

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6758

Hearing at
Montpelier, Vermont
October 30, 2002

Investigation into Fourteen Utilities' Provision)
of Service to Customers Pursuant to Expired)
Special Contracts or at Special Rates Without)
Prior Board Approval

Order entered: 12/16/2002

PRESENT: Michael H. Dworkin, Chairman
David C. Coen, Board Member
John D. Burke, Board Member

APPEARANCES: *See Appendix B*

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I. INTRODUCTION

Between October 2000, and August 2002, the Vermont Department of Public Service ("Department") investigated thirty-three of Vermont's public utilities in order to determine whether any of these companies were illegally providing services at preferential rates. The Department found that fourteen of the state's utilities had violated 30 V.S.A. § 229, a statute that requires public notice of the fact of a preferential rate. Section 229 is intended to preclude the evils attendant to such practices as insider trading, discriminatory offerings, undue preferences, and exploitation of other monopolized customers that fund the price breaks given to a selected few. The Department's testimony regarding the scope and scale of these violations indicates that it discovered over 60 instances of the provision of unapproved preferential rates, and that utilities provided preferential rates in the range of nearly \$11 million over various periods since 1995.¹ The Department has entered into 14 stipulations in which the respective utility companies agree

1. See Appendix A.

to pay cumulative penalties of nearly \$400,000.² In no case will ratepayers be required to pay any of these penalties.³

In response to the report issued by the Department regarding its investigation, the Public Service Board ("Board") opened this Docket.⁴ In its filing, the Department also asked the Board to set a hearing date to consider each of the fourteen settlement stipulations. The Board agreed and by Order of September 19, 2002, instructed the Department to submit prefiled testimony in support of the stipulations no later than October 18, 2002. The Board instructed the Department to include in its testimony a description of the general rationale and methodology by which the recommended penalty amounts were determined. The Board also directed Parties wishing to do so, to file comments no later than October 25, 2002. The parties filed no comments opposing the proposed stipulations.⁵

The Board conducted an evidentiary hearing in this matter on October 30, 2002. In attendance were the following parties: GMP, VGS, BED, Morrisville, Swanton, Verizon, VEC, CVPS, Readsboro, Lyndonville, Stowe, Ludlow, Barton, and VTel.

In this Order, we approve thirteen of the fourteen stipulations submitted. With regard to the stipulation between the Department and Verizon VT, we conclude that, before we can approve their stipulation, the company needs to demonstrate to this Board why its special contract monitoring measures will be sufficient to ensure the company's future compliance with

2. The fourteen utilities are: Green Mountain Power Corporation ("GMP"); Vermont Gas Systems, Inc. ("VGS"); City of Burlington Electric Department ("BED"); Village of Morrisville Water & Light Department ("Morrisville"); Swanton Village Inc. Electric Department ("Swanton"); Verizon New England Inc., d/b/a Verizon Vermont ("Verizon VT"); Vermont Electric Cooperative, Inc. ("VEC"); Central Vermont Public Service Corporation ("CVPS"); Town of Readsboro Electric Light Department (referred to as "Readsboro Utilities" in the Stipulation or "Readsboro"); Village of Lyndonville Electric Department ("Lyndonville"); Town of Stowe Electric Department ("Stowe"); Village of Ludlow Electric Light Department ("Ludlow"); Barton Village Inc. Electric Department ("Barton"); and Vermont Telephone Company, Inc., d/b/a Vtel ("VTel"). In addition to a cumulative proposal for penalties of \$393,975, the stipulations also describe procedures that the utilities have subsequently implemented to maintain compliance with the law and with Board procedures regarding special contracts and special rates.

3. Tr. 10/30/02 at 48-53.

4. By letter dated August 30, 2002, the Department indicated that it had "identified numerous instances where a utility served customers pursuant to an expired special contract or at special rates without Board approval or otherwise failed to fully comply with the terms of the Board's approval order." Department Letter of August 30, 2002.

5. In addition to the comments of Parties, the Board received a letter from Senator Susan Bartlett on October 8, 2002, a copy of which was placed in the public file in this Docket.

Section 229. As explained more fully below, in order to ensure more effective oversight of the special contract process by regulated Vermont utilities, our approval of the stipulations is conditioned to require companies to notify in writing each of their special contract customers 90 days in advance of the termination date of that customer's special contract, and to copy the Board and the Department with that notice letter. The Board will designate one of its staff to serve as a coordinator with the utilities in order to help them to stay in compliance with the various requirements of specific Board orders and, more generally, with Section 229.

II. BACKGROUND

Vermont law requires that a regulated utility company charge customers only the rates set forth in the company's tariff, unless the company first obtains approval from the Board to charge a different rate. Specifically, section 229 of Title 30 states that:

A public service company shall not directly or indirectly or by any special rate, rebate, drawback or other device or method make any deviation from the rates, fares, charges or prices for any service rendered by it or in services rendered or to be rendered in connection therewith, as specified in its schedules of charges in effect at the time such service was rendered. No public service company may enter into any contract, agreement or arrangement relating to the furnishing or rendering of any special product or special service not provided for or covered in the schedule without the prior approval of the board.

If a company grants a special rate or rebate without first obtaining approval from the Board, section 230 allows the Board to impose a civil penalty up to the larger of \$10,000 or five times the amount of the benefit or rebate. Furthermore, Section 247 also provides that:

In addition to any civil penalty imposed under section 30 and section 230 of this title, any person, partnership, unincorporated association, company or corporation, or the officers of any unincorporated association, company, or corporation who violates section 230 or section 248 of this title shall be fined not more than \$100.00 or imprisoned not more than sixty days, or both.

In spite of receiving service from monopoly providers, Vermont's large commercial and industrial customers enjoy significant flexibility in electric services and rates due to the availability of two types of special contracts authorized under 30 V.S.A. § 229. First, special

contracts can provide customers with interruptible services, and thus, with flexibility and lower prices in exchange for the customer's agreement to interrupt its use of the service at certain times, for example, when the company needs all of its capacity to provide service to its firm customers. To the degree that the value of avoided additional capacity costs meets or exceeds the value of the reduction in rates, the interruptibility feature of a contract enables a utility to avoid additional capacity costs. Secondly, eligible customers can receive economic development incentive rates through a special contract. This type of special contract is intended to attract new or expanded business activity to the state. When approved, economic development rates are designed to fully cover the incremental costs of serving that new load.⁶

However, in cases where utilities ignore their legal obligation to obtain special contract approval from the Board and, instead, offer unapproved preferential rates, there is no assurance that the company will recover its incremental costs of service. If this is the case, and a utility does not recover the costs from the special contract customer, then its other customers purchasing tariffed services are left to shoulder these costs. It is inappropriate for the special contract customer to receive such benefits, in the form of discounted rates, while other utility customers pay those costs. In the case of both kinds of special contracts – the interruptible and the economic development incentive rate special contracts – the reduced rates can be justified only if there are benefits for other ratepayers that fully offset the discounts. And unless a contract is reviewed and approved, there is no guarantee that it will meet these fundamental requirements, and that existing utility customers will avoid being harmed. It is for these reasons that the legislature requires the Board to review contracts for special rates, and why it concluded that the imposition of financial penalties, and even prison time, is appropriate where the Board finds that 30 V.S.A. Section 229 has been violated.

6. Eligible customers participate in these programs by entering into special contracts, but do not necessarily provide a quid pro quo, such as a willingness to be interrupted, for the discounted rates offered. However, existing customers are not harmed, and, in fact, may even be helped, if the incentive rates provide a contribution to the utility's fixed costs that would have been foregone, absent the special contract.

III. FINDINGS

General

1. In October, 2000, when it became apparent to the Board that VEC was providing service to several customers pursuant to expired special contracts, the Board asked the Department to comment and to recommend a process that the Board might undertake to consider appropriate remedies. Steinhurst pf. at 2.

2. On November 15, 2000, the Department indicated that it would investigate the matter and that it would work with VEC in order to determine if a joint resolution to the matter could be reached. *Id.*

3. In January and February of 2001, the Department continued to investigate whether there were other examples of service under expired contracts. Discovering that other regulated utilities besides VEC were providing service under expired contracts, the Department began serving companies with requests for information in March of 2001. *Id.*

4. On March 13, 2001, the Department initiated a broader investigation of all electric, gas and incumbent telephone companies to determine whether customers are, or have been, served at rates pursuant to expired special contracts or otherwise at rates different from those provided in the company's tariff and without Board approval. The Department's investigation initially looked at all 22 Vermont utilities and then focused upon fourteen Vermont utilities including GMP, VGS, BED, Morrisville, Swanton, Verizon, VEC, CVPS, Readsboro, Lyndonville, Stowe, Ludlow, Barton, and VTel (collectively "the fourteen affected utilities."). *Id.* at 2-3.

5. The Department continued its inquiries through September of 2001. Due to the high number of violations of the law, complexity of issues, and the volume of data required to understand the specifics of each case, the Department was unable to resolve the issues during that period. *Id.*

6. During the period between October, 2001 and July, 2002, the Department added staff to its investigation, collected additional data on some of the violations, began to analyze data, and to explore options for remedial action and for a penalty methodology. *Id.* at 3.

