STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7466

Investigation into Petition filed by Vermont	)
Department of Public Service Re: Energy	)
Efficiency Utility Structure	)

Order entered: 2/26/2009

ORDER RE DEPARTMENT OF PUBLIC SERVICE REQUEST FOR FUNDING

I. INTRODUCTION

The Vermont Department of Public Service ("Department") has stated that it intends to hire a consultant with expertise in the area of public energy efficiency programs in order to evaluate the proposed Energy Efficiency Utility ("EEU") structure that is the subject of this proceeding. The consultant selected by the Department has proposed a budget of $20,356 for this project. The Department has requested that the Board authorize it to use up to $30,000 of the unallocated interest earned by the EEU Fund[1] to pay for its consultant.

In this Order, we determine that the funding of the Department's proposed consultant is an appropriate use of the interest accrued from the EEU Fund. However, while we recognize that the final cost of the consultant may exceed the proposed budget, we do not agree that it is appropriate to accommodate possible cost overruns of nearly 50 percent, as the Department has requested. Therefore, we authorize the Department to spend up to $25,000 of the unallocated interest earned by the EEU Fund to pay for its consultant.

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1. The EEU Fund is the fund created by the Public Service Board ("Board") pursuant to 30 V.S.A. § 209(d)(3). It includes monies collected from Vermont ratepayers via the Energy Efficiency Charge, as well as payments received from the New England Independent System Operator for capacity savings resulting from the EEU's activities. Balances in the EEU Fund earn interest, and pursuant to 30 V.S.A. § 209(d)(3), such interest remains in the EEU Fund.

II. PROCEDURAL HISTORY

On December 1, 2008, the Department filed a progress report on settlement negotiations in this proceeding. In the progress report, the Department proposed to extend the schedule to provide it with time to retain the services of a consultant with expertise in the area of public energy efficiency programs in order to evaluate the proposed EEU structure.

On December 10, 2008, Central Vermont Public Service Corporation ("CVPS"), Vermont Electric Cooperative, Inc. ("VEC"), and the Group of Municipal Electric Utilities ("GMEU")[2] filed comments that, among other items, addressed the source of funds to pay a Department consultant.[3] CVPS's, VEC's and GMEU's positions on the source of funds are described below.

On December 31, 2008, the Board conducted a status conference to further discuss the Department's request for a schedule extension and the retention of a consultant to evaluate the proposed EEU structure. At the status conference, parties were given the opportunity to file comments and reply comments on several items, including possible funding sources for a Department consultant.

On January 9, 2009, comments were filed by: the Department; the City of Burlington Electric Department ("BED"); CVPS; CLF; GMP; GMEU; Vermont Electric Power Company, Inc. ("VELCO"); and VEIC. On January 16, 2009, reply comments were filed by the Department and CVPS. Parties' positions on funding sources are described below.

On January 29, 2009, we issued a scheduling order providing additional time in the schedule for settlement negotiations and for the Department's retention of a consultant to evaluate the proposed EEU structure. We did not, however, rule on the Department's request that the Board approve the funding of the consultant through the interest accrued from the EEU Fund. Instead, we stated that the Department's request was incomplete, and if the Department still

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2. The Group of Municipal Electric Utilities include: Barton Village Inc. Electric Department; Village of Enosburg Falls Water & Light Department; Town of Hardwick Electric Department; Village of Hyde Park Electric Department; Village of Jacksonville Electric Department; Village of Johnson Water & Light Department; Village of Ludlow Electric Light Department; Village of Lyndonville Electric Department; Village of Morrisville Water & Light Department; Village of Northfield Electric Department; Village of Orleans Electric Department; Town of Readsboro Electric Light Department; and Swanton Village Inc. Electric Department.

3. Conservation Law Foundation ("CLF"), Green Mountain Power Corporation ("GMP"), and the Vermont Energy Investment Corporation ("VEIC") also filed comments on issues associated with the Department's request at this time; however, their comments did not address the source of funds to pay a Department consultant.

wished to request an EEU funding source, it should file a request explaining why its request is an appropriate use of interest funds and providing more specifics on the dollar amounts and timeframes for the consultant expenditures.

On February 13, 2009, the Department filed a funding request with additional information on its selection of a consultant and dollar amount of funding requested.

On February 20, 2009, CVPS filed comments on the Department's funding request. No other party filed comments on the request.

III. Department's Funding Request

On February 13, 2009, the Department filed a request that the Board approve the funding of the Department's consultant through the interest accrued on the EEU Fund. The Department seeks authorization from the Board for funding in an amount not to exceed $30,000. The Department indicates that this amount is larger than its selected consultant's bid of $20,356 in order to accommodate possible cost overruns and to insure that the consulting project will not be delayed by the need to seek additional funding.

