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I. INTRODUCTION

In this proposal for decision, I review a tariff (the "Tariff") filed by Vermont Gas Systems, Inc. ("VGS," "Vermont Gas," or "the Company"), that seeks to establish a limited offering of firm transportation rates to large commercial and industrial customers. As explained more fully in Section III, I conclude that the Tariff, with modifications and conditions, is just and reasonable, and furthermore, recommend that the Public Service Board ("Board") adopt it.

In Section IV, I recommend that the Board deny the request by the City of Burlington Electric Department ("BED"), the Vermont Public Power Supply Authority ("VPPSA"), and Central Vermont Public Service Corporation ("CVPS") that the Board require VGS to provide a "transmission-only" transportation tariff. I make this recommendation primarily because I cannot conclude that VGS offers a separable transmission service that does not rely upon portions of the distribution system, or that, by virtue of any other distinction, BED, thereby, constitutes a distinct class of VGS customers that merits special treatment that would justify exempting it from contributing to the support of VGS' entire pipeline network.

II. PROCEDURAL HISTORY

On December 17, 1999, VGS filed a proposed firm-transportation-service tariff, Rate Schedule FT-G, to take effect for service rendered on or after February 1, 2000.¹ On December 27, 1999, the Vermont Department of Public Service ("Department") informed the Board that it had reviewed the filing and recommended that the Board suspend and investigate the proposed tariff to determine whether its provisions are just and reasonable.² By Order of January 21, 2000, VGS' filing was suspended.³ In the same Order, the Board also appointed me Hearing Officer

1. Tariff Filing No. 3697; exh. VGS-1; Order of 1/21/00 at 1. On January 18, 2000, pursuant to a further Order in Docket No. 5934, VGS updated its firm transportation tariff in a new filing to reflect the revenue requirement approved in Docket No. 6292, Order of 10/28/99.

2. Order of 1/21/00 at 1.

3. *Id.*

and scheduled a prehearing conference for January 27, 2000.⁴

The Board received requests to intervene on behalf of VPPSA, BED, and CVPS. At the prehearing conference, the Department and Vermont Gas agreed that VPPSA, BED and CVPS should be allowed to intervene in this docket on the same basis as they had been allowed to intervene in Docket No. 5934.⁵ At the prehearing conference, the parties also agreed on a schedule for these proceedings. In accordance with that schedule, the Board issued notice for a public hearing on March 14, 2000, and for technical hearings on June 19, 20, and 22, which were subsequently rescheduled for September 12-13, 2000.⁶

At the request of BED, and after comment from the other parties, in a Procedural Order dated March 16, 2000, I indicated that the scope of this docket would include the following issues:

(1) the review of the proposed firm-transportation tariff for large commercial and industrial customers; (2) the question of whether it is appropriate for VGS to offer a "transmission-only" tariff; and (3) the broader issues of the applicability to this tariff of FERC Order 636 policies or other open-access policies.⁷

On May 3, 2000, the Department filed a letter with the Board objecting to portions of BED and VPPSA's prefiled testimony and exhibits.⁸ The Department also asked for reconsideration of my March 16, 2000, Procedural Order regarding this docket's scope.⁹ Subsequently, in a Procedural Order issued on June 5, 2000, I ruled on each of the Department's objections and requests for reconsideration.¹⁰

4. *Id.* at 2.

5. Order of 2/9/00 at 1. I then incorporated the rulings approving their intervention in Docket No. 5934. Docket 5934, Order of 7/21/97 (VPPSA and BED); Order of 12/30/99 (CVPS).

6. Notice of March 1, 2000; Notice of June 5, 2000; Notice of August 14, 2000.

7. Order of 3/16/00 at 1.

8. Letter of D. Farnsworth to parties, dated May 4, 2000.

9. *Id.*

10. Order of 6/5/00 at 2-5.

I then held a telephonic status conference on June 6, 2000, to discuss several discovery disputes and to reschedule the technical hearings to September.¹¹ On July 17, 2000, the Department filed a motion to compel discovery on BED asserting that BED did not respond fully to its information request seeking citations to FERC Order 636 which, according to BED, support BED's position in this docket.¹² I granted the Department's motion, rejecting BED's arguments that the Department's information request was overly vague and sought disclosure of attorney work product.¹³ On August 30, 2000, the Department filed a motion requesting that the Board impose sanctions against BED for non-compliance with my August 10, 2000, Order granting the Department's motion to compel.¹⁴

On September 12, 2000, I convened a technical hearing to examine the Department's motion for sanctions and Vermont Gas' proposed firm-transportation tariff.¹⁵ The technical hearing was continued on September 13, 2000, and a date of October 2, 2000, was set and due notice was published for a final technical hearing.¹⁶

By Notice of Cancelled Hearing, dated September 22, 2000, I notified the parties that the October 2, 2000, technical hearing would be cancelled and rescheduled.¹⁷ Through a memorandum from the Clerk of the Board dated February 22, 2001, I asked the parties to negotiate and determine a date for the remaining technical hearing in this docket. I subsequently received several responses indicating that the parties were conducting negotiations and might be able to stipulate to the admission of the remaining evidence without a further hearing.¹⁸

11. Order of 6/14/00.

12. Order of 8/10/00.

13. *Id.* at 2.

14. Letter of D. Farnsworth to Parties, dated September 7, 2000.

15. *See* tr. 9/12/00.

16. *See* tr. 9/13/00; Notice of Hearing (September 15, 2000).

17. Order of 9/22/00 at 1.

18. Order of 4/27/01 at 1.

On April 19, 2001, the Department, on behalf of the parties in this docket, filed a Stipulation to the admission of (1) certain previously prefiled (but not cross-examined) supplemental prefiled testimony submitted by BED and the Department, (2) certain stipulated facts, (3) certain responses to informal discovery conducted by the parties in connection with the stipulation, and (4) a statement that the Board should take notice of several interruptible gas sales agreements between BED and VGS, all without the need for any further technical hearing in this docket. On April 27, 2001, I issued an Order accepting the stipulation, and the parties proceeded to file briefs.

The parties submitted proposals for decision and their initial briefs on May 18, 2001. On June 11, 2001, the parties filed reply briefs.

The matter is now ready for decision. In accordance with 30 V.S.A. § 8, I propose that the Board adopt the following findings of fact and, with modifications and conditions, approve the Tariff.

III. VGS' PROPOSED RATE SCHEDULE FT-G

A. Introduction: The Tariff and Proposed Modifications

Issues and Positions

VGS seeks to establish firm-transportation rates for its nine large commercial and industrial firm customers. Significant aspects of the Tariff include VGS' proposal to make its current upstream capacity available on a voluntary basis. The Tariff also provides for standby service, *i.e.*, capacity for those customers who neither elect to take assignment of VGS upstream capacity nor otherwise secure alternative capacity. VGS also proposes to impose balancing charges, essentially a true-up mechanism, for customers whose actual daily requirements exceed the amount they have nominated. The Tariff is based upon a cost study intended to reflect costs for the nine large customers, and a revenue requirement approved by the Board in Docket No. 6292, Order of 10/28/99.

The Department's overall position can be characterized as supporting the Tariff, but doing so, in general, on the conditions that VGS be required to fully recognize its costs to provide firm

transportation service and that the Tariff reflect those costs. More specifically, the Department recommends that the Board approve VGS' proposed tariff with certain modifications and conditions related to (1) VGS' revenue requirement, (2) Board-approved class revenues, (3) capacity assignment and standby service, (4) balancing services and charges, (5) metering provisions and charges, and (6) availability of transportation service to other classes of VGS customers.

BED has argued that VGS's proposed demand charge would be uneconomic for BED, and that VGS ought to change it.¹⁹ More broadly, BED maintains that VGS can and should identify and unbundle its system's transmission and distribution functions, and should offer a transmission-only transportation service.²⁰ BED contends that it is "served directly off of VGS' transmission system, at transmission level pressure, for purposes of firing its boilers and producing electricity . . ." and that McNeil "does not utilize VGS' distribution network, nor has it caused VGS to incur distribution costs."²¹ In support of its position, BED seeks to establish that:

"McNeil's load characteristics and usage patterns justify a preferential rate classification;" and that VGS' failure to provide a transmission-only tariff results in unjustly discriminatory and insufficient rates which are, thus, neither just nor reasonable.²²

Finally, BED seeks to refute VGS' and the Department's arguments that VGS does not provide a "separate and distinct" transmission function.²³ The "transmission-only" issues are considered below in Section IV.

19. *See* Smith pf. at 11; Galligan pf. reb. at 21; *see also* letters of BED, dated September 21, 2000, and Department, dated September 25, 2000.

20. CVPS and VPPSA each support the positions taken by BED in the BED Brief and BED Draft Proposal for Decision. *See e.g.*, Letter of CVPS, dated May 18, 2001.