7. On August 30, 2002, the Department filed signed stipulations into which it had entered with each of the fourteen affected utilities. *Id.*

8. Each stipulation contains: (1) a statement of specific infractions found; (2) a certification by each utility that it has identified and disclosed all relevant infractions; (3) an agreement to pay a financial penalty; and (4) a proposal for remedial actions by the utility. *Id.*⁷

9. Each stipulation also contains the following terms:

a. The Department agrees that the payment described in the preceding paragraph is appropriate and sufficient consideration for this settlement. In making this judgment, the Department considered the utility's cooperation with the Department in the conduct of its investigation, the immediate action the utility took to correct the violation once it was identified, the fact that the utility represents that it has conducted an analysis of the internal systems that allowed the violation to occur and developed and implemented improved internal procedures with regard to special contract review and implementation procedures.

b. The utility agrees that if the Department discovers any future violations of 30 V.S.A. § 229 that the utility's violation(s) identified in the stipulation and the other representations in the stipulation will be considered in recommending the appropriate penalty as permitted by 30 V.S.A. §§ 30, 230 and 247.

c. The utility agrees to maintain records of all special contracts, including billing records, for a minimum of seven years following termination of the special contract service.

d. The utility agrees to provide the Department with annual reports regarding all service pursuant to a special contract in the preceding year, to be filed on or before July 1 of each year in 2003, 2004, 2005, 2006 and 2007, with those filings containing (at a minimum) the special contract number, customer name, Board approved term of the contract, the effective date of the special

7. Apart from the general findings regarding the Department's overall investigation, and the development of a methodology to establish penalties, findings regarding company-specific infractions found, certification by each utility that it has identified and disclosed all relevant infractions, company agreements to pay a specific financial penalty, and company-specific proposals for remedial actions will be made below in the context of each utility's settlement stipulation.

contract rates, the current status of the service, the date any required reports were due and the date any required reports were filed, and, where applicable, the special contract service termination date.

e. The parties to the stipulation agree that the settlement set forth in the stipulation is a compromise of contested claims reached in arms-length negotiations, and is fair, reasonable, and in the public interest.

f. The parties agree that the penalty methodology used in reaching this stipulation was developed only for the purpose of resolving, through settlement, the violations of Section 229 discovered through the Department's investigation. Accordingly, the parties agree that the settlement penalty methodology shall not be construed by any party or tribunal as having precedential impact on any future proceedings involving Section 229 violations by any Vermont regulated utility, except to enforce this stipulation or the Board's Order adopting this stipulation. The parties reserve the right in future proceedings to advocate positions that differ from the positions set forth in this stipulation.

g. If the Board does not accept this stipulation in its entirety, the stipulation shall be deemed null and void and without effect, shall not constitute any part of the record in this proceeding and shall not be used for any other purpose. In such event, or in the event any modification or condition is made to this stipulation, each party shall be placed in the position that it enjoyed in this proceeding before entering into the stipulation, and all negotiations and proceedings connected therewith shall be without prejudice to the rights of the parties.

h. All terms, conditions and provisions of this stipulation shall be binding upon, inure to the benefit of, and be enforceable by the respective parties hereto, including their predecessors, successors and assigns.

i. The parties jointly move that the Board approve this stipulation as the full and final resolution of the investigation into the utility's service to customers

pursuant to expired special contracts or otherwise at rates not approved by the Board, and close this docket.

Penalty Methodology

10. The Department's methodology for establishing penalties employs various factors in setting specific dollar amounts for penalties. The methodology also establishes settlement terms and factors in consideration for companies' willingness to cooperate and to negotiate. *Id.*

11. In establishing its methodology, the Department took into account the following factors:

- The maximum penalty permitted under 30 V.S.A. §230;
- The duration of the violation;
- The dollar difference between the actual rates charged by the company and the utility's applicable tariff rates;
- Any specific instances of the utilities' failure to comply with Board orders;
- Whether the utility cooperated with the Department in its investigation and in remedying any violations; and
- Whether the utility has been previously penalized for violating 30 V.S.A. § 229.

The resulting methodology contains maximum amounts to ensure that a penalty recommendation for specific violations of especially long length or exceptionally great dollar difference remains reasonable. The methodology also establishes a total utility penalty maximum based on each utility's gross revenue as reported for calendar year 2001. *Id.*

12. According to the methodology, a penalty is calculated in the following manner: first, the methodology assigns a pro forma penalty amount "for certain factors using penalty scales developed by the Department to provide proportionality." The pro forma penalty amounts are then capped according to the limits contained in 30 V.S.A. § 230, and at a percentage of the utility's gross revenue. The Department has also adjusted the pro forma penalty to reflect cooperation and timely compliance where it determined this was appropriate. *Id.* at 5.

13. In establishing the penalty methodology, the Department has sought to advance the following goals:

1. Deterrence of future prohibited activity;
2. Fair and even-handed result; and
3. Avoidance of additional infractions, protracted litigation, and further delay.

Id. at 4.

The Settlement Stipulations

The Green Mountain Power Corporation Settlement

14. GMP provided station service to the McNeil Generating Station ("McNeil") pursuant to two special contracts without Board approval and that it was continuing to provide station service to McNeil pursuant to the most recent contract, although the term of that contract had expired. The Department's investigation revealed that the initial special contract was implemented effective June 1, 1988. That contract expired on May 31, 1995. Subsequently, GMP and McNeil amended the initial contract to extend the term until May 1, 1999. Following expiration of the extended contract, GMP continued to provide station service to McNeil at the contract rates. GMP never submitted the contracts with McNeil for Board approval under 30 V.S.A. § 229. GMP did file the extended contract with the Board and the Department on July 9, 1997, under G.O. 45. Department/GMP Stipulation at 3.

15. GMP provided service to McNeil, pursuant to the two contracts, without Board approval, from June 1, 1988, through July 1, 2001. The estimated annual difference between the tariff rate for this service and the contract rate is approximately \$347,366. The total estimated difference is \$4,515,758. *Id.*

16. GMP moved McNeil to tariff rates effective July 1, 2001, and took steps to negotiate a new contract with McNeil and to seek Board approval of the new contract. The new contract with McNeil, Special Contract No. 478, was approved by the Board effective January 23, 2002, in Docket 6565. *Id.*

17. From November 1, 1997, through July 1, 2001, GMP provided service to Ryegate, pursuant to the expired special contract. The estimated difference between the tariff rate for this service and the contract rate charged is \$22,863. *Id.* at 4.

18. The Board approved Special Contract No. 341 with Sugarbush effective November 20, 1998. In its approval Order, the Board specifically declined to approve the contract retroactively. The Board included in its Order a provision that if the customer suffered financial damages arising from reasonable expectations that the contract would go into effect on the originally

proposed date, and if such damages have arisen as a consequence of the Company's failure to comply with the Board's review procedures, that those costs should be borne by the Company's shareholders and not be recoverable in rates. GMP billed Sugarbush at the Special Contract No. 341 rates for the period November 1, 1998, through November 19, 1998, instead of the tariff rates. Therefore, the customer did not suffer any financial damages and the Company's shareholders did not bear the costs. The estimated difference between the tariff rate for this service and the contract rate charged is estimated at approximately \$350,074. *Id.* at 4-5.

19. GMP obtained Board approval of a special contract with Sugarbush for the period ending April 30, 2000, in Special Contract No. 381, yet GMP continued to provide service at contract rates from May 1, 2000, through October 29, 2000. The difference between the tariff rate for this service and the contract rate charged is \$324,030. *Id.*

20. The Department identified three past instances of GMP providing service at unapproved rates to Sugarbush. GMP obtained Board approval of a special contract with Sugarbush for the period ending April 30, 1999, in Special Contract No. 341, yet GMP continued to provide service at contract rates from May 1, 1999, through November 8, 1999. The difference between the tariff rate for this service and the contract rate charged is \$212,590. *Id.*

21. From November 1, 1997, through July 1, 2001, GMP provided service to Ryegate, pursuant to the expired special contract. The estimated difference between the tariff rate for this service and the contract rate charged is \$22,863. *Id.* at 4.

22. From July 2000 through February 2001, GMP provided service to South Burlington Middle School without Board approval. The difference between the tariff rate for this service and the contract rate charged is \$46,855. *Id.* at 2.

23. GMP sought and received Board approval of the South Burlington Middle School contract effective August 14, 2001, in Special Contract No. 454. In its approval Order, the Board specifically reserved the issue of whether GMP provided service to this customer under terms of a special contract for which Board approval had not been obtained. The Board also specifically declined to approve the contract retroactively. The Board included in its Order a provision that if the customer demonstrates it suffered financial damages arising from reasonable expectations that the contract would go into effect on the originally proposed date, and if such damages have

arisen as a consequence of the Company's failure to comply with the Board's review procedures, that those costs should be borne by the Company's shareholders rather than the customer and will not be recoverable in rates. The customer has not sought to recover financial damages. *Id.* at 2-3.

24. The Department's investigation revealed that GMP failed to file reports required as a condition of approval of Special Contract No. 268, a Generic Contract implementing a NEPOOL load response program and Special Contract No. 417, a Jobs Incentive Program contract with AstenJohnson. GMP agrees to file the required reports with the Board and the Department no later than November 1, 2002. *Id.* at 5.

25. On September 20, 2002, GMP filed the report as required by Special Contract 417.

26. The Department's investigation revealed that GMP made a late filing, of a few days, of a report required as a condition of approval of Special Contract No. 433, a Jobs Incentive Program contract with International Business Machines ("IBM"). *Id.*

27. GMP disclosed to the Department in the course of the investigation, that since the early 1990's it has helped certain customers avoid incurring demand charges during a sustained period of shut-down, by conducting special meter readings in exchange for an administrative fee of \$75. GMP does not charge special rates to these customers, although this service does result in lower rates for these customers. The service and the fee are not included in the GMP tariff. Board approval has not been obtained for this service or the administrative fee. GMP agrees to file appropriate tariffs for Board approval, no later than September 13, 2002. *Id.* at 5-6.

