which are statewide programs addressing system-wide DSM. DUs shall budget separately and pay in addition to the EEU budget for DUP planning and implementation by the EEU or other entity.

38. The EEU may provide, on a fee-for-service basis, assistance in DUP efforts to the extent that this activity does not detract from delivery of the Core Programs.

39. The EEU shall provide DUs with reasonable estimates of expected load impacts from the Core Programs, and any other System-wide Programs approved for EEU implementation by the Board, for use by the DUs in DUP. In addition, to the extent the EEU already has information due to its existing activities, the EEU will make available to the DUs, as reasonable and in a manner useful to their DUP efforts: relevant planning assumptions, descriptions of eligible measures, and measure characteristics including estimates of DSM potential (load shape, eligible market, realistic penetration, and other information relevant to such characteristics). The information to be provided under this paragraph shall be limited to information created or maintained by the EEU in the ordinary course of business. This paragraph does not create an obligation of the EEU to create information specially for a DU. The provision of information by the EEU to the DU under this paragraph shall be at no cost to the DU.

40. The EEU shall respond to solicitations for bids from a DU for DSM implementation arising out of DUP at the DU's request. The EEU may charge the DU for costs of responding to such solicitations.

41. Consistent with paragraph 37, above, and the EEU's obligation to deliver, at or near the planned budget levels and participation rates, uniform statewide Core Programs and other System-wide Programs as may be approved by the Board, at the request of a DU the EEU may provide increments to the Core Programs in DUP-identified target areas, and deploy additional strategic retrofit programs. The DU receiving such services will pay the incremental costs for added measures, marketing and coordination and the full cost of any additional programs.

42. One or more DUs may make a proposal to the EEU's Emerging Markets Initiatives Program involving innovative least-cost strategies for DUP implementation. The EEU will evaluate such a proposal as it would any other proposal to the Emerging Markets Initiatives Program.

ACE

43. DUs currently accruing ACE shall be allowed to accrue and recover ACE on energy savings attributable to System-wide Programs delivered by the EEU for up to two (2) calendar years from January 1, 2000 or until the DU receives a Board order with respect to replacing the ACE mechanism in a rate case, whichever is earlier. At the time of that rate case the DU may present evidence and argument concerning: (a) the extent to which revenue erosion due to core program savings has or will have an effect on the DU's opportunity to earn its allowed return; (b) the appropriateness of establishing a rate-making method to ameliorate any such effect; and (c) a proposed rate-making method, other than ACE, to ameliorate any such effect.

44. When ACE is eliminated, the regulatory process should be examined to determine any changes necessary to allow DUs the reasonable opportunity to earn their allowed return. The Parties commit to perform such examination and develop and implement any needed mechanism by January 1, 2001. If agreement on a new mechanism cannot be reached, the matter shall be resolved in the rate case where the DU proposes such a mechanism.

Distributional Equity

45. Over time, the System-wide Programs offered by the EEU should generally reflect a level of expenditure that corresponds to electric energy use by geographic region and customer class throughout the state. In this regard, the Parties agree that the design of the System-wide Programs and the budgets for those Programs should generally seek to provide a level of service to customer classes and regions of the state that corresponds to their share of the eligible energy efficiency potential and their contribution to DSM expenditures.

46. In accordance with paragraph 17, above, the System-wide Program activities of the EEU shall be designed to operate within a Board-approved budget, with annual re-allocations among programs as provided for in paragraph 19, above. The Parties agree that at no time during the five-year period commencing January 1, 2000 should the DU customer contribution to the EEU for the Core Programs exceed the equivalent of 2.9 mills/kWh on total statewide retail sales.

47. Initially, in accordance with paragraphs 21 and 24, above, the allocation of the EEU budget and/or share of benefits charge has been determined for each DU on a company-specific basis, based in part on a reasonable estimate of eligible markets for the core programs in each service territory. As stated in paragraph 21, the design of a

benefits charge to support the System-wide Programs to be implemented by the EEU is to be volumetric to the greatest extent possible consistent with traditional rate design principles, pursuant to a rate design approved by the Board. For customer classes with a demand component, such a benefits charge may reflect both the energy and demand components of the bill, pursuant to a rate design approved by the Board.