21. BED Brief at 2.

22. *Id.*

23. *Id.*

Findings—General

1. On December 17, 1999, Vermont Gas filed the Tariff and supporting work papers for a firm-transportation service (Rate Schedule FT-G). *See* exh. VGS-1 ("VGS Initial Filing").
2. Eligibility for service under the Tariff is limited to large commercial and industrial customers that currently receive bundled-gas service from Vermont Gas and have a daily firm consumption in excess of 1,000 ccf. *See* VGS Initial Filing, V.P.S.B. Gas Tariff, Orig. Sheet No. 53.
3. Where VGS has sufficient transmission and distribution facilities in place to serve that customer, service is also to be available under the Tariff to new commercial or industrial customers. *See id.*
4. Service under the Tariff will be provided under a twelve-month written contract between Vermont Gas and each customer, under which Vermont Gas will receive gas on the customer's behalf at the interconnection between the system of Trans Canada Pipeline ("TCPL") and Vermont Gas' system at Phillipsburg, Quebec, and transport the gas to the customer's facility. *See id.*
5. The tariff contains a sixty (60) day notice requirement for termination. Simollardes/Scholten pf. at 3.
6. The Tariff's term and notice provisions will help ensure predictability of both VGS' and customers' supply planning. The term provision is also consistent with the goal of using the Tariff as a foundation to provide firm transportation service to VGS' other customer classes. *Id.*
7. The proposed rate for transportation service consists of two parts: a monthly demand charge of \$2.9943 per ccf of the Maximum Daily Transportation Quantity ("MDTQ"), or the customer's highest average daily consumption during a recent billing period; and a commodity charge of \$0.012 per ccf. VGS Initial Filing, V.P.S.B. Gas Tariff, Orig. Sheet No. 53.
8. A customer's MDTQ establishes the maximum volume of gas that Vermont Gas is obligated to transport to a customer on any given day and also serves as a basis for certain transportation, standby-service, and balancing charges. *See id.*
9. MDTQ will be calculated based on an existing customer's highest average-daily consumption during the previous twelve months or, for new customers (or incremental

consumption of existing customers), on engineering estimates. *Id.*

10. The Tariff seeks to recover firm-transportation costs primarily based on a demand-rate structure by which customers in essence pay "rent" each month for "space" on VGS' system. Simollardes/Scholten pf. at 10.

11. A demand-based rate structure is a more appropriate determinant of the underlying costs of transportation service than a variable volumetric charge because the cost of transporting goods is largely a function of capital investment in the system. *See id.* at 9.

12. With a demand rate, the more efficiently customers use their gas, the lower their rate per unit transported will be. *Id.* at 10.

13. The Tariff's proposed demand charge of \$2.9943 is based on a cost of service study submitted in this proceeding, and reflects the remaining allocated costs for G-3 and G-4 customers, after crediting such costs with a share of gas costs (and miscellaneous revenues) which would no longer apply to an FT-G customer who would be paying for the procurement and delivery of their own gas supplies to VGS. Galligan pf. at 5-6.

14. Under the Tariff, VGS would remain responsible for all delivery service costs associated with transporting the customer's MDTQ from Phillipsburg to the customer's premises, and with providing any capacity and transportation costs for the customer's gas requirements above the customer's MDTQ level. *Id.*

15. Prior to the end of each month, a customer must submit to VGS a nomination for the following month's expected gas usage, which cannot exceed the customer's MDTQ and will remain in effect for the entire following month unless a variation is accepted by Vermont Gas. *See VGS Initial Filing, V.P.S.B. Gas Tariff, Orig. Sheet No. 54.*

16. If VGS is unable to confirm a customer's nomination on a given day, the Company will make reasonable efforts to notify the customer so that the customer can try to remedy the deficiency. *See id.*, Orig. Sheet No. 55.

17. If the customer's nomination is inconsistent with the volume received from the upstream pipeline(s), VGS will be obligated to transport the lesser of the two amounts. *Id.*

18. VGS will charge a 1% line-loss deduction for all gas delivered under the Tariff. *Id.*

Resolution

I conclude that the Board should approve the Tariff with the conditions and modifications proposed by the Department. Below I specifically discuss each in turn, including (1) VGS' revenue requirement, (2) Board-approved class revenues, (3) capacity assignment and standby service, (4) balancing services and charges, (5) metering provisions and charges, and (6) availability of transportation service to other classes of VGS customers.

B. Revenue RequirementIssues and Positions

The Tariff reflects a revenue requirement approved by the Board in Docket No. 6292, Order of 10/28/99. During the pendency of this docket, VGS has initiated four subsequent revenue requirement proceedings. The Department recommends that VGS be required to update any approved tariff in this Docket in accordance with its most recent approved revenue requirement.

Findings

19. The Tariff reflects a revenue requirement approved by the Board in Docket No. 6292, Order of 10/28/99. During the pendency of this investigation, the Board conducted further revenue requirement proceedings with VGS, including Docket Nos. 6413, Order of 3/28/01, 6444, Order of 6/6/01, 6495, Order of 11/9/01. VGS recently initiated further revenue requirement proceedings, VGS Tariff No. 5261.²⁴

Resolution

There are several choices of sources for the appropriate revenue information. First, the most recent revenue requirement Order was issued in Docket No. 6495, decided in November 2001. Second, on September 25, 2002, VGS filed revisions to its tariffs to reflect a 5.7%

24. Filed 9/25/02, and amended on 9/26/02.

reduction in firm rates (Tariff filing #5261).²⁵ The Board approved the rate reduction to take effect on a service-rendered basis, commencing October 3, 2002.²⁶ This filing thus represents the current VGS revenue filing. Third, in addition to voicing support for VGS' voluntary reduction in September, the Department also requested that the Board open an investigation into VGS' rates going forward.²⁷ By Order of 10/23/02, the Board opened an investigation, Docket 6767, into VGS' rates.

I conclude that requiring VGS to update the cost of service underlying the Tariff is a reasonable proposal. However, since it is not clear which revenue requirement would best suit that purpose, the only question is which, of the several options available, should VGS use. On one hand, in Docket 6495, the Board fully reviewed and approved VGS' cost of service.²⁸ On the other hand, while the Board has not reviewed the cost of service underlying Tariff #5261 (VGS' recent decrease in its rates), that filing represents a more recent representation by VGS of its cost of service.²⁹ There is also a third option, an approved cost of service that could be developed in the Docket 6767 rate investigation.

In filing their comments on this proposal for decision, parties should comment as to the most appropriate cost of service upon which to base any approved tariff in this Docket. In formulating responses, commenters should consider the three choices outlined above.

C. Class Revenues

Issues and Positions

25. On September 30, 2002, the Department, pursuant to 30 V.S.A., Section 225, filed its letter of recommendation with the Board, and recommended that the tariff revision be allowed to go into effect without suspension or hearing.

26. *See* Docket No. 6767, Investigation into existing rates of Vermont Gas Systems, Inc., Order of 10/23/02 at 1.

27. *Id.*

28. Docket 6495, Order of 11/9/01.

29. Section 225 of Title 30 provides that "a change which in effect decreases such tolls or rates may be made upon five days' notice to the board and the department of public service and such notice to parties affected as the board shall direct."

As originally filed, the Tariff is based upon newly-proposed revenue requirements for G-3 and G-4 customers. The Department opposes this aspect of VGS' filing, contending that VGS' firm transportation rate should be based on currently-approved class revenues, and not upon the costs reflected in the new cost allocation study submitted by VGS. VGS agrees that the proposed firm transportation rates be based upon the same class revenue requirements as the companion firm sales rates, *i.e.*, G-3 and G-4 rates.

Findings

20. VGS has four G-3 customers and five G-4 customers that are eligible for the proposed FT-G service. Galligan pf. at 5-6.

21. The rates that VGS' proposes for the G-3 and G-4 classes are based on VGS' update of the cost allocation and rate design approved by the Board in Docket No. 6016. Simollardes/Scholten pf. at 5-6.

22. VGS agrees that rates under the Tariff should be based upon the same class revenue requirements as its firm sales rates for G-3 and G-4 customers. Tr 9/12/00 at 48 (Scholten).

Resolution

With VGS' proposal to base its firm transportation rates for G-3 and G-4 customers on the same Board-approved class revenue requirements as its firm sales rates for those customers, there is no dispute on this issue. VGS has indicated that it can amend the Tariff to reflect these changes. I conclude that the VGS and the Department's resolution of this issue is reasonable and recommend that the Board adopt it.

D. Capacity Assignment and Standby Service

Issues and Positions

VGS proposes that customers taking service under the Tariff procure their own firm, upstream capacity or, if available, that VGS assign them some of its own upstream capacity. However, in the case where a firm transportation customer has neither, then the customer would be eligible to take VGS' standby service, whereby VGS would acquire capacity for that customer

on a non-firm, as-available basis.

The Department urges the Board not to approve VGS' capacity assignment proposal. According to the Department, allowing the voluntary selection of upstream capacity creates a risk of stranding some of VGS' currently-held upstream capacity. This, argues the Department, would free the customers electing firm transport service from potentially higher-cost capacity. Also, according to the Department, it would leave VGS with the responsibility for potentially unrecovered costs, thereby putting VGS' remaining firm ratepayers in a position to pay for the costs. Consequently, the Department argues, the Board should require mandatory capacity assignment whereby VGS assigns its upstream-transportation capacity proportionally to those customers that elect to take transport service under the Tariff.

If the Board were to require mandatory capacity assignment, as the Department argues it should, then this would moot the Department's various concerns about standby service.³⁰ On the other hand, if the Board approves voluntary capacity assignment, then the Department urges the Board to first consider alternatives to VGS' standby proposal.³¹ According to the Department, if the Board is not willing to consider alternatives to standby service, then the Board should require VGS to base the cost of its standby service on the actual costs of upstream capacity resources (which would include TCPL capacity costs, storage and propane facility costs) rather than on the cost of VGS' more economic propane facilities.

Findings

23. Under the Tariff, customers have the choice of securing their own upstream firm-transportation rights. If VGS makes such capacity available, customers may also take assignment of a portion of VGS' firm, pipeline-transportation-capacity rights (including storage-backed, firm-transportation-capacity rights) that the Company holds under its contract with TCPL. *See*

30. *See* Galligan pf. at 11.

31. The Department has proposed that, *if* the Board approves voluntary capacity assignment, VGS should be required to maintain system integrity by, for example, using such mechanisms as "recall rights to shipper capacity," "operational flow orders" that serve to limit transportation the lesser of scheduled or nominated volume, or by otherwise arranging deliveries necessary to protect system integrity with the cost of these to be passed on to non-performing shippers. *See* Galligan pf. at 10-11.