28. On August 6, 2002, GMP disclosed to the Department that the Company had discovered, as part of its continuing internal review, that GMP is the successor in interest to Montpelier & Barre Light & Power Company, which entered into an agreement dated October 31, 1914, with M.A. Newhall, Angie Newhall, W.M. Newhall and Leona Newhall, to provide free electrical energy for personal and household use through a five-kilowatt transformer in consideration of receiving "the right to flow" certain property upstream of GMP's Middlesex dam facilities. GMP continues to provide free electricity under this agreement to the current owner of a portion of this property. GMP's review of this occurrence is continuing. GMP agrees

to provide the Department with all relevant information regarding service under this agreement on or before September 30, 2002. *Id.* at 6.

29. GMP and the Department have agreed that the settlement set forth in this stipulation shall not apply to this occurrence, and that the Department and the Company each reserve their respective rights with respect to whether this occurrence constitutes a violation of 30 V.S.A. §§ 229 or 230, or what remedy, if any, is appropriate. The Department, in recognition of GMP's cooperation in reporting this occurrence, agrees that in the event this occurrence is determined to constitute an actionable violation of Section 229 or 230, the Department may apply the penalty methodology used by the Department in this investigation in recommending any penalty for such violation. *Id.* at 6-7.

30. On August 6, 2002, GMP disclosed to the Department that the Company had discovered, as part of its continuing internal review, that in approximately 1985 or 1986, GMP implemented a pilot program to provide off-peak energy for dual fuel heating systems and storage heat systems at residential and small commercial locations at rates comparable to the off-peak component of GMP's time-of-use tariff. Although GMP believes it received Board approval for this program, the Company has been unable to produce documentation evidencing such approval. Approximately 25 customers entered this program. Seven customers remain on the program. The Company began a phase-out of this program in 2001, independent of the special contract investigation. GMP will complete the phase-out of this program and all enrolled customers will be converted to other regular tariffed rates effective no later than September 30, 2002. *Id.* at 7-8.

31. GMP's review of this program is continuing. GMP agrees to provide the Department with all relevant information regarding service under this program on or before September 30, 2002. GMP and the Department have agreed that the settlement set forth in this stipulation shall not apply to any occurrences relating to this program, and that the Department and the Company each reserve their respective rights with respect to whether any services offered in connection with this program constitute actionable violations of 30 V.S.A. §§ 229 or 230, or what remedy, if any, is appropriate. The Department, in recognition of GMP's cooperation in reporting this program, agrees that in the event the services offered in connection with this program are

determined to constitute actionable violations of Section 229 or 230, the Department may apply the penalty methodology used by the Department in this investigation in recommending any penalty for such violation(s). *Id.* at 8.

32. GMP represents that it has conducted a thorough review of its special contracts and special rates and disclosed to the Department those instances discovered by GMP of service to customers pursuant to special contracts or at special rates without Board approval to the best of the Company's knowledge.⁸ *Id.*

33. GMP agrees that, within 30 days after entry of a final order in this Docket, GMP shall pay a penalty in the amount of \$79,700. *Id.* at 9.

34. GMP further agrees that, upon Board approval of this Stipulation, GMP will withdraw its requests in Docket No. 6565 for retroactive special contract approval and for resolution of any arrearage relating to provision of station service to McNeil. *Id.*

35. GMP further agrees not to seek to collect any sums attributable to arrearages or unpaid portions of GMP's bills to McNeil during the time period that GMP billed McNeil at rates applicable under GMP's Rate 63 (service-rendered July 1, 2001, through January 23, 2002). *Id.*

36. GMP's payment and undertakings set forth herein shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by GMP to the Department in the course of its investigation. *Id.*

37. GMP attributes the provision of service pursuant to unapproved or expired special contracts administrative oversight and internal misunderstandings concerning the status of Board approval of special contracts and tariffs. *Id.* at 8-9.

38. GMP has implemented specific procedures governing negotiation, execution, approval and monitoring of special contracts to maintain compliance with applicable statutes and Board orders, an outline of which is attached to their stipulation. *Id.* at 9.

8. On September 30, 2002, GMP disclosed in its tariff filing No. 5269(b) (requesting review of its Rate 6 tariff), which it subsequently withdrew, an additional potential violation of Section 229. This possible violation was not disclosed to the Department and is not part of GMP's settlement stipulation being considered here.

The Vermont Gas Systems, Inc. Settlement

39. From May 31, 1997, through December 10, 1998, VGS provided service to IBM at unapproved special rates after the expiration of Special Contract No. 192. The difference between the tariff rate for this service and the special rate charged was \$2,006,529. *Id.* at 3-4.

40. From December 31, 1998, through April 1, 2002, VGS provided service to the University of Vermont pursuant to the terms of Special Contract No. 194, for which Board approval had expired. Following this discovery, VGS took steps to negotiate and obtain Board approval of a successor contract with this customer, but continued to bill the customer at unapproved special rates until such time as Board approval was obtained for the successor contract. The difference between the tariff rate for this service and the special rate charged was \$1,070,965. Department/VGS Stipulation at 2.

41. From November 30, 1994, through December 1, 1995, VGS provided service to St. Michael's College at unapproved special rates after the expiration of Special Contract No. 121. The difference between the tariff rate for this service and the special rate charged was \$143,592. *Id.* at 5-6.

42. From July 7, 1998, through October 9, 1998, VGS provided service to the City of Burlington Electric Department at unapproved special rates after the expiration of Special Contract No. 272. The difference between the tariff rate for this service and the special rate charged was \$101,069. *Id.* at 3.

43. From December 1, 1997, through January 1, 1999, VGS provided service to Everready at unapproved special rates after the expiration of Special Contract No. 185. The difference between the tariff rate for this service and the special rate charged was \$52,520. Prior to the investigation VGS received Board approval of the successor contract. *Id.* at 9.

44. From October 1, 1994, through December 1, 1995, VGS provided service to International Business Machines-Saxon Hill site at unapproved special rates after the expiration of Special Contract No. 124. The difference between the tariff rate for this service and the special rate charged was \$51,747. *Id.* at 9

45. From July 31, 1999, through December 1, 1999, VGS provided service to Whitcomb Construction at unapproved special rates after the expiration of Special Contract No. 220. The difference between the tariff rate for this service and the special rate charged was \$28,751. *Id.* at 6.

46. From October 31, 1995, through February 28, 1997, VGS provided service to St. Albans Town School at unapproved special rates. The difference between the tariff rate for this service and the special rate charged is unknown but is estimated to be no more than \$20,000. *Id.* at 10.

47. From November 30, 1998, through January 1, 1999, VGS provided service to St. Albans Coop at unapproved special rates after the expiration of Special Contract No. 187. The difference between the tariff rate for this service and the special rate charged was \$18,784. *Id.* at 5.

48. From March 1, 1997, through October 1, 2001, VGS provided service to St. Albans Town School at unapproved special rates. The difference between the tariff rate for this service and the special rate charged was \$16,302. VGS moved the customer to tariff service thereafter. *Id.* at 7-8.

49. From September 30, 1998, through November 25, 1998, VGS provided service to Lucille Farms at unapproved special rates after the expiration of Special Contract No. 186. The difference between the tariff rate for this service and the special rate charged was \$14,088. *Id.* at 4.

50. From November 30, 2000, through March 1, 2001, VGS provided service to Nutrena at unapproved special rates after the expiration of Special Contract No. 286. The difference between the tariff rate for this service and the special rate charged was \$8,025. *Id.* at 6-7.

51. From May 31, 1999, through December 1, 1999, VGS provided service to Pike Industries at unapproved special rates after the expiration of Special Contract No. 221. The difference between the tariff rate for this service and the special rate charged was \$5,600. *Id.*

52. From September 30, 1999, through December 1, 1999, VGS provided service to Tech Park Associates at unapproved special rates after the expiration of Special Contract No. 230. The difference between the tariff rate for this service and the special rate charged was \$5,374. *Id.* at 4-5.

53. From May 31, 1997, through July 7, 1997, VGS provided service to the City of Burlington Electric Department at unapproved special rates after the expiration of Special Contract No. 222. The difference between the tariff rate for this service and the special rate charged is \$5,188. *Id.* at 8.

54. From December 31, 1999, through February 1, 2000, VGS provided service to Agway at unapproved special rates after the expiration of Special Contract No. 317. The difference between the tariff rate for this service and the special rate charged was \$3,784. *Id.* at 2-3.

55. From July 2, 1999, through August 12, 1999, VGS provided service to the City of Burlington Electric Department at unapproved special rates after the expiration of Special Contract No. 323. The difference between the tariff rate for this service and the special rate charged is \$3,262. *Id.*

56. From March 1, 2001, through March 26, 2001, VGS provided service to Missisquoi Valley Union High School at unapproved special rates after the expiration of Special Contract No. 302. The difference between the tariff rate for this service and the special rate charged was \$1,704. *Id.* at 7.

57. From November 1, 1999, through December 1, 1999, VGS provided service to Huber & Suhner at unapproved special rates after the expiration of Special Contract No. 236. The difference between the tariff rate for this service and the special rate charged was \$217. *Id.* at 9-10.