48. Within each DU service territory, the amount of the EEU budget allocated to the DU will be allocated, to the greatest extent possible, among each DU's customer classes in the same manner and using the same methodology as other comparable costs are allocated under the DU's approved rate design, as may be amended with Board approval from time to time.

Avoided Costs

49. All decisions regarding DSM program design, measure selection, and measure installation shall be made based on the societal test as defined in Docket No. 5270. Such societal test, including risk and externalities adjustments, shall be used in screening all DSM measures and programs, including the Core Programs, and in DUP. This agreement is subject to: (a) the provisions of paragraph 51, below, regarding externalities, and (b) the constraint for DUP that the chosen strategy must produce positive electric system net benefits including T&D cost savings, energy and capacity.

50. In applying the societal test to DSM programs and measures, statewide avoided costs as approved by the Board for energy, capacity, risk, losses, and externalities shall be used, except that in DUP planning and implementation, area-specific T&D avoided costs should be substituted for system-wide. The statewide avoided costs proposed by the DPS in the Plan for energy, generation capacity, losses, risk adjustment and T&D capacity are adopted for use in System-wide Programs.

51. The Parties agree that an externalities adder of 0.7 cent/kWh is adopted to replace the five percent adder as a rebuttable presumption for System-wide Programs only, provided that such replacement adder is non-precedential as to any other matters including but not limited to supply purchases and DUP (including DSM programs offered as a result of DUP). For planning and implementation of System-wide Programs, the DPS shall develop externality adders to be used for fuel-consuming measures which are comparable and consistent with the end-use externality adders contained in the Plan modified to be comparable and consistent with the above-described replacement externalities adder. However, until the externalities adder for DUP DSM is resolved through the DUP collaborative process described above, each DU will use, for DUP DSM, the five percent externalities adder as set out in Docket No. 5270.

52. In accordance with paragraph 49, above, DSM measures and programs should all pass the societal test. The first priority of the EEU and its programs should be to identify and implement cost-effective electric energy DSM measures. The EEU is encouraged,

however, to develop customer contribution strategies and other sources of funding that can be used to maximize the ability of programs to provide additional efficiency savings (e.g. fossil fuel, water, sewer, O&M) and other societal benefits as well.

General

53. The Parties agree that the establishment, funding, and support of the EEU in accordance with this MOU, if the MOU with attachments is approved in its entirety by the Board, shall be considered to resolve all claims based on actions or failures to act prior to January 1, 2000 that a DU which signs this MOU failed to satisfy its DSM obligations to customers under 30 V.S.A. §§ 218c, 218b; the Board's orders in Docket Nos. 5270 or 5330; or any requirements to plan for and conduct System-wide Programs contained in a Board order specific to a DU which signs this MOU. This resolution shall include any claims accruing prior to January 1, 2000 founded upon such obligations, including but not limited to claims of imprudence or non-used and usefulness based upon failure to satisfy such obligations.

54. Nothing in this MOU shall prevent the Department from investigating or challenging, on grounds other than failure to satisfy obligations to plan for and deliver System-wide Programs, the existence or proper treatment of claimed DSM expenditures or related AFUDC or ACE amounts.

55. Notwithstanding the foregoing, this MOU does not resolve any claims addressed, or arising out of, the Board's orders in Dockets No. 5841/5859.

56. Notwithstanding the foregoing, DSM costs which a DU signing this MOU has incurred, or is presently incurring, but is not yet recovering in rates are subject to traditional ratemaking principles and potential disallowance if the DU fails to uphold its obligations and agreements as provided in paragraphs 12, 15, and 66 of this MOU, the transition planning framework document attached to this MOU, or a bilateral agreement concerning this docket with the DU.

57. The Department's agreement to this MOU is conditioned upon reaching an additional bilateral agreement, with each DU that signs this MOU, which at a minimum incorporates this MOU and contains the DU's firm agreement, for each of the first three years of the EEU, to a funding amount to be provided by the DU for the EEU's Core Program administration and implementation.