Trans. Ltr; Initial Filing, V.P.S.B. Gas Tariff, Orig. Sheet No. 55; Simollardes/ Scholten pf. at 10-11; tr. 9/12/00 at 64-65 (Simollardes/ Scholten).

24. If a customer neither secures its own upstream firm-transportation rights, nor takes assignment of VGS' firm, pipeline-transportation-capacity rights, the customer can acquire standby service from VGS. *Id.*

25. Unless VGS can eliminate the costs associated with non-elected upstream capacity, VGS or its other customers will have to bear the costs of any upstream capacity that becomes stranded due to customers converting to firm transport service. VGS' voluntary capacity proposal, thus, would shift current upstream capacity costs away from G-3 and G-4 customers that elect to take this service under the Tariff. Galligan pf. at 11.

26. If VGS' customers converting to firm transportation service are required to accept an assignment of upstream capacity, their demands, up to their MDTQ, can be met with pipeline capacity. *Id.*

27. If customers converting to firm transport service experience need for capacity resources greater than their current level, then VGS can meet the demands of such customers with its peak-oriented storage and propane facilities. *Id.*

28. If a customer neither secures its own upstream firm-transportation rights, nor takes assignment of VGS' firm, pipeline-transportation-capacity rights, VGS could interrupt service to that account because the customer failed to procure firm upstream capacity. Galligan pf. at 11-12.

29. In accordance with the Department's recommendations, I find that VGS' firm transportation program should include mandatory capacity assignment.

Resolution

For the following reasons, I conclude that VGS should incorporate mandatory capacity assignment into its firm transportation offering. First, VGS currently pays for upstream capacity through revenues derived from all of its customer classes, including G-3 and G-4 customers. It is reasonable to expect that VGS incurred these costs, at least in part, for the direct purpose of serving all of its customers. VGS' voluntary capacity proposal would shift current upstream

capacity costs away from G-3 and G-4 customers that elect to take this service under the Tariff. To the degree that these two classes of customers are excused from contributing those revenues, by virtue of this shift, VGS' proposal creates a risk of some of the costs of upstream capacity becoming stranded, and that VGS' firm customers will potentially have to shoulder the costs.

VGS recognizes that its proposal could result in unassigned pipeline capacity. VGS witness Scholten testified, however, that this could be addressed and mitigated through sales growth, increased margins from interruptible sales, off-system sales, and VGS' proposed standby service.³² However, VGS provided little in the way of evidence demonstrating that any of the activities are likely to occur, and therefore, that the VGS customers are not at risk for costs that could be stranded by the Company's proposal. More important, in spite of taking the position that such costs may be mitigated in various ways, VGS has provided no justification for putting remaining customers at risk, in the first place, for costs that would be potentially created by the Company's proposal for the voluntary acquisition of upstream capacity.

Second, not only does the voluntary capacity assignment proposal place non-eligible and non-electing customers at risk for stranded costs, it also puts these same customers into a position where they may have to subsidize G-3 and G-4 customers who take advantage of the Tariff. VGS has provided no reason as to why its existing or new retail customers, interruptible customers, or off-system customers should subsidize firm transportation customers.³³ Access to competitively-priced gas commodity is its own reward in this context. VGS does not need to make it more attractive by shifting potential risk and costs from G-3 and G-4 to customers unable to benefit from this limited offering. Absent a reasonable basis for doing so, to leave VGS with

32. Tr. 9/12/00 at 49-50 (Scholten).

33. In the related context of stand-by service, VGS argues that the Department's comparison of "the cost of pipeline capacity to the stand-by service rate . . . does not capture all the effects." Simollardes/Shoulton reb. pf. at 13. VGS maintains that it cannot definitively conclude that the tariff's operational provisions will produce a detrimental cost result, because, according to VGS, incremental interruptible sales margins, the deferral of contracting for incremental pipeline capacity, and the crediting of commodity costs generated by the proposed monthly reconciliation may result in significant contributions. See Scholten/Simollardes reb. at 12-13. However, while VGS' arguments potentially have some merit, due to the possible mitigating effects of interruptible sales margins, deferral of contracting for capacity, and crediting of commodity costs, the record does not demonstrate any likelihood of such mitigation taking place. Thus, it would not be reasonable to rely upon what, at this point, remains speculation on the part of the company, however reasonable.

the responsibility for unrecovered costs and VGS ratepayers in a position to pay for those costs – in order to ensure that G-3 and G-4 customers have flexibility in acquiring upstream capacity – would be unduly discriminatory and unjustifiable under Vermont law.

I conclude, therefore, that VGS' customers electing to purchase gas under the Tariff should be assigned a proportionate share of all of VGS' capacity resources, as part of the Tariff. VGS should submit a filing containing a proposal for the assignment of its upstream-transportation capacity that does so.

I note further that, due to my conclusion that capacity assignment under the Tariff should be *mandatory*, there is no need for VGS to offer standby service, *i.e.*, a service for customers who have not secured sufficient capacity. Although it is not necessary to review the appropriateness of VGS' proposal for standby service, I will make the following observations.

As a complement to VGS' voluntary upstream capacity proposal, standby service would serve as the actual mechanism whereby customers electing service under the Tariff would be relieved from responsibility for higher cost upstream capacity. Customers receiving standby service would get delivery of gas, although the capacity component of that delivery would be based upon the cost of VGS' more economical propane facilities.³⁴ To base the price of standby service on the costs of its propane facilities would result in cost support coming from VGS' remaining customers and, thus, creating a subsidized service for G-3 and G-4 customers.³⁵

E. Balancing Service and Charges

Issues and Positions

VGS proposes to offer balancing service, a feature of the Tariff that would serve as a true-up mechanism for customers whose actual supply requirements exceed the amount they

34. For a service such as this to be justified from the point of view of cost, VGS would have had to base its costs upon all of its capacity costs, including TCPL capacity costs, storage and propane facility costs.

35. Absent reasonable justification, doing this would violate the ban against rates which are preferential or unjustly discriminatory. *See* 30 V.S.A. § 218(a); Docket No. 5625, Order of March 28, 1994 at 13. As argued in the Department's draft proposal for decision, since the rates for standby service and balancing are not based on VGS' costs in providing the service, this would contradict the principle that "just and reasonable" rates are cost-based. *See* 30 V.S.A. § 218(a); *In re Vermont Department of Public Service*, 104 P.U.R. 4th at 37. *See* note 50 and accompanying text below.

nominate ahead of time. VGS proposes a ten percent imbalance tolerance, with a sliding scale of charges applicable to imbalances beyond the ten percent threshold. As part of the service, VGS would "cash-out" each customer on a monthly basis, meaning that a customer's cumulative nominations would be reconciled to its cumulative consumption and, if the nominations exceed consumption, the customer would be charged accordingly.

While the Department agrees with the need for balancing service, it argues that VGS' balancing service, as proposed, should not be approved. The Department urges the Board to require VGS to fully unbundle its balancing service in order to recognize its actual cost-basis, and then to price it in accordance with the Company's costs of meeting demands in excess of customer MDTQs.

Findings

30. Under the Tariff, a customer accepting assignment of an amount of upstream capacity, up to the customer's highest average daily consumption during a recent billing period, or MDTQ, can schedule and provide for its own daily requirements only up to that level. On days when the customer's actual daily requirement exceeds its MDTQ, the customer would be out of balance and VGS would provide a daily balancing service. Galligan pf. at 12.

31. VGS will reconcile a customer's monthly nominations to its cumulative consumption and, if the nominations exceed consumption, the customer will be charged according to a sliding scale. *See id.*; Simollardes/Scholten pf. at 13-16.

32. Imbalances over 250 ccf, exceeding 10% of a customer's nominated volume, will result in balancing charges to the customer at the rate of \$0.013 per ccf for an imbalance of 10 percent to 20 percent, and \$0.026 per ccf for an imbalance of 20 percent or greater. *See Initial Filing, Orig. Sheet No. 56; Galligan pf. at 12; Simollardes/Scholten pf. at 13.*

33. With only a customer's MDTQ being made available by VGS for assignment, the customer cannot expect to remain in balance, especially during peak periods. Galligan pf. at 13.

34. There are costs associated with the ten percent imbalance tolerance that the customer necessarily will exceed whenever the customer's actual requirements are ten percent or more than its MDTQ. Galligan pf. at 13; Simollardes/Scholten pf. at 13.

35. Under VGS' proposal the customer does not pay the costs associated with less than a ten percent imbalance. *Id.*

36. Monthly imbalances will not be carried forward to a subsequent month; however, customers may exchange imbalances with other customers to offset their respective imbalances. *See Initial Filing, V.P.S.B. Gas Tariff, Orig. Sheet Nos. 56-57.*

37. Because VGS would provide balancing service primarily by utilizing Company access to storage and propane services, the costs of balancing service would be closely related to the costs of VGS' storage services and propane facilities. *Galligan pf. at 12.*

38. Under the Tariff the charge for imbalances at the end of the month will be based on the spot-market price of gas at the interconnection between TCPL and Iroquois Pipeline at Waddington, New York, plus the variable-transportation rate under the TCPL tariff for deliveries to Phillipsburg, Quebec. *See Simollardes/Scholten pf. at 15-16.*

Resolution

One of the central features of the Tariff is its reliance upon an estimate of each customer's level of demand, *i.e.*, the Maximum Daily Transportation Quantity or MDTQ.³⁶ VGS' use of demand charges reflects the fact that the Company is allocating the capital costs of reserving a portion of the transportation system to serve the customer. For purposes of planning and administration of the Tariff, therefore, it is reasonable to assume this measure of demand for each customer. In practice, however, one can expect firm transportation customers' actual consumption to vary daily from this estimate. In other words, it is reasonable to expect that firm transportation customers will be regularly out of balance and, thus, unavoidably in need of a balancing service. Given this reasonable likelihood, it is imperative that balancing be fully unbundled, and that its tariffed rate reflect VGS' costs to provide the service.