58. From December 31, 2000, through July 31, 2001, VGS provided service to the City of Burlington Electric Department at unapproved special rates after the expiration of Special Contract No. 273.

59. VGS has subsequently received Board approval of successor contracts for Agway, the City of Burlington Electric Department, Lucille Farms, Pike Industries, Tech Park Associates, St. Alban's Coop, St. Michael's College, Whitcomb Construction Co., Nutrena Feeds Co., Missisquoi Valley Union High School, Everready Co., IBM, and Huber & Suhner, Inc. *Id.* at 3-10.

60. VGS represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of

service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above. *Id.*

61. VGS agrees that, within 30 days after entry of a final order in this Docket, VGS shall pay a penalty of \$146,100, which will be paid by recording a regulatory liability in that amount on the Company's books. This regulatory liability will be a credit to ratebase and shall accrue a carrying charge to the benefit of ratepayers in the amount of the Company's allowed cost of capital. This regulatory liability and accrued interest will be applied for the benefit of ratepayers in the Company's next rate case. *Id.* at 11.

62. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by VGS to the Department in the course of its investigation. *Id.* at 11-12.

63. Because VGS currently has a rate case pending before the Board, its proposal to record a regulatory liability on the Company's books as a credit to rate base that accrues a carrying charge to the benefit of ratepayers, its penalty payment is no different, in essence, than the penalty payments proposed by the other independently owned utilities such as GMP, CVPS, Verizon VT, or VTel. VGS's penalty is for its shareholders to pay and should have no effect on costs that affect ratepayers.

64. VGS attributes the provision of service pursuant to unapproved or expired special contract terms to not having sufficient protocols in place for tracking special contract expirations. *Id.* at 11.

65. VGS has implemented the following improvements to its special contracts review and implementation procedures: the existing data base has been thoroughly reviewed, corrected, and updated. A second, separate database has been developed resulting in a database being maintained by the Marketing and Regulatory departments to serve as a cross check. Finally, outside legal counsel will also track special contract expirations and requirements. *Id.*

The City of Burlington Electric Department Settlement

66. The Department identified several instances where BED provided service to customers at rates pursuant to a special agreement with the customer, different from those provided in the company's tariff and without approval of the Board. BED provided service to Future Energy Resources Corp. ("FERCO") and to a construction company doing work at the FERCO site designated at NEPCO for a period dating February 1, 1998, through September 30, 2001. The difference in the rates charged these customers and the applicable tariff rates is estimated to be \$554,333. Department/BED Stipulation at 2.

67. BED represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than those identified above. *Id.* at 3.

68. BED agrees that, within 30 days after entry of a final order in this Docket, BED shall pay a penalty in the amount of \$3,192. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers. This regulatory liability and accrued interest will be applied for the benefit of ratepayers in BED's next rate case by amortizing it over a 5-year period (or such shorter period as BED may elect) as an offset to operating expenses. The Department agrees that BED's payment is appropriate and sufficient consideration for this settlement. *Id.* at 4-5.

69. BED attributes the unapproved provision of service to the lack of a single, central system for entering and monitoring the critical dates and terms of each special contract and the Board's approvals of same. *Id.* at 3.

70. BED has implemented the following improvements to its special contracts review and implementation procedures:

- a. BED has designated a position within its finance and accounting area as the central clearing house for all special contracts and rates and the Board's approval of same.
- b. BED management and legal counsel are required to provide copies of all contracts and Board approvals to the designated individual in finance and accounting for input into a special contracts filing system.

- c. A separate file shall be maintained for each special contract. The file shall contain copies of the contract, the Board's approval and a cover sheet summarizing key terms (special contract number, customer name, effective dates of rates, service status, dates of required reports, and special contract service termination date).
- d. An electronic calendar system will be used for the entry of critical dates to alert the designated individual and ensure compliance with the terms of the contract and the Board's approval.
- e. BED has also introduced a level of redundancy into its monthly accounting closing schedule which will require one individual to check with the designated special contract person to make sure no critical dates were missed. *Id.* at 4.

The Village of Morrisville Water and Light Department

71. From December 1, 1990, through September 30, 2001, Morrisville continued to provide service to Vermont Precision pursuant to Special Contract No. 22 following expiration of Board approval. The estimated revenue difference between the contract rates charged and the applicable tariff rates is \$199,166. Department/Morrisville Stipulation at 3.

72. From September 2, 1993, through April 28, 1994, Morrisville continued to provide service to Vermont Precision pursuant to Special Contract No. 85 following expiration of Board approval. The estimated revenue difference between the contract rates charged and the applicable tariff rates, in the absence of information from Morrisville, is \$80,000. *Id.*

73. Morrisville provided service to H.A. Manosh Company at a rate pursuant to a special agreement with the customer, different from those provided in the company's tariff and without approval of the Board. Morrisville entered into an economic development incentive program contract with H.A. Manosh and did not submit the contract for Board approval. Service pursuant to this contract began on February 1, 2000, through August 30, 2002. The estimated revenue difference between the contract rates charged and the applicable tariff rates is \$103,380. *Id.* at 2.

74. Morrisville represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of

service to customers pursuant to special contracts or at special rates without Board approval, other than the ones identified above. *Id.*

75. Morrisville agrees that, within 30 days after entry of a final order in this Docket, Morrisville shall pay a penalty in the amount of \$11,763. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by Morrisville to the Department in the course of its investigation. *Id.* at 5.

76. Morrisville agrees to the penalty of \$11,763, which will be paid by recording a regulatory liability in that amount on the municipality's books. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers in the amount of Morrisville's most recent long-term borrowing (or 4.75% in the event that Morrisville possesses no long-term borrowings). This regulatory liability and accrued interest will be applied for the benefit of ratepayers in Morrisville's next rate case by amortizing it over a 5-year period (or such shorter period as Morrisville may elect) as an offset to operating expenses. *Id.*

77. Morrisville attributes the provision of service pursuant to unapproved or expired special contracts to: the gaps in the two older contracts predate the current management of Morrisville. They were never terminated due to a clerical error/oversight. No contract for Manosh was filed because Morrisville believed that an economic development rate that had been filed covered such situations (*i.e.* new manufacturing employment creation). *Id.* at 3.

78. Morrisville has implemented the following improvements to its special contracts review and implementation procedures, including procedures for meeting reporting requirements: Morrisville has implemented a special contract tracking system. This tracking system combines electronic tracking of information relating to special contracts along with a traditional hardcopy tracking system. Morrisville also proposes the use of a comprehensive notebook that contains all contract-related correspondence, as well as the currently approved (or pending) special contract and its predecessor, being maintained for each special contract so that detail on special contract activities is easily obtainable. *Id.* at 4.

The Swanton Village Inc. Electric Department Settlement

79. The Department's investigation determined that Swanton provided service to Brown Foundry pursuant to a special contract without approval. Neither the Department nor Swanton were able to determine whether the Board ever had approved Special Contract No. 108 for this customer. That contract expired by its own terms on February 28, 1994. Swanton provided service without Board approval for at least the period of March 1, 1994 through May 31, 1998. The estimated revenue difference between the contract rates charged and the tariff rate is \$279,110. Department/Swanton Stipulation at 2.

80. Swanton provided service to Brown Foundry pursuant to a special contract following expiration of Board approval. The Board approved Special Contract No. 366 for the period June 1, 2000, through December 31, 2000. Swanton continued to serve Brown Foundry pursuant to that contract although the Board approval for the successor Special Contract No. 429 was not effective until January 1, 2001. The estimated revenue difference between the contract rates charged and the tariff rate is \$34,965. *Id.* at 2-3.

81. Swanton provided service to Vermont Fastener pursuant to a special contract following expiration of Board approval. The Board approved Special Contract No. 309 for the period June 1, 1998, through May 31, 1999. Swanton continued to serve Vermont Fastener from June 1, 1999, through November 30, 1999, pursuant to that contract. The Board approval for the successor Special Contract No. 371 was not effective until December 1, 1999. The estimated revenue difference between the contract rates charged and the tariff rate is \$12,714. *Id.* at 3.

82. Swanton represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above. *Id.*

83. Swanton agrees that, within 30 days after entry of a final order in this Docket, Swanton shall pay a penalty in the amount of \$9,793. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for

violations of 30 V.S.A. § 229 that could have been brought based on information provided by Swanton to the Department in the course of its investigation. *Id.* at 5.

84. Swanton represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above. *Id.* at 3.

85. Swanton has implemented the following improvements to its special contracts review and implementation procedures, including procedures for meeting reporting requirements: Swanton has implemented a special contract tracking system. This tracking system combines electronic tracking of information relating to special contracts along with a traditional hardcopy tracking system. Swanton also proposes the use of a comprehensive notebook that contains all contract-related correspondence, as well as the currently approved (or pending) special contract and its predecessor, being maintained for each special contract so that detail on special contract activities is easily obtainable. *Id.* at 4-5.

The Verizon New England Inc. Settlement

86. Verizon VT provided service pursuant to expired Special Contract No. 316, from August 27, 1999, through May 7, 2000. While the merits of this contract were considered in Docket 6077, the Board issued no ruling extending that contract during the pendency of Docket No. 6077. The revenue difference between the contract rates charged and the appropriate tariff rate for this service is \$197,953. Department/Verizon VT Stipulation at 2.

87. Verizon VT provided services to the State of Vermont pursuant to a contract that had been entered into pursuant to the Vermont Telecommunications Agreement following expiration of the term of the contract. Verizon VT served this customer at the contract rates from May 11, 1999, through June 1, 1999. The Board approved Special Contract No. 367, a six-month extension of the previous contract, on June 2, 1999. The revenue difference between the contract rates charged and the appropriate tariff rate for this service is estimated to be \$19,873. *Id.* at 3.