The Department believes that interest funds are the most appropriate source for funding its consultant's work because these funds are unallocated and come from ratepayer funds collected with the purpose of effectively delivering efficiency programs. The Department maintains that its consultant "will provide expertise gained from practical experience (both nationwide as well as in Vermont) to help analyze whether a change in structure will enable Vermont to continue to deliver energy efficiency service as efficiently as possible."[4]

In response to some parties' suggestion that the EEU evaluation budget be used for its consultant, the Department asserts that the funds in the EEU evaluation budget should be dedicated to evaluation of the performance of the current Efficiency Vermont contractor to assess its effectiveness in delivering programs. While the Department acknowledges that it has the ability to obtain the services of a consultant for a contested case proceeding and bill back those costs to the utilities, the Department maintains that "the inclusive and collaborative work

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4. Letter from Jeanne Elias, Special Counsel, Department, to Susan M. Hudson, Clerk, Board, dated February 13, 2009, at 1.

envisioned for the consultant here is of a different character entirely."[5] Given that several parties have expressed opposition to billing the cost of the consultant back to the utilities, the Department does not favor this funding source. The Department does add that, if given no other alternative, it will likely use its billback authority to retain its consultant.

IV. Parties' Positions

In their comments, the parties identified four possible funding sources for the retention of a consultant: (1) the accrued interest on the EEU Fund; (2) the Department's existing EEU evaluation budget; (3) billbacks to utility parties; and (4) the Department's budget.

As described above, the Department supports the use of the accrued interest on the EEU Fund as a means with which to pay its consultant. BED, GMP and CVPS also support using the accrued interest on the EEU Fund. CVPS states that it concurs with the Department's assessment that the interest funds are the most appropriate source for funding its consultant since these funds are collected for the purpose of effectively delivering efficiency programs to and for the benefit of Vermont customers. CVPS does not support funding the Department's consultant through billbacks to parties.

VELCO supports funding the Department’s consultant through the existing EEU evaluation budget.

CLF and GMEU do not support using either unallocated energy efficiency charge interest or evaluation funds, maintaining that the hiring of a Department consultant for this proceeding is beyond the scope of the purposes of those funds. GMEU expressed concern that the use of either of these two funding approaches would circumvent the procedures and protections of 30 V.S.A. § 21, and establish precedent that may well weaken those protections in future cases.

CLF recommends that funding for the Department's consultant should be provided either from the Department's budget or though billbacks to the affected utilities. GMEU and VEC questioned whether, if the Department tried to bill the cost of a consultant back to the affected utilities, such a decision would survive a challenge under the factors set forth in 30 V.S.A. § 21.

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5. Letter from Jeanne Elias, Special Counsel, Department, to Susan M. Hudson, Clerk, Board, dated February 13, 2009, at 1.

V. DISCUSSION

The Department has asked the Board to authorize it to use up to $30,000 of the unallocated interest that has been earned on the EEU Fund to pay for its consultant in this proceeding. We discuss both the funding source and the amount below.

Funding Source

Parties have identified four possible funding sources for the retention of a consultant: (1) the accrued interest on the EEU Fund; (2) the Department's existing EEU evaluation budget; (3) billbacks to utility parties; and (4) the Department's budget. Only the first two of these options would require Board approval, and we limit our ruling to these options.

The Department has requested that the funding source be the accrued interest on the EEU Fund. CLF and GMEU have questioned whether this is an allowable use of the interest funds. Thus the first issue to consider is a legal one — does the statute allow interest on the EEU Fund to be used to pay for the Department's consultant in this proceeding?

30 V.S.A. § 209(d)(3) requires that balances in the EEU Fund "shall be used to support the activities authorized in this subdivision." These activities include "the support of energy efficiency programs that meet the requirements of 218c of this title."

We have previously determined that the programs delivered by the EEU satisfy the distribution utilities' obligation under 30 V.S.A. § 218c to deliver system-wide energy efficiency programs.[6] This proceeding is considering whether, as a result of circumstances that have changed since the EEU's creation in 2000, the EEU structure should be modified in a manner that would improve the delivery of energy efficiency services. We are persuaded that the consideration of possible improvements to the structure for delivering programs that meet the requirements of 30 V.S.A. § 218c is consistent with the statutory requirement that the EEU Fund balances be used for the support of such energy efficiency programs.

Our determination on this legal issue takes into account the Department's statutory responsibility to represent the public interest in proceedings before the Board. This responsibility gives the Department a role in this proceeding that is different from that played by any other

6. Docket 5980, Order of 9/30/99 at 34.

party, and is part of the reason why we are persuaded it is appropriate to use ratepayer funds to pay for the Department's consultant.[7]

Since we have found that there is no legal barrier to the use of the accrued interest on the EEU Fund, we next consider whether, from a public policy perspective, this is the best means of funding the Department's consultant in this proceeding. As explained below, we conclude that it is.