I conclude that the Department's position and proposal with regard to balancing service is

36. BED has argued that the proposed rate is so demand intensive, that it does not reflect actual cost causation. As Department witness Galligan indicated, the practice of overwhelmingly placing cost recovery responsibility in a demand charge, with an attendant commodity rate charge set to recover only a very small variable cost of service, is a practice approved by FERC, employed by TCPL and appears reasonable in this context. *See Smith pf. at 11; Galligan reb. pf. at 22.*

sound, and for the reasons set out below, adopt its recommendations. Essentially, the Department starts from the position that, even though a customer's actual daily requirements may approximate the MDTQ, it is far more likely that the customer will be regularly over or under its MDTQ. On days when the customer's actual requirement exceeds MDTQ, then the customer is going to require balancing service.

VGS recognizes this and its proposal for managing customer imbalances is, in many respects, reasonable and one that provides flexible means for staying in balance under the Tariff. For example, VGS proposes to reconcile customer's daily nomination and consumption imbalances on a monthly basis. VGS also proposes charging customers on a sliding scale, whereby charges increase the greater the imbalance. This creates a clear incentive to keep in balance while not dictating to the customer how this must be accomplished. Furthermore, although not permitting an account to be carried over from one month to the next, the Tariff allows customers to exchange their imbalances with one another in order to offset their own respective imbalances. This provides both flexibility to individual customers and a system-wide benefit by avoiding the need to acquire additional supply resources. While these aspects of VGS' proposal are reasonable and should help customers minimize their imbalances, there remain several problems with the balancing service that need to be considered in order to ensure that all the costs associated with the service are recognized and reflected in the Tariff.

First, VGS' proposal assumes that costs associated with imbalances of less than ten percent are not significant and, presumably, not worth recovering under the Tariff. This is incorrect because any imbalance comes with some cost to VGS. Furthermore, due to the flexible balancing features described above, it is possible that a monthly accounting of all the customers eligible under the Tariff will yield imbalances in the range of slightly less than ten percent. In such a case, all the costs associated with supplying gas to address the imbalances of all of VGS' large industrial and commercial customers could go unrecovered. If the costs of these imbalances are not recovered from the customers who are out of balance, then the costs will be left for VGS' other retail customers (who are already contributing to the rest of the Company's balancing costs). VGS' balancing service should include all of the costs associated with the Company's provision of the service. I recommend that VGS fully unbundle its balancing service,

and in doing so, that it demonstrate its recognition of the full cost basis of providing balancing service.

Secondly, and in association with the need for a cost-basis demonstration described above, VGS' contention that it will remedy daily imbalances by going to the spot-market for gas is not borne by the evidence. On one hand, VGS has testified that its proposed charges for balancing services will be based upon the spot-market price of gas at the interconnection between TCPL and Iroquois Pipeline, plus the variable-transportation rate under the TCPL tariff. However, VGS has also testified that it employs its storage and propane air resources to reconcile system imbalances. Therefore, as VGS establishes the cost basis for balancing services, it should track the costs of the resources that it actually uses and plans to use in the future.

I conclude that VGS should fully unbundle its balancing service, and that, in doing so, it should recognize the actual cost-basis for providing such a service. Furthermore, I conclude that VGS ought to amend its tariff and submit a compliance filing to the Board that reflects charges designed to recover all of the costs that the Company incurs in meeting the consumption needs of customers whose demand exceeds their MDTQ.³⁷

F. Metering Provisions and Charges

The Department takes the position that metering should be part of VGS' firm transport service and that metering provisions and related charges should be included in the final tariff. VGS subsequently agreed not to challenge a separate metering charge proposed by the Department if the Board decides in favor of the Department.

Issues and Positions

39. Daily metering should be a requirement for firm transportation service. Metering provisions and related charges should be included in VGS' final tariff. Galligan pf. at 15.

Resolution

37. Furthermore, VGS agrees that its interruptible-transportation tariffs should be amended to contain the same balancing provisions as proposed in the Tariff. VGS Initial Brief at 20.

In order to successfully implement other provisions of the tariff, including those related to commodity charges and balancing, firm transportation customers should be able to monitor their actual consumption of gas. This makes sense both from the point of view of an individual customer's demand response and for the efficiency of VGS' distribution system as a whole. Consequently, I conclude that firm transport customers should be metered separately. VGS has agreed not to contest the Department's metering proposal, and to develop a metering charge in its final tariff. I conclude that this is reasonable; VGS should develop a metering charge for firm transportation customers that comports with the other provisions of the Tariff, and that the Company should submit it as a compliance filing in this Docket.

G. Further Availability of Transportation Service

Issues and Positions

The Department indicated that opening transportation service to other VGS customers is a good idea, but only if it can be done in a manner that protects the public interest. VGS agrees with the Department that the Company's plan to offer transportation service to its remaining customer classes should be phased in, based on guidance from the Board.

Findings

40. As VGS expands its firm transportation service offerings to its remaining customers, that expansion should be based on the following principles that advance the public interest. These principles were proposed by the Department in its direct testimony and no party has disagreed with them:

- a. VGS' transportation program should be structured to promote an environment in which competition can thrive. However, customers who elect to continue to purchase natural gas supply service from VGS should not be harmed.
- b. The reliability of VGS' distribution system should be maintained.
- c. Transportation service should be available to all customers in VGS' service territory and to all natural gas suppliers at non-

discriminatory rates, terms of access and other conditions.

d. VGS should structure its tariff to separately identify the price of distribution service and the prices of the various components of natural gas supply service in an administratively simple fashion for both retail customers and third-party suppliers serving those customers.

Galligan pf. at 14.

41. VGS characterizes the firm transportation rate tariff as "the next step toward the development of an open-access environment for natural gas in Vermont." Simollardes/Scholten pf. at 2.

42. VGS has agreed to phasing in transportation to other rate classes. Tr. 9/12/00 at 49 (Simollardes).

Resolution

I conclude that VGS should file a phase-in plan for providing transportation service to the rest of its customers. The plan should include appropriate milestones such as dates for the filing of specific proposals to offer transportation to each of the remaining classes of customers. I further conclude that VGS' proposal to offer transportation service to its remaining customers should be based on the principles enumerated immediately above and on those adopted in this Order.

IV. TRANSMISSION-ONLY TRANSPORTATION TARIFF

Issues and Positions

BED seeks to convince the Board to require VGS to identify and to unbundle its system's transmission and distribution functions, and to offer a transmission-only transportation service.³⁸ BED maintains that it is "served directly off of VGS' transmission system, at transmission level pressure, for purposes of firing its boilers and producing electricity . . ." and that McNeil "does not utilize VGS' distribution network, nor has it caused VGS to incur distribution costs."³⁹ In

38. CVPS and VPPSA each support the positions taken by BED in the BED Brief and BED Draft Proposal for Decision.

39. BED Brief at 2.

support of its position, BED seeks to establish that "McNeil's load characteristics and usage patterns justify a preferential rate classification;" and that VGS' failure to provide a transmission-only tariff results in unjustly discriminatory and insufficient rates which are, thus, neither just nor reasonable.⁴⁰ Finally, BED seeks to refute VGS' and the Department's arguments that VGS does not provide a "separate and distinct" transmission function.⁴¹

The Department and VGS oppose BED, VPPSA and CVPS' position. The Department and VGS argue that, in Docket 6016, the Board concluded that VGS need not offer such a tariff, and "[w]hile the Board also left the matter open for further consideration, these parties have failed to show a persuasive reason to change the Board's prior conclusion."⁴² The Department also argues that BED, VPPSA and CVPS "fail to show, or even allege, that VGS has inappropriately included commodity-related or upstream capacity costs in the proposed transportation rate."⁴³ Finally, the Department argues that "the weight of the evidence in this docket is that VGS does not provide transmission service."⁴⁴

VGS, additionally, disagrees with BED's assertion that VGS' decision not to unbundle transportation service through a transmission-only rate is anticompetitive, and furthermore that VGS' inclusion of distribution-plant costs constitutes "an illegal tying arrangement if challenged under Section One of the Sherman Act"⁴⁵

Findings

43. When proposing separate rates for service elements that warrant separate treatment, it is essential to analyze the per books plant accounts to determine which facilities booked as transmission or distribution plant actually are used in operations to provide one or the other

40. *Id.*

41. *Id.*

42. Department Proposed Pfd at 1.

43. *Id.*

44. *Id.*

45. 15 U.S.C.A. §1 (1997). VGS Reply Brief at 5, citing to BED Brief at 14-16.

service. Galligan reb. pf. at 4.

44. VGS' classification is not based on an analysis of functionality. Instead, its classification of its service pipes as "transmission" or "distribution" is based on federal Department of Transportation ("DOT") bookkeeping requirements. *See* tr. 9/13/00 at 181-82 (Galligan); Galligan reb. at 4; exh. DPS-RAG-3; tr. 9/12/00 at 44 (Simollardes).

45. The DOT also differentiates among pipes for siting and safety reasons, *i.e.*, higher pressure pipes should not go past schools and are more frequently walked and inspected. *Id.*

46. When FERC asserted jurisdiction over the transmission component of unbundled retail electric service, in its Order 888, the FERC had to establish standards for assessing which electric facilities actually perform a transmission function and which facilities perform a distribution function. This was necessary because the functionalized plant amount per books does not necessarily relate to how plant facilities function in the provision of service. Galligan reb. at 4-5; exh. DPS-RAG-1.