88. Verizon VT served 24 lines under Special Contract No. 198 without Board approval from May 8, 1999, through April 2, 2001. The revenue difference between the contract rates charged and the appropriate tariff rate for this service is \$938. *Id.* at 2.

89. Verizon VT is continuing to serve no more than four customers pursuant to special contracts for indefinite terms entered into pursuant to the Vermont Telecommunications Agreement. The Department does not recommend a penalty for Verizon VT's continued service to these customers pursuant to special contracts of indefinite term and Verizon VT agrees to negotiate a definite term for these contracts consistent with the Board's Order in Dockets 6167/6189, Order of March 24, 2000. *Id.*

90. Verizon VT served a customer pursuant to Special Contract No. 210 following its expiration, from August 13 through August 15, 1999. The revenue difference between the contract rates charged and the appropriate tariff rate for this service is approximately \$4.00. The Department does not recommend a penalty for Verizon VT's continued service to this customer based on the minimal time and revenue difference involved and Verizon VT's representations by Verizon that Verizon VT has implemented improvements to its special contracts review and implementation procedures as described in Docket 6066. *Id.* at 3-4.

91. Verizon VT attributes the circumstances described above to a belief that Special Contract No. 316 was being treated like other contracts under review in Docket 6077 as in effect during the pendency of that Docket; a belief that Special Contract No. 367 was approved as an extension of the prior contract with the State of Vermont to enable the state contracting process with respect to a successor contract to be completed; an inadvertent omission to convert back to tariffed rates a portion of the lines covered by Special Contract 198 upon expiration of that contract; and other administrative issues. *Id.* at 4.

92. Verizon VT represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than the ones identified above. *Id.*

93. Verizon VT agrees that, within 30 days after entry of a final order in this Docket, Verizon VT shall pay a penalty in the amount of \$35,400. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by Verizon VT to the Department in the course of its investigation. *Id.* at 4-5.

94. Verizon VT has implemented improvements to its special contracts review and implementation procedures as described in Docket 6066. *Id.* at 4.

95. In Docket 6066, Order of September 25, 2001, the Board found that by summer 1998, Verizon voluntarily implemented a number of measures to improve its special contract review and implementation procedures. These measures included improved internal tracking systems for special contracts, strengthened internal procedures for review of special contracts by company regulatory personnel, and training sessions for Verizon sales and other personnel involved in negotiation and implementation of special contracts regarding applicable statutory and regulatory requirements. Docket 6066, Order of September 25, 2001, at 3, citing to Stipulation at 2-3; Internal Audit Memorandum dated March 19, 1998.

The Vermont Electric Cooperative, Inc. Settlement

96. VEC provided service to Smuggler's Notch pursuant to a special contract without Board approval from approximately January 1, 1988, through January 30, 2001. The estimated revenue difference between the contract rates charged and the applicable tariff rate for the service is \$26,634. Department/VEC Stipulation at 2.

97. VEC provided service to Tivoly (previously Union Butterfield) pursuant to a special contract without Board approval from approximately August 14, 1986, through February 1, 2001. The estimated revenue difference between the contract rates charged and the applicable tariff rate for the service is \$167,172. *Id.*

98. VEC failed to timely install all cost-effective power corrections by November 30, 2001, as required as a condition of Board approval of Special Contract No. 436 with Smuggler's Notch.

Following the required date for completion of the installation, on December 7, 2001, VEC did seek Board approval of an extension of time to complete the installation. *Id.* at 2-3.

99. VEC attributes the provision of service pursuant to unapproved or expired special contracts to the following: for the period of time beginning in 1986 through mid 1997 when the PSB issued its approval of VEC's bankruptcy plan, VEC was engaged in a financial workout with its major creditors. Thereafter, VEC's assets were the subject of an acquisition proposal by several municipal utilities and the Rural Utilities Service which was rejected by the PSB in November 1999. During that period, VEC's survival was very much in question and virtually all of VEC's resources were devoted to balancing the needs of its members against the demands of its creditors and the requirements of its regulators. *Id.* at 3.

100. VEC represents that it has conducted a thorough review of its special contracts and special rates and determined that there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than those identified above. *Id.*

101. VEC agrees that, within 30 days after entry of a final order in this Docket, VEC shall pay a penalty in the amount of \$26,400. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by VEC to the Department in the course of its investigation. *Id.* at 4.

102. VEC has implemented the following improvements to its special contracts review and implementation procedures: all special contracts must be approved by VEC's Board of Directors pursuant to and identified on the agenda. VEC's Executive Manager will see that a copy of the agenda is provided to VEC's attorneys, Burak Anderson & Melloni, PLC. Burak Anderson & Melloni maintain a calendar in the normal course of business. They will incorporate all of VEC's special contracts into that system in a manner that will provide notice as to the expiration of such contracts three and six months in advance of their expiration. *Id.* at 3-4.

The Central Vermont Public Service Corporation Settlement

103. CVPS provided service to Stratton Corporation - Main Delivery Point at contract rates retroactive to the Board approval of Special Contract No. 334. The Board approved Special Contract No. 334 effective November 20, 1998. In its approval Order, the Board specifically declined to approve the contract retroactively. The Board included in its Order a provision that if the customer suffered financial damages arising from reasonable expectations that the contract would go into effect on the originally proposed date, and if such damages have arisen as a consequence of the Company's failure to comply with the Board's review procedures, that those costs should be borne by the Company's shareholders and not be recoverable in rates. CVPS billed Stratton Corporation - Main Delivery Point at the Special Contract No. 334 rates for the period November 1 through November 19, 1998, instead of the tariff rates. The estimated difference between the tariff rate for this service and the contract rate charged is \$63,286. Department/CVPS Stipulation at 2.

104. CVPS provided service to Mill River Lumber Ltd. at contract rates retroactive to the Board approval of Special Contract No. 283. The Board approved Special Contract No. 283 effective March 18, 1999. In its approval Order, the Board specifically declined to approve the contract retroactively. The Board included in its Order a provision that if the customer suffered financial damages arising from reasonable expectations that the contract would go into effect on the originally proposed date, and if such damages have arisen as a consequence of the Company's failure to comply with the Board's review procedures, that those costs should be borne by the Company's shareholders and not be recoverable in rates. CVPS billed Mill River Lumber Ltd. at the Special Contract No. 283 rates for the period March 1, 1999, through March 18, 1999, instead of the tariff rates. The estimated difference between the tariff rate for this service and the contract rate charged is \$8,859. *Id.* at 2-3.

105. CVPS provided service to the City of Rutland from April 2, 2001, through May 11, 2001, pursuant to Special Contract No. 231, following expiration of Board approval of that contract. The Board subsequently approved an extension of Special Contract No. 231 for the period beginning May 11, 2001. The estimated revenue resulting from the service during that period is \$1,012. *Id.* At 3-4.

106. CVPS provided service to Woodstock Resort d/b/a Suicide Six at contract rates retroactive to the Board approval of Special Contract No. 352. The Board approved Special Contract No. 352 effective December 7, 1998. In its approval Order, the Board specifically declined to approve the contract retroactively. The Board included in its Order a provision that if the customer suffered financial damages arising from reasonable expectations that the contract would go into effect on the originally proposed date, and if such damages have arisen as a consequence of the Company's failure to comply with the Board's review procedures, that those costs should be borne by the Company's shareholders and not be recoverable in rates. CVPS billed Woodstock Resort d/b/a Suicide Six at the Special Contract No. 352 rates for the period November 1 through December 6, 1998, instead of the tariff rates. The special contract rate charged for this service is estimated to be \$741 more than the tariff rate. *Id.* at 4.

107. CVPS has either failed to file reports, or filed reports late, that were required as a condition of twenty-nine Board approval Orders, specifically Special Contracts Nos. 150 (Agri-Mark), 79 (Allard Lumber), 336 (Ascutney Mountain Resort), 131 (Cersosimo Lumber), 165 (Cersosimo Lumber), 164 (Cone-Blanchard), 139 (Killington Ski Area), 244 (Killington Ski Area), 287 (Killington Ski Area), 353 (Killington Ski Area), 125 (Killington Wood Products), 141 (Luzenac), 169 (Luzenac), 285 (Luzenac), 337 (Luzenac), 119 (Middlebury College), 135 (Middlebury College), 351 (Middlebury College), 134 (New England Woodcraft), 233 (Woodcraft), 138 (Pico Peak Ski Area), 250 (Pico Peak Ski Area), 225 (Stratton Corp.), 335 (Stratton Corp.), 334 (Stratton Corp.), 246 (Vermont Tubbs), 286 (Woodstock Resort), 352 (Woodstock Resort), 142 (General Electric), and 428 (Northeast Precision). CVPS agrees to file the required report of contract 428 (Northeast Precision – Electric Heat Resistance report) by November 1, 2002. *Id.* at 4-5.

108. CVPS represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of

service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above.⁹ *Id.* at 6.

109. CVPS agrees that, within 30 days after entry of a final order in this Docket, CVPS shall pay a penalty in the amount of \$31,000. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by CVPS to the Department in the course of its investigation. *Id.* at 7.