58. Certain DUs have filed appeals with the Court, pertaining to the Board's orders in this docket of January 19, 1999 and February 22, 1999, in order to preserve their rights with respect to the issue of whether the Board has jurisdiction to order and require funding of an EEU. By signing this MOU, each such DU acknowledges and agrees: (a) that the Board has jurisdiction to consider and approve this MOU notwithstanding the pendency of any such appeal; (b) following approval of this MOU by the Board, promptly to withdraw any such appeal; and (c) following Board approval of this MOU in its entirety,

to take no action to challenge or provide assistance to any challenge of the Board's jurisdiction to order and require funding of an EEU.

59. If all DUs which have filed appeals with the Court, pertaining to the Board's orders in this docket of January 19, 1999 and February 22, 1999, sign this MOU, then those DUs and the Department agree: (a) that the Court should suspend the process for briefing, arguing, and consideration of any such appeals for a period of 90 days to allow the Board hear, consider, and approve this MOU; and (b) following the execution of this MOU by all such DUs and the Department, to file a stipulated motion with the Court requesting the agreed-upon 90-day suspension.

60. This paragraph pertains to Parties which have not filed an appeal with the Court arising from this docket. By signing this MOU, any such Party agrees not to challenge or provide assistance to any challenge of the Board's jurisdiction to order and require funding of an EEU, the Board's jurisdiction to proceed with Phase II of this docket, or the Board's jurisdiction to consider and approve this MOU notwithstanding the pendency of an appeal to the Court.

61. Each DU which signs this MOU does so voluntarily. In the event that the Court reverses the Board's order of January 19, 1999 with respect to whether the Board has authority to require the EEU or the funding thereof by a DU, each DU which signs this MOU voluntarily agrees that the EEU may be implemented, in accordance with this MOU and any bilateral agreement concerning this docket between the Department and such DU, in such DU's service territory.

62. The Parties agree that, pursuant to 30 V.S.A. § 21(a), the Department will allocate to the utilities, in accordance with the allocation procedures previously used in this docket, its consultant costs to date for Phase II including but not limited to the Department's costs related to the settlement negotiations which have produced this MOU, and those additional consultant costs incurred for supporting the approval of this MOU, and performing, in 1999, the Department's tasks under this MOU or in the transition to an EEU.

63. Each DU which signs this MOU agrees to pay its share, in accordance with the allocation procedures previously used in this docket, of the invoices the Department received for work performed by its consultants in this docket under the Phase II contract amendment during the period June 1, 1998 through September 30, 1998.

64. Each DU which signs this MOU agrees to pay its share, in accordance with the allocation procedures previously used in this docket, of the invoices the Department has received or will receive for work performed by its consultants in this docket in connection with the negotiations which produced this MOU.

65. With respect to additional consultant expenditures for supporting this MOU before the Board, the Department agrees to identify specific tasks to be performed by such consultants and the associated costs, provide this information to each DU which signs this MOU, and consult on how such tasks might most efficiently be accomplished.

66. Before the Board, the General Assembly, and the public, and in communications with DU customers, the Parties agree in good faith to support the approval, establishment, funding, and implementation of the EEU in accordance with this MOU. The Parties agree to take no action intended or reasonably likely to undermine the approval, establishment, funding, and implementation of the EEU in accordance with this MOU.

67. The Board shall have jurisdiction to resolve any disputes arising under this MOU.

68. The Parties have made specific compromises to reach this MOU. The Parties agree that should the Board fail to approve this MOU in its 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 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.

Attachments:

A. Energy Efficiency Utility ("EEU") Transition Planning Framework (April 29, 1999)
B. Core Efficiency Utility Program Costs (April 29, 1999) [not included in this Order]
C. Bilateral Agreement with CVPS [included as a separate appendix to this Order]
D. Bilateral Agreement with GMP [included as a separate appendix to this Order]

Attachment A

Energy Efficiency Utility ("EEU") Transition Planning Framework

Transition Goals and Scope

- Achieve an orderly and efficient transfer of program responsibilities from utilities to EEU by a date certain.
- Scope of transition includes all programs related to core programs, and those utilities currently involved in them.
- Utility actions are concentrated on transitioning to the EEU those programs or functional areas where the utility is currently involved.
- In the event of a settlement on all issues with some but not all parties, the parties to the settlement participate in the transition planning process.