47. The standards FERC developed are often referred to as the "Seven-factor test," and are to be evaluated on a case-by-case basis. They are consistent with general cost allocation principles applicable to both gas and electric cost functionalization. The FERC technical standards relating to the functionalization of electric facilities are useful to a determination of whether specific gas pipeline facilities perform a transmission or a distribution function. *Id.*

48. **Proximity:** the first factor in the 7-factor test requires the consideration of whether the facilities are normally in close proximity to the retail customers. Transmission service routinely requires the delivery of gas received in or near gas producing areas or from upstream interconnections with other transmission facilities and the movement of that gas hundreds or even more than a thousand miles to distant retail markets. VGS has a retail service market located in two northwestern Vermont counties, in the same location as all of its facilities. The size of VGS' system does not compare with typical distances associated with gas transmission companies providing transmission service. Galligan reb. pf. at 5, 8; exh. DPS-RAG-1.

49. VGS' facilities are in close proximity, and, in fact, they constitute VGS' retail service area. *Id.*

50. **Radial Design:** the second factor requires the consideration of whether the delivery

facilities are primarily radial in character. The 1988 Webster Collegiate Dictionary defines radial as "arranged or having parts arranged like rays," or "characterized by divergence from the center." The gas in the VGS system flows outward from VGS' interconnection site with TCPL in Phillipsburg, Quebec, to the Company's various retail customers. There is no gas that flows from the TCPL system into the VGS system and then back into the TCPL system farther downstream. Galligan reb pf. at 5; exh. DPS-RAG-1.

51. The VGS system is an extension upon the TCPL system, and its facilities are primarily radial in design. *Id.*

52. **Energy Flow:** the third factor calls for a determination of whether energy (in this case gas) flows into a local distribution system, but rarely or ever flows out. VGS has only one delivery service location that connects it to its upstream transmission company pipeline supplier near Phillipsburg, Quebec. VGS has no other connection between itself and another supplier or another distribution company. Galligan reb. pf. at 5; exh DPS-RAG-1.

53. Gas flows into the VGS system from the upstream TCPL natural gas pipeline system. *Id.*

54. **Consignment:** the fourth factor requires a determination of whether power (in this case gas) entering a distribution system is reconsigned or transported to some other market. Galligan reb. pf. at 5-6; exh. DPS-RAG-1.

55. Gas entering the VGS system is not reconsigned, nor is that gas transported to some other market. All gas entering VGS' system is distributed to retail customers located throughout VGS' service territory and sold under VGS' system-wide retail tariffs or special contracts. *Id.*

56. The gas that flows into the VGS system is not reconsigned nor is it transported to some other market. *Id.*

57. **Consumption:** the fifth factor requires a determination of whether power entering a local distribution system is consumed in a comparatively restricted geographical area. All gas entering the VGS distribution company's facilities is consumed locally, as described above. Galligan reb. pf. at 6; exh. DPS-RAG-1.

58. I find that the gas that flows into the VGS system is consumed in a comparatively restricted geographical area defined by VGS' system described above. *Id.*

59. **Metering:** the sixth factor requires the consideration of whether meters are based at an interface between the transmission and local distribution systems in order to measure flows into the local distribution system. Unlike a transmission company that meters deliveries from their transmission system into their LDC customer distribution systems,⁴⁶ VGS does not comprehensively meter gas flows between its per books, DOT classified transmission and distribution facilities. Instead, it has gate stations at some points on its system that serve to decrease the pressure from one level to another. Some of those gas stations record the gas flows and some of them do not. Galligan reb. pf. at 54; exh. DPS-RAG-1; tr. 9/12/00 at 54 (Simollardes).

60. VGS has not installed meters that might constitute a transmission/local distribution interface in order to distinguish between two systems and to measure gas flows. Galligan reb. pf. at 54.

61. **Voltage Reduction:** the seventh factor requires a determination of whether the local distribution system operates at reduced voltage (or, in this case, at reduced pressures). Galligan reb. pf. at 6-7; exh. DPS-RAG-1.

62. Depending on the distance traveled, as natural gas moves through a pipeline it loses pressure. In order to maintain gas flows, pipeline companies performing a transmission function must install and operate compressor stations to periodically raise the pressure of the gas. For example, TCPL operates compressor stations approximately every 75 to 100 miles along its system. These compressors raise the gas pressure from the low level of about 750 pounds per square inch gauge (*i.e.*, pressure as measured on a pressure gauge without the inclusion of atmospheric pressure "psig") at the inlet side of the compressor station to about 1000 psig at the outlet side of the compressor. This compression is necessary to keep the gas moving through the transmission pipeline facilities. Galligan reb. pf. at 8.

63. Unlike TCPL, VGS has no compressor facilities. Instead, VGS reduces the pressure of the gas that it receives from the TCPL pipeline before VGS distributes gas to its customers. *Id.*

64. TCPL routinely operates its transmission system so as to maintain approximately 800

46. *E.g.*, gas deliveries from the TCPL company facilities into VGS' system are metered at the interface between TCPL and VGS' systems.

pounds of pressure at the terminus of its transmission system. Galligan reb. pf. at 6-7; exh. DPS-RAG-1.

65. After receiving gas from TCPL at required contract pressures of 580 psig, that pressure is reduced throughout VGS' system. *Id.*

66. Gas pressure varies with demand on VGS' system. For example, pressure on the 6-inch spur running to the gas regulating station at McNeil would be expected to be reduced when McNeil is operating, or when heavy demand is placed on the VGS system from other users (e.g., during significant heating days). Conversely, pressure would tend to build up on that spur during periods of low use. Tr. 9/13/00 at 178-79 (Galligan).

67. The entire pipeline is affected by where the gas flows in and out. For example, if VGS were to further build its distribution system in one area, this would have a direct impact on the capacity calculation of any per books transmission lines. Likewise, if usage on the distribution system draws more heavily than the per books transmission lines are capable of handling, pressure problems will result. *See* tr. 9/12/00 at 117-18 (Simollardes).

68. This pressure varies from as low as 136 psig to as high as 546 psig. Galligan reb. at 7; tr. 9/12/00 at 205 (Simollardes); Stipulation among the parties dated May 22, 2000 (the "Procedural Stipulation"), Attachment E.

69. VGS' gas regulating station at McNeil reduces the pressure from the 6-inch spur that runs to the regulating station. While McNeil is operating, the pressure at the outlet from the regulating station to McNeil ranges from 83 psig to approximately 95 psig. *Id.*

70. The pressure at the regulating station outlet exceeds 100 psig only when McNeil is not operating. During these periods, the maximum pressure is 110 psig. *Id.*

71. The VGS system operates at pressures reduced from the pressures at which TCPL delivers gas to VGS. *Id.*

72. An application, by analogy, of the FERC seven-factor test to the VGS system indicates that VGS' facilities perform distribution functions. Findings 46-71, above.

73. Vermont Gas designed and maintains its system as an integrated whole and determines whether to extend service to a large customer by using transmission- or distribution-rated plant based on the size of the customer load but also on the most cost-effective means of serving all

retail customers. Galligan reb. pf. at 13-14; tr. 9/12/00 at 134-35 (Simollardes).

74. VGS' pipeline facilities collectively contribute to the system's overall capacity. Simollardes/Scholten pf. at 7; tr. 9/12/00 at 45-7 (Simollardes).

75. Although not a dispositive test, transmission service is associated with large pipe sizes. For example, transmission pipe diameters are often 36-inches or more. Significant amounts of the TCPL transmission system are typified by twin 36-inch pipes. Pipe sizes on VGS' distribution system are significantly smaller. The 6-inch pipe that serves McNeil does not typify pipe sizes associated with a transmission function. Galligan reb. pf. at 8.

76. Where VGS operates pipe at transmission pressure, it does so to ensure that there is adequate pressure at the customer's meter at the other end. *See* tr. 9/12/00 at 44 (Simollardes); Galligan pf. at 10.

77. VGS' system, unlike transmission systems that periodically raise the pressure of the gas in their pipes, operates at reduced pressures from the TCPL system, the source of VGS gas. *Id.*

78. From a functional stand point, the VGS facilities serving McNeil cannot be characterized as serving a transmission function. The gas pressures, pipe size and the limited distance gas flows on the VGS system are not characteristic of a transmission function. Also, the single source of gas supply and the flow of that gas which is consigned only to VGS and is restricted to serving only the retail VGS market are not consistent with a transmission function. VGS cannot reasonably be characterized as providing transmission service to McNeil or any other customer. Findings 46-77, above.

79. The Tariff includes an allocation of distribution-system or distribution-related costs. Tr. 9/12/00 at 43-45 (Simollardes).

80. Including distribution costs in the Tariff is appropriate. VGS is a local distribution company whose system functions as a distribution system. It is integrated for purposes of operations, in that the capacity of the per books transmission-rated lines are directly affected by the size and location of the loads on the distribution system. *Id.*

81. Separating costs associated from customers whose plant is rated "transmission" from customers whose plant is rated "distribution" will have no effect on obtaining a lower commodity cost by shopping upstream, *i.e.*, VGS' delivery rate is irrelevant to a customer's ability to obtain

gas supply more cheaply. Tr. 9/13/00 at 95 (Smith).

82. The record does not reflect that VGS has included any gas commodity or upstream capacity cost in the proposed FT-G rate. *See, e.g., id.* at 65-6 (Smith).