110. CVPS has implemented the following improvements to its special contracts review and implementation procedures, including procedures for meeting reporting requirements. CVPS will inform customers that renewal of contracts must be submitted more than 90 days before an existing contract expires. CVPS will make every effort to file contracts more than 90 days prior to the effective date. CVPS will manage its reporting and renewal deadlines in a master database, and will keep all retail electric service contracts in a central filing location. *Id.* at 6-7.

The Town of Readsboro Electric Light Department Settlement

111. The Department discovered in its investigation that Readsboro provided service to a customer at a rate pursuant to a special agreement with the customer, different from that provided in the company's tariff and without approval of the Board. Readsboro was providing service to Caruso Wood Products pursuant to Special Contract No. 30, for which Board approval had expired. Readsboro provided this service from September 1, 1990, through November 1, 2001. The estimated revenue difference is \$45,304. Department/Readsboro Stipulation at 2.

112. Readsboro represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of

9. On November 7, 2002, CVPS wrote the Board to disclose that it had identified additional examples of service to customers that may be in violation of Section 229. This possible violation was not disclosed to the Department and is not part of CVPS' settlement stipulation being considered here.

service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above.¹⁰ *Id.* at 2.

113. Readsboro agrees that, within 30 days after entry of a final order in this Docket, Readsboro shall pay a penalty in the amount of \$343. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by Readsboro to the Department in the course of its investigation. *Id.* at 4.

114. Readsboro agrees to the penalty of \$343, which will be paid by recording a regulatory liability in that amount on the municipality's books. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers in the amount of Readsboro's most recent long-term borrowing (or 4.75% in the event that Readsboro possesses no long-term borrowings). This regulatory liability and accrued interest will be applied for the benefit of ratepayers in Readsboro's next rate case by amortizing it over a 5-year period (or such shorter period as Readsboro may elect) as an offset to operating expenses. *Id.* at 4-5.

115. Readsboro attributes the provision of service pursuant to unapproved or expired special contracts to the fact that the termination provisions of the original Caruso wood products contract contained language that provided for extension by mutual agreement. The parties believed that the contract was still valid. Service under the contract was terminated and the customer was placed on Readsboro's demand rate promptly upon the DPS indicating it believed the contract was no longer valid. *Id.* at 3.

116. Readsboro has implemented the following improvements to its special contracts review and implementation procedures, including procedures for meeting reporting requirements: Readsboro has implemented a special contract tracking system. This tracking system combines electronic tracking of information relating to special contracts along with a traditional hardcopy tracking system. Readsboro also proposes the use of a comprehensive notebook that contains all

10. On November 20, 2002, Readsboro wrote the Board to disclose that it had identified an additional example of service to customers that may be in violation of Section 229. This possible violation was not disclosed to the Department and is not part of Readsboro's settlement stipulation being considered here.

contract-related correspondence, as well as the currently approved (or pending) special contract and its predecessor, being maintained for each special contract so that detail on special contract activities is easily obtainable. *Id.* at 3.

The Village of Lyndonville Electric Department Settlement

117. The Department identified two instances where Lyndonville provided service to customers at rates pursuant to special agreements with the customers, different from those provided in the company's tariff and without approval of the Board. The Department's investigation revealed that Lyndonville continued to provide service to Vermont Tap & Die, and subsequent owners, including the current owner Kennametal IPG, pursuant to the terms of Special Contract No. 74, following expiration of Board approval of that contract from January 1, 1998, through October 31, 2001. The estimated revenue difference between the contracts rates and the applicable tariff rates is \$15,252 more than tariff rates. The customer's request for a refund of this revenue difference is the subject of Docket 6696. Department/Lyndonville Stipulation at 2.

118. The Department identified two past instances of Lyndonville providing service to Northern Star Ski Corporation retroactively. The Board approved Special Contract No. 338 effective November 20, 1998. In its approval Order, the Board specifically declined to approve the contract retroactively. The Board included a provision that if the customer suffered financial damages arising from reasonable expectations that the contract would go into effect on the originally proposed date, and if such damages have arisen as a consequence of the company's failure to comply with the Board's review procedures, those costs will not be recoverable in rates. Lyndonville billed Northern Star Ski Corporation at the Special Contract No. 338 rates from November 1 through November 19, 1998, instead of the tariff rates. Therefore, the customer did not suffer any financial damages. The difference between the contract rates charged and the tariff rate for this service is \$3,987. *Id.* at 3.

119. The Board approved Special Contract No. 396, also for Northern Star Ski Corporation, effective December 20, 1999. In its approval Order, the Board specifically declined to approve the contract retroactively. The Board included a provision that if the customer

suffered financial damages arising from reasonable expectations that the contract would go into effect on the originally proposed date, and if such damages have arisen as a consequence of the company's failure to comply with the Board's review procedures, those costs will not be recoverable in rates. Lyndonville billed Northern Star Ski Corporation at the Special Contract No. 396 rates from November 1 through December 19, 1999, instead of the tariff rates. Therefore, the customer did not suffer any financial damages. The difference between the contract rates charged and the tariff rate for this service is \$8,678. *Id.* at 3-4.

120. The Department's investigation revealed that Lyndonville failed to timely file the report required as a condition of approval of several special contracts. Lyndonville failed to timely file a report pursuant to Special Contract No. 140 with Vermont Table and Chair Company, an economic development incentive program contract. Lyndonville has failed to timely file reports that were a condition of the Board's approval of special contracts with Northern Star Ski Corporation, such as reports required in Special Contracts Nos. 252, 292 and 338. Lyndonville did eventually file reports and the Department recommended approval of subsequent contracts with the new owners of the ski facility. Consequently, the Department does not recommend a penalty for filing reports late, or not at all, in past special contracts with Northern Star Ski Corporation that were the subject of this investigation. *Id.* at 4.

121. Lyndonville represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than those identified above. *Id.* at 4.

122. Lyndonville attributes the provision of service pursuant to unapproved or expired special contracts to: in both of the cases related to Burke/Northern Star, the gap between contract approval dates was caused by clerical error. With regard to the Tap & Die/ Kennametal contract, the matter is the subject of PSB Docket No. 6696. The gap occurred because of an oversight/ clerical error. The missed compliance filing for Vermont Table & Chair was the result of an oversight/clerical error. *Id.* at 5.

123. Lyndonville agrees that, within 30 days after entry of a final order in this Docket, it shall pay a penalty in the amount of \$11,284. This payment shall be in full settlement of any and

all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by Lyndonville to the Department in the course of its investigation. *Id.* at 6.

124. Lyndonville agrees that the penalty of \$11,284, will be paid by recording a regulatory liability in that amount on the municipality's books. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers in the amount of Lyndonville's most recent long-term borrowing (or 4.75% in the event that Lyndonville possesses no long-term borrowings). This regulatory liability and accrued interest will be applied for the benefit of ratepayers in Lyndonville's next rate case by amortizing it over a 5-year period (or such shorter period as Lyndonville may elect) as an offset to operating expenses. *Id.* at 6-7.

125. Lyndonville has implemented the following improvements to its special contracts review and implementation procedures, including procedures for meeting reporting requirements: Lyndonville has implemented a special contract tracking system. This tracking system combines electronic tracking of information relating to special contracts along with a traditional hardcopy tracking system. Lyndonville also proposes the use of a comprehensive notebook that contains all contract-related correspondence, as well as the currently approved (or pending) special contract and its predecessor, being maintained for each special contract so that detail on special contract activities is easily obtainable. *Id.* at 5-6.

The Town of Stowe Electric Department Settlement

126. The Department discovered in its investigation that Stowe provided service to a customer at a rate pursuant to a special agreement with the customer, different from that provided in the company's tariff and without approval of the Board. Stowe provided service to the Jackson Ice Arena for the period November 1, 1995, through September 30, 1996, at special contract rates without Board approval. The difference in the rates charged the customer and the applicable tariff rates is estimated to be \$6,287. Department/Stowe Stipulation at 2.

127. Stowe has failed to timely file reports that were a condition of the Board's approval of Special Contract Nos. 87, 136, 161 and 369 with Mount Mansfield Company, Inc. *Id.* at 2.

128. Stowe represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above. *Id.* at 3.

129. Stowe agrees that, within 30 days after entry of a final order in this Docket, Stowe shall pay a penalty in the amount of \$3,600. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by Stowe to the Department in the course of its investigation. *Id.* at 4.

130. Stowe agrees to the penalty of \$3,600, which will be paid by recording a regulatory liability in that amount on the municipality's books. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers in the amount of Stowe's most recent long-term borrowing (or 4.75% in the event that Stowe possesses no long-term borrowings). This regulatory liability and accrued interest will be applied for the benefit of ratepayers in Stowe's next rate case by amortizing it over a 5-year period (or such shorter period as Stowe may elect) as an offset to operating expenses. *Id.* at 5.

131. Stowe attributes the provision of service to the Jackson Ice Arena from November 1, 1995, to September 30, 1996, to a clerical error. *Id.* at 3.

132. Stowe has implemented the following improvements to its special contracts review and implementation procedures, including procedures for meeting reporting requirements: Stowe has implemented a special contract tracking system. This tracking system combines electronic tracking of information relating to special contracts along with a traditional hardcopy tracking system. Stowe also proposes the use of a comprehensive notebook that contains all contract-related correspondence, as well as the currently approved (or pending) special contract and its predecessor, being maintained for each special contract so that detail on special contract activities is easily obtainable. *Id.* at 3-4.