First, historically, at the end of a contract cycle, the Board has determined how the unallocated interest accrued on the EEU Fund during the previous three years will be used.[8] Some options include increasing the EEU program budget for the next year, or keeping the EEU budget the same but reducing the amount to be collected from ratepayers via the Energy Efficiency Charge in the following year. The Board has not yet made a determination regarding the unallocated interest accrued on the EEU Fund during the 2006-2008 period. Thus, there are unallocated interest funds available.[9]

Second, energy efficiency evaluation activities are a critical component of the EEU program's success. The Department's evaluation activities play a key role in determining the savings achieved by the EEU as well as provide important information and guidance related to efficiency program design. The budgets that the Board has approved for the Department's EEU evaluation activities are already tight, particularly since the areas to be evaluated have increased with the initiation of geographic targeting and the EEU's unregulated-fuels activities. We are concerned about reducing the amount of funds available for evaluating the EEU, particularly when there are unallocated interest funds available.

While we do not rule on the DPS's ability to utilize the billback provisions of 30 V.S.A. §§ 20 and 21, we note that this provision limits the DPS's ability to bill back the costs of its

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7. 30 V.S.A. § 209(d)(3) provides that balances in the EEU Fund shall be ratepayer funds.

8. A small amount of the interest earned on the EEU Fund is used for specific purposes, including paying for the triennial independent audit required by 30 V.S.A. § 209(e)(12), and costs associated with providing notice to customers of new Energy Efficiency Charge rates.

9. No party submitted information regarding the amount of unallocated interest earned on the EEU Fund during the 2006-2008 period. However, we note that the January 2009 monthly report prepared by the Fiscal Agent for the EEU Fund shows that the EEU Fund earned over $74,000 in interest in 2008. While this is clearly not a quantification of the amount of unallocated interest earned during the 2006-2008 period, it is an indication that there is sufficient unallocated interest to meet the Department's request, if we were to grant it.

consultant to companies involved in this proceeding. The Town of Stowe Electric Department is not a party to this proceeding.[10] The EEU is a statewide program that benefits ratepayers of all electric distribution utilities; the costs associated with potentially changing the structure of this program should also be shared by the ratepayers of all electric distribution utilities. Such sharing would occur if the unallocated interest funds are used.

Finally, GMEU has asserted that using the interest funds to pay for the Department's consultant would circumvent the procedures and protections of 30 V.S.A. § 21 (which provides the Department with its billback authority), and establish precedent that may well weaken those protections in future cases. We are not persuaded by this argument. 30 V.S.A. § 21 sets forth the procedures to be used when utilities are asked to pay for certain Board or Department costs. In this instance, however, the Department has not asked the utilities to pay for its consultant's costs. Rather, the Department has proposed using ratepayer funds, not utility funds, to pay for its consultant's costs. Thus, our decision today is in no way precedential with regard to the processes to be used when utilities are asked to pay for certain Board or Department costs.

Amount

The Department has requested permission to spend up to $30,000 of the unallocated EEU Fund interest on its consultant in this proceeding. No party commented on the amount of the Department's request. However, we are troubled that the Department asked for nearly 50 percent more than the winning consultant's proposed budget of $20,356 "in order to accommodate possible cost overruns and to insure that the consulting project will not be delayed by the need to seek additional funding."[11] We recognize that the final cost could be slightly higher than the proposed budget (particularly since the Department's contract with the consultant has not yet been finalized), but we are not persuaded that it is appropriate to approve possible cost overruns of that magnitude at this time. Instead, we determine that the Department should be authorized to spend up to $25,000 of the unallocated interest on the EEU Fund on its consultant in this

10. We did not automatically make all electric distribution utilities parties to this proceeding.

11. Letter from Jeanne Elias, Special Counsel, DPS, to Susan M. Hudson, Clerk, Board, dated February 13, 2009, at 1.

proceeding. We will consider any requests the Department may make for additional funds due to cost overruns that exceed this amount at the time such requests are made.

VI. CONCLUSION

For the reasons set forth above, we conclude that the funding of the Department's consultant to evaluate the proposed EEU structure is an appropriate use of the interest accrued from the EEU Fund. We approve the Department's use of $25,000 of this interest to pay for its consultant in this proceeding.

SO ORDERED.

Dated at Montpelier, Vermont, this 26th day of February, 2009.

s/James Volz	)	
	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/John D. Burke	)	

OFFICE OF THE CLERK

FILED: February 26, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

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