Resolution

Introduction

As further explained below, I reject BED's contention that it is served by a distinct transmission system. Instead, I conclude that VGS' system functions as a distribution system, and that its transmission-rated and distribution-rate plant are integrated. The record reflects that, for purposes of operations, the capacity of the per books transmission-rated lines is directly affected by the size and location of the loads on the distribution system. I also conclude that BED has not demonstrated that VGS' inclusion of distribution costs in its Tariff is discriminatory. I consequently deny BED's request for VGS to identify and to unbundle its system's transmission and distribution functions, and to offer a transmission-only transportation service. I further conclude that, as applied by analogy, the functionality test for electricity systems, developed by FERC in its Order 888, provides meaningful guidance in determining (1) why VGS is currently only a distribution utility, and does not offer transmission service, and (2) the circumstances under which, in the future, the Board might determine that VGS is, in fact, offering transmission service and, consequently, at what point a company like BED should expect to be able to take service under a transmission-only tariff.

Background

In this Docket, as in Docket 6016, BED argues that, since it is served from only the transmission portions VGS' system, and since this causes VGS to incur no distribution costs, BED should be required to pay only transmission-related costs under this tariff.⁴⁷ BED consequently contends that the Board should find VGS' inclusion of distribution costs in the Tariff's rates to be discriminatory, because VGS charges customers for all of the plant used by

47. Docket 6016, Order of 11/24/98.

VGS to deliver gas (including the pipe termed "distribution") in spite of BED taking delivery of gas only from pipe termed "transmission." BED also argues that, if FERC policy were being implemented in Vermont, BED would not have to pay distribution costs for the transmission of natural gas over the VGS system.

VGS and the Department disagree, arguing that the "distribution/transmission" distinction is essentially a matter of nomenclature, terminology used by the U.S. Department of Transportation for purposes of safety regulation and accounting.⁴⁸ From VGS' point of view, these labels have no relevant bearing on the actual function of its facilities; and rather than being comprised of two distinct systems, one transmission and the other distribution, the VGS system is an integrated distribution pipeline. The Department and VGS also contend that, in Docket 6016, the Board concluded that VGS need not offer a transmission-only tariff. In particular, the Department has argued, that "[w]hile the Board also left the matter open for further consideration, these parties have failed to show a persuasive reason to change the Board's prior conclusion."⁴⁹

In Docket 6016, BED sought to demonstrate that VGS' proposed tariff for interruptible transport customers was not cost-based, and therefore that the rates developed pursuant to the tariff were discriminatory. In that Order, the Board recognized that "McNeil takes service over a "transmission" main rather than a "distribution" main, but found that "this fact alone does not relieve an individual customer from the responsibility of supporting a fair portion of the entire pipeline network."⁵⁰ The Board further explained that:

Both "transmission" and "distribution" customers are charged averaged transportation rates, which have never been adjusted for individual variances, such as the customer density in a neighborhood, distance from VGS's main lines, or the cost of laying pipe in urban vs. rural areas. Some

48. VGS and the Department have testified that the classification of VGS' service pipes as "transmission" or "distribution" is based on federal Department of Transportation ("DOT") bookkeeping requirements. See tr. 9/13/00 at 181-82 (Galligan); Galligan reb. pf. at 4; exh. DPS-RAG-3; tr. 9/12/00 at 44 (Simollardes). The DOT also differentiates among pipes for siting and safety reasons, *i.e.*, higher pressure pipes should not go past schools and are more frequently walked and inspected. *Id.*

49. DPS Proposed PfD at 1.

50. Docket 6016, Order of 11/24/98 at 15.

customers will of course be more (or less) expensive to serve than others. However, there are important policies -- *e.g.*, economic development, rate simplicity, and equality of access -- that counsel for averaged transportation rates. Moreover, physical location and pipe diameter are only a portion of the cost equation; load characteristics, including scale, predictability, variability, and coincidence with peak demand, are also important cost drivers. Considering all of these factors, the present record does not support BED's request for a preferential rate classification at this time.⁵¹

In summary, in Docket 6016, the Board articulated a "postage stamp" policy, acknowledging that, essentially, where facilities benefit the system as a whole and customers as a whole, the cost of such facilities should be shared by customers as a whole. However, the Board also explicitly limited its conclusions to the record in that case. It recognized that "a separate rate may have merit in the future, particularly if VGS' transmission and distribution systems are further opened to allow other customers to transport natural gas."⁵²

The Standard

Under Vermont law, the Board cannot approve a tariff without first finding that the rate charged under the tariff is just and reasonable and that it does not discriminate or unjustly create any preference.⁵³ The Board has typically exercised its authority by utilizing cost-based methodologies in order to set rates that are just and reasonable.⁵⁴ In this investigation, parties have not disputed this; they have agreed that "just and reasonable" means "cost-based."⁵⁵ Instead, the disagreement here has been over what "cost-based" means for firm-transportation

51. *Id.*

52. *Id.*

53. 30 V.S.A. § 218(a) (2000). As the Vermont Supreme Court observed, the Board's authority under section 218 is "broad and unconfining." *In re Green Mountain Power Corp.*, 142 Vt. 373, 380 (1983).

54. *See, e.g.*, Tariff Filing of Green Mountain Power Corp. requesting a 12.9% rate increase, Docket No. 6107, Order of 1/3/01 at 16; *see also* Tariff filing of Franklin Electric Light Company requesting a revision to its rules and regulations re: a 1% penalty charge; Docket No. 5137, Order of 9/25/90 at 16 (Board states that it has vigorously pursued cost-based pricing since a 1973 Supreme Court decision).

55. *See, e.g.*, Smith pf. at 6; Galligan pf. at 8; Simollardes/Scholten reb. pf. at 5; tr. 9/12/00 at 85, 189 (Simollardes/Scholten).

service to large industrial and commercial customers.

Parties' disagreements here have stemmed not only from differences about cost causation, but also over the question of whether VGS can appropriately lower the rate charged to a customer because that customer takes service from pipe rated as "transmission" without violating the prohibition on preferences and unjust discrimination contained in 30 V.S.A. Section 218. VGS presented credible testimony that, in attempting to develop cost-based rates, it followed established rate-design methodology and identified service categories on the basis of significant cost-causation distinctions.⁵⁶ According to VGS' methodology, costs are functionalized and classified (the latter, into fixed and variable costs), and then costs are allocated to various classes of customers.⁵⁷

In evaluating whether it is appropriate to grant BED's request to classify transmission-only customers separately, the Board must determine whether the various plant classified as "transmission" and "distribution" are functionally distinct, and how they are used in company operations. Department witness Galligan testified that:

When proposing separate rates for service elements that warrant separate treatment, it is essential to analyze the per books plant accounts to determine which facilities booked as transmission or distribution plant actually are used in operations to provide one or the other service.⁵⁸

In doing this, the Board must determine whether the manner in which customers being delivered gas through distribution pipe constitutes a materially different service from that being offered to customers who take delivery of gas through transmission pipe.

Discussion

VGS' System Characteristics

As further explained below, the initial impression created by the testimony regarding pipe size, pressure, and certain load characteristics of McNeil is that there is a strong distinction

56. Simollardes/Scholten reb. pf. at 3-5.

57. Id. at 4; tr. 9/12/00 at 90 (Simollardes).

58. Galligan reb. pf. at 4.

between transmission-rated and distribution-rated plant, as BED has argued. However, on the basis of countervailing evidence, especially concerning system operations, I conclude that the differences between distribution and transmission are not significant. Furthermore, I conclude that it is not unreasonable for VGS to include distribution costs in its service to McNeil.

McNeil is served by a 6-inch pipe. While larger than much of the other pipe on the system, according to Department witness Galligan, McNeil's service pipe "does not typify pipe sizes associated with a transmission function."⁵⁹ According to his testimony, transmission pipe diameters are often 36-inches or more, and further that significant amounts of the TCPL transmission system are typified by twin 36-inch pipes.⁶⁰ Although not a conclusive test, pipe sizes on VGS' system are significantly smaller than the sizes of pipes typically associated with transmission service.

McNeil takes service at a higher pressure than most of VGS' other customers. VGS has acknowledged this. While McNeil is operating, the pressure at the outlet from the regulating station to McNeil ranges from 83 psig to approximately 95 psig.⁶¹ BED's own witness, however, testified that distribution-level pressures are typically below 100 psig.⁶² Since VGS reduces the gas pressure for McNeil to approximately 90 psig, it is noteworthy that, by BED's own measure of distribution level pressure, McNeil takes gas at distribution pressure.⁶³

When operating on natural gas, McNeil consumes large amounts of that fuel. On full load, McNeil can consume 13,000 McF per day. On an average summer day, this amount far exceeds the combined load of all other VGS customers, which can range from 8,000 to 11,000 McF. Although it can consume large amounts of fuel, as an electric generating facility subject to dispatch by ISO-New England, McNeil is unable to accurately predict whether it will be is

59. *Id.* at 8.