Transition Periods

Transition activities span three distinct periods:

- *Before selection of the EEU:* Coordinated activities among parties preparing for selection of EEU contractor, and putting in place fiscal and administrative mechanisms at the PSB for contracting with EEU.
- *Before commencement of EEU operations*: Preparation of programs and systems for arrival of EEU.
- *After commencement of EEU operations*: Completion of program transfer (probably on a staggered basis).

Transition Principles

- No significant changes will be made to existing programs that are likely to evolve into EEU Core programs, unless approved by the Transition Working Group ("TWG") to be established by the parties.

- No additional utilities shall begin delivery of existing statewide programs in 1999 unless approved by the TWG.
- No new programs (except for targeted distributed utility programs) will be developed or delivered by utilities.
- Guidance, as appropriate, in phasing out or modifying non-core system-wide program utilities may choose to terminate.
- Assistance, to the extent appropriate, in facilitating utility employee transitions.

Transition Activities

To facilitate the orderly development and implementation of a transition plan, a TWG will be developed by the parties to the settlement. This working group will:

- perform utility coordination functions until the appointment of the utility coordination Advisory Committee to the EEU described in paragraph 5 (d) of the settlement MOU;
- be chaired by the DPS;
- be comprised of DPS staff and contractors, utility staff and existing program contractors currently involved in multi-utility programs ("participating utilities") selected by the DPS in consultation with participating utilities;
- may establish subgroups separately staffed for different customer groups (that may include one or more core programs) and major functional areas
- may include utilities not currently participating in core programs for coordination on cross-cutting issues (e.g. data requirements)

Individual programs will be readied for hand-off to the EEU by TWG program subgroups. Each program subgroup will identify utility staffing support needed for coordination in each transition phase. Cross-program functions will also be readied for assumption by the EEU. These include data definitions and requirements, coordination and consolidation; and cost accounting procedures and controls.

The Transition Working Group will develop a detailed Transition Plan for submission to the PSB by May 21, 1999. This plan will cover transition activities before and after commencement of the EEU. The PSB will resolve any disputes over transition issues submitted by the TWG, (any such disputes to be identified with the filing of the transition plan). The TWG will also seek agreement on recommended language, terms and provisions of the EEU RFP, and suggested EEU contract provisions as well as the scope of work for the fiscal agent and contract administrator to be engaged by the PSB. The transition plan will be included as part of the EEU RFP.

The PSB will convene the next stage of Docket 5980, the purpose of which will be to issue an RFP. Parties to Docket 5980 will have the opportunity to submit draft language for the RFP, suggested EEU contract provisions and criteria that the PSB will use to select among EEU bids.

Transition Timetable

Following are milestones for transition activities in the first two transition periods before commencement of operations by the Efficiency Utility. The Efficiency Utility would assume lead responsibility for transition efforts, with guidance from the Transition Plan, and assistance from the Transition Working Group.

Task	Completion Date
5980 settlement submitted to PSB for approval Parties form Transition Working Group, begin transition plan development, collaborating on development of draft EEU RFP	4/30/99
PSB issues decision approving settlement Parties submit transition plan for PSB review, approval, and/or dispute resolution PSB issues RFP for Fiscal Agent and Contract administrator Parties submit joint draft RFP for EEU, and suggested EEU contract provisions[1]	5/21/99 [2]

PSB hires Fiscal Agent PSB hires Contract Administrator PSB issues RFP for selection of the EEU	6/21/99
Pre-bid conference	7/05/99
EEU bids due	8/16/99
PSB opens technical workshop proceeding on selection of EU (Docket 5980 parties and/or bidders respond to information requests, questions at workshop)	8/16/99
PSB issues recommended decision on EEU selection	10/11/99
PSB issues final decisions (after written exceptions and/or oral argument)	10/25/99
Final contract agreement (following contract negotiations involving winning bidder, contract administrator, PSB)	11/15/99
EU takes over full responsibility for core programs (including current statewide programs). EU further refines transition plan and begins orderly phase-in of program delivery activities separately for each program.	1/10/00

[1] If the parties are unable to develop a single, concensus draft RFP and/or suggested contract provisions, each party would be free to submit such filing(s) separately to the PSB for its consideration.

[2] Date for Board Decision assumes no objections to settlement. Significant revision of schedule may be required if there is no objection to the settlement by one or more parties.