The Village of Ludlow Electric Light Department Settlement

133. The Department identified two instances where Ludlow provided service to customers at rates pursuant to special agreements with the customers, different from those provided in the company's tariff and without approval of the Board. The Department's investigation revealed that Ludlow provided service to Gilcris, Inc., following expiration of Board approval for Special Contract No. 359, from April 1, 2000, through September 30, 2000. The estimated revenue difference between the tariff rate for this service and the contract rate charged is \$1,602. Department/Ludlow Stipulation at 2.

134. The Department's investigation revealed that Ludlow provided service to Luzenac America, Inc. at contract rates approved by the Board in Special Contract No. 394 beginning February 1, 2000. In its February 17, 2000, approval Order, the Board specifically declined to approve the contract retroactively. The estimated revenue difference between the tariff rate for this service and the contract rate is \$1,068. *Id.*

135. Ludlow represents that it has conducted a thorough review of its special contracts and special rates and determined that to the best of its knowledge there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than those identified above. *Id.* at 2-3.

136. Ludlow agrees that, within 30 days after entry of a final order in this Docket, Ludlow shall pay a penalty in the amount of \$6,650. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers in the amount of Ludlow's most recent long-term borrowing (or 4.75% in the event that Ludlow possesses no long-term borrowings). This regulatory liability and accrued interest will be applied for the benefit of ratepayers in Ludlow's next rate case by amortizing it over a 5-year period (or such shorter period as Ludlow may elect) as an offset to operating expenses. The Department agrees that Ludlow's payment is appropriate and sufficient consideration for this settlement. *Id.* at 4-5.

137. Ludlow attributes its unapproved provision of service, in the case of Gilcris, to a clerical error, and in the case of Luzenac, a good faith belief that it was acting in accordance with the terms of the approved contract. *Id.* at 3.

138. Ludlow has implemented the following improvements to its special contracts review and implementation procedures: Ludlow has instituted a policy to make all special contracts effective on October 1. All special contracts must be filed by July 1 to meet the Board's 90-day notice requirement. Ludlow has also implemented a special contract tracking system. Ludlow's new tracking system combines electronic tracking of information relating to special contracts along with a traditional hardcopy tracking system. Ludlow also proposes the use of a comprehensive notebook that contains all contract-related correspondence, as well as the currently approved (or pending) special contract and its predecessor, being maintained for each special contract so that detail on special contract activities is easily obtainable. *Id.* at 3-4.

The Barton Village Inc. Electric Department Settlement

139. The Department identified one instance where Barton provided service to a customer at a rate pursuant to a special agreement with the customer, different from that provided in the company's tariff and without approval of the Board. Barton provided service to Conley Custom Sawing for a period pre-dating January 1, 1995, through December 31, 1999. The difference in the rates charged the customer and the applicable tariff rates is estimated to be \$1,650. Stipulation at 2.

140. Barton represents that it has conducted a thorough review of its special contracts and special rates and determined that, to the best of its knowledge, there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above. *Id.* at 2.

141. Barton agrees that, within 30 days after entry of a final order in this Docket, Barton shall pay a penalty in the amount of \$3,192. This regulatory liability shall accrue a carrying charge to the benefit of ratepayers in the amount of Barton's most recent long-term borrowing (or 4.75% in the event that Barton possesses no long-term borrowings). This regulatory liability and accrued interest will be applied for the benefit of ratepayers in Barton's next rate case by amortizing it over a 5-year period (or such shorter period as Barton may elect) as an offset to operating expenses. *Id.* at 4-5.

142. Barton attributes the unapproved provision of service to the fact that the special agreement with Conley predates the current management at Barton Electric. *Id.* at 2.

143. Barton has implemented the following improvements to its special contracts review and implementation procedures: Barton has instituted a policy to make all special contracts effective on October 1. All special contracts must be filed by July 1 to meet the Board's 90-day notice requirement. Barton has also implemented a special contract tracking system. Barton's new tracking system combines electronic tracking of information relating to special contracts along with a traditional hardcopy tracking system. Barton also proposes the use of a comprehensive notebook that contains all contract-related correspondence, as well as the currently approved (or pending) special contract and its predecessor, being maintained for each special contract so that detail on special contract activities is easily obtainable. *Id.* at 3-4.

The Vermont Telephone Company, Inc. Settlement

144. VTel provided service to Killington for the period August 1, 1994, through April 8, 2001, at special contract rates without Board approval. The contract with Killington had been in place without Board approval when VTel acquired GTE on August 1, 1994. Department/VTel Stipulation at 2.

145. VTel converted Killington to a tariffed service on April 9, 2001. *Id.*

146. VTel represents that it has conducted a thorough review of its special contracts and special rates and determined that there are no other instances of service to customers pursuant to special contracts or at special rates without Board approval, other than the one identified above. *Id.* at 2-3.

147. VTel agrees that, within 30 days after entry of a final order in this Docket, VTel shall pay a penalty in the amount of \$5,000. This payment shall be in full settlement of any and all claims for violations of 30 V.S.A. § 229, including penalties under 30 V.S.A. §§ 30, 230 and 247 for service to customers without Board approval identified above and any other claims for violations of 30 V.S.A. § 229 that could have been brought based on information provided by VTel to the Department in the course of its investigation. *Id.* at 3.

148. VTel attributes the provision of service pursuant to unapproved or expired special contracts to a single contract implemented without approval by a predecessor company, circumstances not known by VTel. *Id.*

149. VTel has implemented improvements to its special contracts review and implementation procedures. The specific procedures are outlined in Attachment 1 to the Department/VTel Stipulation. *Id.*

IV. DISCUSSION

The facts relevant to the Department's investigation of the fourteen affected utilities are not in dispute. As a result of its investigation, the Department determined that in various instances GMP, VGS, BED, Morrisville, Swanton, Verizon, VEC, CVPS, Readsboro, Lyndonville, Stowe, Ludlow, Barton, and VTel provided preferential rates without Board approval. The evidentiary record also indicates that, on different occasions, some of these utilities failed to timely file reports that were a condition of Board approvals that they did receive for other special contracts.

The Department and each of the fourteen affected utilities agree that by providing service to a customer at rates pursuant to a special agreement with the customer, each utility has offered special rates in violation of Section 229 of Title 30. In all, the fourteen affected utilities provided significant discounts to customers under these unapproved special contracts – nearly \$11 million in total.¹¹

The primary question facing the Board is the appropriate remedy for the violations. The Department and the fourteen affected utilities have entered into settlement stipulations in which they recommend relatively minor penalties, cumulatively, less than \$400,000 total. The Department agrees (1) that the stipulated penalties are adequate to create a desirable deterrent effect for the long-term benefit of ratepayers, (2) that the actual harm caused to users who did not

11. In a letter dated November 25, 2002, the Department indicated that there is a "total revenue difference for all violations of all the utilities of approximately \$10.8 million."

receive a preferential rate is relatively small, and (3) that all the violations were inadvertent.¹² The various stipulations and the Department's witness note that the utilities cooperated with the Department in its investigation. Department witness Steinhurst, also testified that the Department found:

[N]o cases where there was any deliberate violation. All of the cases we identified, however inappropriate, were the result of inadequate systems, clerical reports, misunderstandings, lack of knowledge on the part of people doing the job day-to-day.¹³

In addition, the record indicates, for the most part, that the utilities have taken reasonable steps to correct their internal processes that resulted in company violations of Section 229.

Consequently, the Department recommends that the Board accept the stipulated penalties under Sections 30, 230, and 247, in full settlement of any and all claims that were or could have been brought in this Docket for violations of Section 229. In each case, the Department agrees that this payment is appropriate and sufficient consideration for this settlement, considering each company's cooperation with the Department, and their conduct during this investigation. The parties also agree that the settlement set forth in the stipulation is a compromise of contested claims reached in arms-length negotiations, and is fair, reasonable, and in the public interest.¹⁴

We conclude, in general, that the affected utilities have taken reasonable steps to alter their internal practices in ways that should promote compliance with Section 229. With one exception which we discuss below, the utilities have proposed what appear to be substantive remedial measures designed to improve their special contract review and implementation procedures. In the case of Barton, Ludlow, Lyndonville, Morrisville, Readsboro, Stowe, and Swanton, these measures combine an electronic tracking of information relating to special contracts, a traditional hardcopy tracking system, and a comprehensive notebook that contains all contract-related correspondence as well as the currently approved (or pending) special contract

12. Tr. 10/30/02 at 44 (Chairman Dworkin).

13. Tr. 10/30/02 at 45 (Steinhurst).

14. See Stipulations at ¶ 11.

and its predecessor.¹⁵ GMP, CVPS, and VTel have proposed similar procedural safeguards. VGS and VEC have also proposed similar measures, but, in addition, have indicated that they will employ outside legal counsel in order to track special contract expirations and requirements.¹⁶ With several reservations, we accept the parties' assertions that these measures will substantially address the shortcomings that led to the improper implementation of the special contracts and in the failure to comply with conditions in those contracts.

On the basis of the evidence provided, it appears that the tendency to provide service under expired contracts is a problem that can be readily addressed simply with more diligent company oversight. The key question, however, is how to ensure that such "more diligent company oversight" actually occurs. The proposals reviewed above seem to acknowledge this and do provide for a conscious level of oversight of the special contract process which should ensure that companies know when their special contracts are nearing expiration and that they need to be renewed or consciously terminated with customers. The company proposals should go a long way toward reducing future problems; but they do have a focus on internal utility matters with little attention to the role of the relevant customers. Thus, we will require an additional element.