60. *Id.*

61. Procedural Stipulation, Attachment E. Only when McNeil is not operating, does the pressure exceed 100 psig, to a maximum of 110 psig. *Id.*

62. Smith pf. at 6.

63. *See* Procedural Stipulation, Attachment E; Simollardes/Scholten reb. pf. at 5. When McNeil is operating, VGS reduces the pressure from anywhere between 546 and 136 psig, to 90. *Id.*

dispatched on any given day. The record reflects that McNeil has historically burned natural gas during summer months and shoulder months when VGS has available capacity on its system. Although this represents a significant amount of VGS' load during off peak periods, McNeil's gas consumption levels remain unpredictable.⁶⁴

VGS presented evidence that the pressure that it maintains for McNeil, is a function, not only of the demand for gas at McNeil, but is also a function of VGS' need to balance the rest of its system. VGS witness Simollardes testified that:

[W]hen we calculate the capacity of the transmission rated pipes, one of the significant inputs is where the distribution load occurs on our system. In other words, where the take-off points are. . . .⁶⁵

Thus, pressure levels in transmission-rated pipe to McNeil are not only McNeil-driven, but are also partly a function of pressure necessary to maintain VGS' distribution-rated pipes. Likewise, the record reflects that, if McNeil's demand changes, then the rest of VGS' distribution system must respond. Of course, in spite of McNeil's operating characteristics, pressure on VGS' system varies with demand across the system, and not simply because of variations at McNeil. Therefore, it is reasonable to expect that pressure will be reduced on the 6-inch spur running to the gas regulating station at McNeil, not only when McNeil is operating, but also when there is heavy demand placed elsewhere on the VGS system from other users (*e.g.*, during significant heating days). Similarly, pressure would tend to build up on that spur during periods of low use.⁶⁶ Thus, from an operational standpoint, the record indicates that there is less of a distinction between transmission-rated and distribution-rated plant, but that, instead, VGS runs a single, integrated system.

In addition to on-going calculation and regulation of system capacity, according to VGS witness Simollardes, if VGS were to further build its distribution system in one area, this effort

64. BED Brief at 5. In addition to being subject to ISO-New England dispatch priorities, McNeil's air quality permit limits McNeil's ability to burn natural gas on full load to 89 days. For these reasons McNeil continues to be an interruptible customer of VGS, and unable to commit to firm service from the Company. *Id.*

65. Tr. 9/12/00 at 117-18 (Simollardes).

66. Tr. 9/13/00 at 178-79 (Galligan).

would have a direct impact on the capacity calculation of any per books transmission lines.⁶⁷ Thus, for purposes of system planning, VGS recognizes that system pressure also varies with demand on either transmission or distribution plant. VGS witness Simollardes testified:

We could beef up our distribution system in one area and alter the flow of gas and it would have a direct impact on the capacity calculation of the transmission line.

Further, . . . if the usage on the distribution system starts to draw more heavily than the transmission system is capable of handling, we are going to have pressure problems. . . .

The entire pipeline system is modeled depending on where the gas flows in and out.⁶⁸

The record reflects that VGS provides McNeil service with relatively larger pipe and at relatively higher pressures than the service VGS provides others on its system. McNeil is also a significant part of VGS' load at certain times of the year. From a functional standpoint, however, the pressure that VGS maintains for McNeil, and also assumes for system planning, is a function, not only of McNeil's demand for gas, but is part of VGS' overall operational needs. If McNeil's demand changes, then the rest of VGS' distribution system must respond, and vice versa. This leads to the conclusion that, functionally, VGS' transmission and distribution plant are not distinct.⁶⁹ As Department witness Galligan testified, "Vermont Gas' system operates as a single, integrated whole."⁷⁰

Citing FERC unbundling orders, BED has also argued that if FERC policy were being implemented in Vermont, BED would have access to transmission-only rates.⁷¹ On cross-

67. See tr. 9/12/00 at 117-18 (Simollardes). VGS witness Simollardes also testified that:

The only reason we have pipe that operates at a transmission pressure is so that there's adequate pressure at the customer's meter at the other end. In other words, the transmission system is there to benefit the distribution system. Our entire operation is really structured around the distribution of natural gas. Tr. 9/12/00 at 44.

68. Tr. 9/12/00 at 118 (Simollardes).

69. I reach this conclusion only in regard to the manner in which this plant functions within the VGS system.

70. Galligan pf. at 10.

71. See, e.g., BED Brief at 3-4; Smith reb. pf. at 7.

examination, however, BED witness Smith acknowledged that FERC Order 636 focuses upon interstate pipelines:

And pipelines I'm not sure have any DOT classified distribution plant I did skim over this, and there is no reference of that sort. But I don't know why we would expect to find a reference to distribution plant in an order referring to pipelines, interstate pipelines.⁷²

Later, witness Smith conceded that she was not aware of any case in which a FERC order addressed distribution, or local distribution companies such as VGS.⁷³

The Department demonstrated that FERC Order 888, applied by analogy, is useful in analyzing the functionality of VGS' system. Each factor in the FERC test serves as a measure of system functionality, and focuses on elements of system operations. Applying FERC's seven-factor test leads to the conclusion that VGS is a distribution company that provides local distribution services (see findings 46-72, above). For example, all of VGS' facilities are in close proximity to its retail customers.⁷⁴ VGS is not in the business of providing deliveries of gas at wholesale for further redistribution to retail customers in some other retail gas delivery market.⁷⁵ Its delivery facilities are primarily radial in character.⁷⁶ Gas flows into the VGS system, but does not flow out into another system.⁷⁷ The pressure of this gas is reduced significantly by the time it gets to BED and VGS' other retail customers.⁷⁸ Finally, all of the gas that enters VGS' system is consumed in a relatively restricted area.⁷⁹

72. Tr. 9/13/00 at 83 (Smith). While containing discussions of the advantages of open access policies for interstate transmission pipelines, FERC's order 636 does not apply to distribution companies such as VGS. *See id.*; *see also* Galligan reb. pf. at 9.

73. *Id.* at 83-84 (Smith).

74. See Findings 48-49 above.

75. See Findings 54-56 above.

76. See Findings 50-51 above.

77. See Findings 52-53 above.

78. See Findings 59-71 above.

79. See Findings 57-58 above.

Other LDC Transmission-Only Tariffs

BED has also argued that LDCs in other states (California and Montana) are providing transmission-only tariffs. While, strictly speaking, this is a correct assertion, these cases do not provide the Board with useful examples. SoCal Gas Company, for example, has 45,000 miles of transmission and distribution pipes, serves 17 million people, and covers 23,000 square miles.⁸⁰ San Diego Gas and Electric's ("SDG&E") tariff refers to the transportation of gas across both SoCal Gas and SDG&E pipelines to other end users.⁸¹ This reference encompasses not only the large size of SoCal Gas's territory, but also transport over more than one service area. Pacific Gas and Electric has a 70,000 square mile territory, 43,000 miles of natural gas pipelines, and 3.7 million gas customer accounts.⁸²

Upon closer scrutiny, the evidence in this case indicates that the California gas market is, in fact, unique in many respects.⁸³ California's is the only gas market in the United States in which no transmission pipelines are owned by interstate pipeline companies.⁸⁴ The transmission pipelines in California "replicate the function that interstate pipelines which operate in other parts of the country perform."⁸⁵ These pipelines also provide what is referred to as "universal transmission services," meaning that they transport gas from the California border (as would any interstate pipeline) to the distribution systems of the companies that own the transmission systems, but also beyond, to other distribution systems.⁸⁶

80. Exh. DPS-RAG-6; 9/13/00 tr. at 74 (Smith); *id.* at 150-51 (Galligan).

81. Tr. 9/13/00 at 151 (Galligan).

82. Exh. DPS-Cross-3, -4. One of those companies, Montana Power Company, has over 2,100 miles of transmission pipeline and 3,300 miles of distribution pipeline. It also has storage facilities, which VGS does not.

83. In the instances cited, the LDCs provide transportation services over long distances, take service from FERC-regulated interstate pipelines, and in the case of California consign the gas to other LDCs in combination with supplying commodity to their own customers. Tr. 9/12/00 at 102-06 (Scholten); tr. 9/13/00 at 149-52 (Galligan); *see* Simollardes/Scholten reb. pf. at 6.

84. *Id.* at 102.

85. *Id.*

86. *Id.*

While the California examples are inapposite to Vermont due to their relative size, there are two other more significant distinctions between that market and Vermont's. First, the VGS system takes delivery of its gas at the border from an actual transmission system. Second, VGS lowers the pressure of the gas, and the gas is consumed within VGS' system and not consigned to another system for consumption there. BED, consequently, is not convincing in its argument that VGS in Vermont can, essentially, do the same thing that PG&E, SDG&E and SoCal have done in California.

Anticompetitiveness

BED has argued that VGS' failure to unbundle its transportation service through a transmission-only offering is anticompetitive.⁸⁷ BED contends that, by virtue of including distribution costs in transportation rates, VGS has created an illegal "tying" arrangement if challenged under Section One of the Sherman Act, 15 U.S.C.A. § 1 (1997).⁸⁸

I disagree. BED's tying argument fails because it ignores the relationship between competition law and the Board's regulatory responsibility to ensure just and reasonable rates. While BED's contention that "antitrust risks can be significant" as competition in energy markets develops, may be true where rates are not reviewed and regulated by regulatory bodies such as the Board, that risk does not exist where the Board continues its oversight of a monopoly provider's rates.⁸⁹

Primary Service

Finally, BED argues that the service it receives from VGS is analogous to primary electric distribution service. Primary electric service involves the receipt of electric energy at voltage

87. BED Brief at 16.

88. *Id.* at 14-16.

89. *See* VGS Reply Brief at 6, citing *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. at 105 (collateral attack of regulated rates through the use of antitrust laws precluded). As VGS has correctly indicated, if VGS sought to tie an unregulated service to a service that the Board regulates, the tying cases that BED has cited would arguably apply.

levels that require further reduction, and where it is the customer's responsibility to own the transformers that step the electricity down to usable voltages. Customers receiving primary service also distribute the electricity to their own energy-using facilities.