In order to assist the companies in their oversight, the Board will designate one of its staff to coordinate special contract issues with them. Companies shall be required to notify in writing,

15. According to their stipulations:

The electronic tracking system shows the contract number that is in effect in any given month for a particular customer, the renewal date, summaries of any PSB ordered compliance filings, and the date that the reminder to prepare any required filings will be released from the hardcopy tracking system. The hardcopy tracking system is a suspense filing system. Upon approval of a special contract, a reminder for the renewal filing is placed in suspense. The reminder is assigned a lead-time of 1 - 3 months in advance of the filing date depending on the amount of work required to prepare the filing. It is expected that absent unusual circumstances all special contract renewals will be filed 90 days in advance of the desired implementation date. *See generally* Stipulations between the Department and each of the following utilities: Barton; Ludlow; Lyndonville; Morrisville; Readsboro; Stowe; and Swanton at ¶ 4.

16. *See* VGS/Department Stipulation at 11. VEC's stipulation indicates that:

All special contracts must be approved by VEC's Board of Directors pursuant to and identified on the agenda. VEC's Executive Manager will see that a copy of the agenda is provided to VEC's attorneys, Burak Anderson & Melloni, PLC. Burak Anderson & Melloni maintain a calendar in the normal course of business. They will incorporate all of VEC's special contracts into that system in a manner that will provide notice as to the expiration of such contracts three and six months in advance of their expiration. VEC/Department Stipulation at ¶ 6.

with copies to the Department and the staff coordinator at the Board, each of their special contract customers 90 days in advance of the termination date of that customer's special contract. If the Board and Department do not receive a copy of the letter within an appropriate time from the due date, there will be sufficient time to notify the company that it has missed the date. This will serve two purposes. First, it will allow the company time to determine why it may be in violation of a Board Order prior to the possible provision of unapproved service. Secondly, it will leave the company sufficient time to propose either a renewal of the special contract with the customer or the migration of that customer to a tariffed service.

This additional measure is designed and intended as assistance to the companies, and in no way should be considered as an effort to assume any company management duties. In spite of our recognition that the fourteen affected utilities are in need of further assistance in ensuring that they meet special contract requirements, we do not conclude that company management is incapable of, or that it should be excused from complying with these requirements. The companies are better informed about the various potential benefits of pursuing and maintaining special contract arrangements with their customers. Decisions of whether to enter into or to renew these agreements are management decisions and Vermont law recognizes that the utility, and not the Board, is the best-qualified to oversee such decisions.¹⁷ As with all management decisions, each utility has the responsibility to make them prudently and reasonably, and to be able to demonstrate this before the Board.

In the case of the settlement stipulation between Verizon, VT and the Department, we reach a different conclusion. We are not convinced that Verizon VT's proposal will be sufficient to ensure that it avoids the problems with its special contracts that have been uncovered in this investigation. The Stipulation between the Department and Verizon VT states that "Verizon VT has implemented improvements to its special contracts review and implementation procedures as described in Docket 6066," a Board investigation opened in early 1998.¹⁸

In Docket 6066, the Board acknowledged that Verizon's remedial measures included:

17. See *In re Green Mountain Power Corp.*, 162 Vt. 378, 386 (1994); *Latourneau v. Citizens Utilities Co.*, 125 Vt. 38 (1965).

18. Stipulation of Department/Verizon VT at 4.

- improved internal tracking systems for special contracts;
- strengthened internal procedures for review of special contracts by Company regulatory personnel; and
- training sessions for Verizon sales and other personnel involved in negotiation and implementation of special contracts.¹⁹

In the same Docket, the Board recognized that:

Verizon has undertaken laudable efforts to determine the reasons that the Company put special contracts into effect without the prior approval of the Board . . . and to modify its internal practices to avoid repetition."²⁰

The Board also based its decision to not impose further fines on Verizon due, in part, to the remedial measures that Verizon maintained would be sufficient to address the compliance problems it had been experiencing. The Board wrote:

[a]s the Department and Verizon suggest, however, there are several reasons not to impose a significant penalty. Most significantly, Verizon acted promptly and appropriately upon learning that it had implemented the special contracts without Board approval. *Verizon determined the sources of the error and put in place mechanisms designed to prevent a repeat occurrence.*²¹

The Board agreed with the Hearing Officer who determined that "these measures will adequately address the shortcomings that led to the improper implementation of the special contracts."²²

The procedures upon which the Docket 6066 Hearing Officer and the Board relied were developed by Verizon VT in 1998. It is only reasonable to conclude that, if they had been effective, they would have signaled Verizon's non-compliance with the special contracts at issue in this case. If Verizon VT's tracking system worked, it would have recognized that Special Contract No. 198 expired on May 8, 1999. Likewise, in a second instance, Verizon VT's improved special contract oversight measures should have enabled the company to avoid providing unapproved service pursuant to the Vermont Telecommunications Agreement. Instead of being tracked and flagged by Verizon VT, these unapproved special contracts were discovered through the Department's efforts.

19. Docket 6066, Order of 9/25/01 at 6.

20. *Id.* at 9.

21. *Id.* at 7 (emphasis added).

22. *Id.* at 6.

Since Verizon VT's special contracts were not recognized by the same procedures Verizon VT proposes as its solution in this Docket, *i.e.*, since they did not "prevent a repeat occurrence," there is no reasonable basis for the Board to accept the procedures as sufficient for tracking the same contracts today. There is no evidence on the record to suggest that Verizon's procedures are in any way better suited today than they were during the pendency of Docket 6066 to address Verizon's special contract compliance.

We, therefore, order Verizon VT to demonstrate to the Board why its proposed special contracts review and implementation procedures will perform as represented in its stipulation with the Department. The Board will conduct a hearing at which it expects the attendance of the most senior Verizon VT official. The company should be prepared to explain why its procedures did not work in the case of its contracts at issue in this investigation, and why these procedures, or additional procedures that Verizon VT may choose to adopt, will ensure its future compliance with Vermont law.

Payment of Penalties

Verizon, CVPS, GMP, and VEC have agreed to pay penalties. However, unlike the other parties, their stipulations did not specify in what manner that money would be paid, or to whom. Absent further explanation, we are unable to determine whether or not the payment of penalties by these companies will be appropriate. As we indicated in Docket 6331:

we cannot avoid the responsibility to make at least a prima facie determination that the funds will be used in a way that benefits Vermont ratepayers."²³

Although there has been no indication in this Docket that the intended recipients of these penalty payments will be charitable organizations, as was the case in Docket 6331, we expect sufficient detail on this issue to inform our decision of whether to accept a penalty payment agreement between parties. These parties and the Department should provide the Board with a specific recommendation as to the disposition of these funds and should take into consideration how this money might be paid to the state treasury or used for the benefit of Vermont customers or citizens.

23. Docket 6331, Order of 9/13/01 at 35.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The individual Stipulations between Green Mountain Power Corporation ("GMP"); Vermont Gas Systems, Inc. ("VGS"); City of Burlington Electric Department ("BED"); Village of Morrisville Water & Light Department ("Morrisville"); Swanton Village Electric Department ("Swanton"); Vermont Electric Cooperative, Inc. ("VEC"); Central Vermont Public Service Corporation ("CVPS"); Town of Readsboro Electric Light Department (referred to as "Readsboro Utilities" in the Stipulation or "Readsboro"); Village of Lyndonville Electric Department ("Lyndonville"); Town of Stowe Electric Department ("Stowe"); Village of Ludlow Electric Light Department ("Ludlow"); Barton Village Inc. Electric Department ("Barton"); and Vermont Telephone Company, Inc., d/b/a Vtel ("VTel"). (collectively, "the thirteen affected utilities") and the Vermont Department of Public Service ("Department") are approved.

2. Each of the utilities shall pay the penalties per their respective stipulations as settlement of the claims for this proceeding.

3. Verizon VT, CVPS, GMP, VEC and the Department shall recommend in what manner the money from their stipulations will be used to benefit ratepayers prior to the payment of their respective penalties. They shall provide the Board with their recommendations within 15 days of the issuance of this Order.

4. Pursuant to 30 V.S.A. §§ 30, 203 and 209, at least one senior representative of Verizon VT, shall appear before the Vermont Public Service Board, and shall show cause as to why the Board should accept the company's proposed special contracts review and implementation procedures as adequate for company's compliance with Vermont law as represented in its Stipulation with the Department.

5. Pursuant to 30 V.S.A. § 10, hearings will be held in this matter on Wednesday, January 8, 2003, at 2:30 P.M., at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont. On that date, the Board shall:

- (a) conduct a prehearing conference on the question of the adequacy of Verizon VT's proposed special contracts review and implementation procedures; and
- (b) conduct an evidentiary hearing to determine whether the Board should accept the settlement stipulation between the Vermont Department of Public Service and Verizon VT, due to the Company's development of effective special contracts review and implementation procedures.

6. Due to the disclosure by Readsboro, CVPS and GMP of additional examples of service to customers that may be in violation of section 229, the Department shall notify the Board of the status of its review into the additional filings of Readsboro, CVPS and GMP within 30 days of the issuance of this Order.

7. Pursuant to the requirement of Special Contract No. 417, GMP shall file the required report with the Board and Department within 15 days of the issuance of this Order.

Dated at Montpelier, Vermont, this 16th day of December, 2002.

s/Michael H. Dworkin)	
)	PUBLIC SERVICE
)	
s/David C. Coen)	BOARD
)	
)	OF VERMONT
s/John D. Burke)	

OFFICE OF THE CLERK

FILED: December 16, 2002

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.