I do not find BED's comparison to be persuasive. First, customers who pay reduced rates for primary service get service where the customer, not the power company, owns the transformers that step the electricity down to usable voltages. Primary service customers also have the responsibility to distribute the electricity to the energy-using facilities. BED's relationship to VGS cannot be characterized this way. As the record demonstrates, McNeil already receives its gas from VGS at distribution level pressures.⁹⁰ VGS, not BED, owns the pressure regulation facilities. VGS incurs the costs to reduce gas pressures for BED, and also distributes the gas to BED. In other words, BED neither provides for itself, nor does it incur the related costs directly, in the same manner as an electric customer receiving primary service.⁹¹

Secondly, where an electric customer needs service at primary, it will be charged with the cost responsibility for extending the existing primary system to the customer's premises. Primary electric service is provided from the existing primary voltage facilities that are the closest, most economic location to the customer. If the primary voltage system must be extended to serve the customer, the total costs associated with the extension facilities would be directly assigned to the customer demanding service at primary voltage levels. In contrast, the costs of extending VGS' transmission rated plant to McNeil were placed in rate base, and thus all VGS firm retail ratepayers have had those costs allocated to them in rates.⁹²

Resolution

I conclude that – in spite of providing BED's McNeil plant with service through various sizes of pipe, some of which have a per-book rating of "transmission" – all of the pipe that VGS uses to serve BED (including the six-inch pipe that leads to McNeil) serve a distribution function

90. See footnotes 59-61 and accompanying text above.

91. Galligan reb. pf. at 11; Simollardes/Scholten reb. pf. at 5.

92. Galligan reb. pf. at 11-12; exh. DPS-RAG-2 at 11-12; tr. 9/12/00 at 205 (Simollardes).

on VGS' system. BED did not submit sufficient evidence to demonstrate that the underlying cost-based rates developed by VGS in this Docket are discriminatory or otherwise unreasonable. On the basis of the record evidence in this Docket, to exclude distribution costs from a service to BED would require the Board to ignore that, as it is currently configured, VGS' system is integrated and relies upon distribution and transmission plant in providing service. As the Board previously found in Docket 6016, taking service from a "transmission" line, as opposed to a "distribution" line, "does not relieve an individual customer from the responsibility of supporting a fair portion of the entire pipeline network."⁹³ Therefore, I cannot find that "McNeil's load characteristics and usage patterns justify a preferential rate classification," or that VGS' failure to provide a transmission-only tariff results in unjustly discriminatory and insufficient rates which are, thus, neither just nor reasonable.⁹⁴ I, consequently, recommend that the Board reject BED's recommendation that the Board require VGS to file a tariff offering transmission-only service for large industrial and commercial customers seeking firm transportation.

V. CONCLUSION

The role of the Board in reviewing rates is to ensure that they are just and reasonable and not unjustly discriminatory or preferential.⁹⁵ In accordance with my discussion in Section III, I conclude that, with the modifications and conditions proposed by the Department, VGS' firm transportation rate is just and reasonable, and recommend that the Board adopt it. With the exception of several facets of the Tariff that have been discussed, VGS' proposal properly separates commodity-related from non-commodity costs, thereby promoting the essential purpose of the tariff, which is to allow eligible customers to shop for the gas commodity. Furthermore, the modifications and conditions which the Department proposed will, in general:

- ensure that eligible customers are not faced with inappropriate incentives or disincentives to switch from full retail service to firm transportation service;

93. Docket No. 6016, Order of 11/24/98 at 15.

94. *Id.*

95. *See* 30 V.S.A. § 218(a), § 225(b).

- prevent non-participating customers from inappropriately subsidizing electing firm transportation customers; and
- encourage future consideration of expanding customer eligibility for firm transportation.

With regard to the request by BED, VPPSA, and CVPS for a transmission-only transportation tariff, discussed in Section IV, I conclude that these parties have not provided a persuasive basis for the Board to modify the conclusions it reached in Docket 6016. For the reasons provided above in Section IV, I recommend that the Board deny BED, VPPSA, and CVPS's request.

All parties to this proceeding have waived the opportunity to comment on this Proposal for Decision in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 5th day of March, 2003.

s/David Farnsworth

David Farnsworth, Esq.
Hearing Officer

VI. BOARD DISCUSSION

On February 28, 2003, BED, CVPS, VGS, and the Department filed comments on the Hearing Officer's Proposal for Decision in this Docket. On March 13, 2003, the Department further filed a response to BED's initial comments. We have carefully examined the parties' comments upon the Proposal for Decision. In addition to BED's request for oral argument, the Department and VGS provided responses to the Hearing Officer's request for comment as to the appropriate cost of service upon which to base any approved tariff in this Docket.⁹⁶

VGS and the Department originally recommended that any approved tariff here be based upon the cost of service filed in support of Tariff No. 5261, updated to reflect any resolution of the ongoing investigation in Docket 6767. However, on March 7, 2003, the Department submitted a letter to the Board in Docket 6767 indicating that the Board should close that Docket.⁹⁷ Thus, without actual resolution, Docket 6767 is of little use in helping the Board provide guidance on this issue. We consequently conclude that VGS ought to use the cost of service that the Board approved in the final order in Docket 6495.⁹⁸ If any party has an alternative proposition, it can file it as a motion to reconsider.

On March 19, 2003, the parties to this Docket presented oral argument on the Hearing Officers' Proposal for Decision. At oral argument, VGS and the Department indicated their support for the Hearing Officer's proposed resolution of this Docket. BED asked us to reverse the Hearing Officer's decision insofar as it denied BED's request for a transmission-only transportation rate for the McNeil Plant.

For the reasons discussed below, we conclude that the Hearing Officer's analysis is thorough and appropriate, and affirm his findings of fact and conclusions of law. We, thus, deny

96. As VGS recognized, the Hearing Officer's Proposal for Decision proposes a similar requirement regarding VGS' existing interruptible-transportation tariff. See Proposal for Decision at 42, ¶ 4.

97. We also note that on the same date, VGS filed Tariff No. 5651 with the Board in which it requests a 10.6 percent rate increase. On March 28, 2003, the Department recommended that the Board open an investigation into VGS' tariff filing.

98. Docket 6495, Order of 11/9/01.

BED's request for a transmission-only rate.

In this Docket, BED has argued that it causes VGS no distribution-related costs, and that consequently BED deserves to receive a transportation rate that reflects only costs associated with transmission service. In support of its position, BED notes that it takes service through a relatively larger pipe and at higher pressures than other of VGS' distribution customers. Countervailing evidence, however, demonstrates that, in spite of taking service through pipes larger than those used to serve other VGS customers, BED does take service through pipes that are still smaller than those generally recognized as transmission-level pipes. The record also demonstrates that, while BED takes service at pressures higher than those generally used to serve other VGS distribution customers, BED still takes service at pressures lower than those generally recognized as transmission pressures.

Further review of the manner in which VGS serves its customers reveals that VGS does not offer what would usually be considered "transmission service." The Hearing Officer applied, by analogy, the FERC seven-factor test and concluded, on the basis of a number of objective indicia, that VGS is not offering transmission service, but instead provides only distribution service. For example, the record demonstrates that VGS reduces the pressure of the gas that it brings into its system, and that the gas is consumed locally, *i.e.*, within the bounds of the system. A transmission system, generally, raises pressure in order to move gas on to another system. Furthermore, in general, the gas in VGS' system generally flows into the system. It is not consigned beyond VGS' system for sale and consumption elsewhere.

We do recognize, as did the Hearing Officer, that the seven-factor test is typically employed on a case-by-case basis and, depending on the facts, could result in conclusions different from those reached here. Thus, the test is not only valuable in demonstrating why VGS is currently only a distribution utility, but is also a potentially valuable tool in analyzing the:

circumstances under which, in the future, the Board might determine that VGS is, in fact, offering transmission service and, consequently, at what point a company like BED should expect to be able to take service under a transmission-only tariff.⁹⁹

99. Proposal for Decision at 29.

In addition to the reasons cited above, we also note that, in this case and during oral argument, BED effectively demonstrated why it does not want to, and cannot, commit to purchasing a large amount of gas at firm service. BED has not, however, demonstrated that it should not face the implications of being a non-firm customer; *i.e.*, BED has not shown why it deserves the benefits that accompany taking service under conditions to which BED cannot commit. Where a customer agrees to purchase a significant amount of gas at firm service, it may be able to distinguish itself from other customers and justify separate rate treatment due to its load profile. Where that is not the case, there is no reasonable basis for providing it with the benefits associated with such a commitment.

We make one final observation. 30 V.S.A. Section 218c requires VGS and this Board to consider the broad range of possible alternatives for meeting the public's need for energy services:

after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.

Because Section 218c requires us to make these considerations, we have asked the parties whether the tariff that VGS proposes here would deter the development of such alternatives — including the construction of generation — that might otherwise be desirable at some future time. The answer that they have given us is that it would not; this is because one of the critical issues here in denying BED's request for a transmission-only rate is a lack of commitment to firm service. Future generation options might well be able to make such a commitment and, if so, would be judged on their overall merits in comparison to other alternatives, without being unduly impaired by the VGS tariff structure at issue here.

VII. ORDER

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

1. The Hearing Officer's findings of fact are hereby adopted.
2. The City of Burlington Electric Department's request that "VGS identify and unbundle its system's transmission and distribution functions, and offer a transmission-only transportation service", is denied.
3. No later than 30 days from the date of the issuance of this Order, Vermont Gas shall file a revised tariff that complies with this Order.
4. No later than 30 days from the date of the issuance of this Order, Vermont Gas shall amend its interruptible transportation tariff in a manner that complies with this Order.
5. Vermont Gas shall notify its customers of the revisions to its tariffs that result from this Order within 90 days of the date of the issuance of this Order.

Dated at Montpelier, Vermont, this 10th day of April, 2003.

s/Michael H. Dworkin)
)
)
s/David C. Coen)
)
)
s/John D. Burke)

PUBLIC SERVICE

 BOARD

 OF VERMONT

OFFICE OF THE CLERK

FILED: April 10, 2003

ATTEST: s/Judith C. Whitney

Acting 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.