

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket Nos. 5841/5859

Investigation into Citizens Utilities Company)
re: alleged investment in facilities without)
proper regulatory approval, and omission of)
least-cost analysis of such investments)

AND

Investigation into the existing)
rates of Citizens Utilities Company)

Order entered: 9/15/98

FINAL ORDER RE: TERMS OF PROBATION

I. BACKGROUND

In our Order of June 16, 1997, in this proceeding, we determined that Citizens Utilities Company ("Citizens" or "the Company") shall be placed on probation for, initially, a five-year period.¹ In that Order, we set forth, on a preliminary basis, the terms of probation that we had determined to be the minimum necessary to ensure that Citizens corrected the specific operational and management problems identified in the Order. We stated that we would hold an additional hearing or hearings to allow the parties an opportunity to propose modifications and additions to our proposed terms of probation.²

Citizens and the Department of Public Service ("DPS" or "the Department") filed motions to clarify, reconsider and amend our Order of June 16, 1997. In Orders dated July 21 and August 28, 1997, we ruled on those motions.

1. Order of 6/16/97 at 284-290, 307.

2. Order of 6/16/97 at 285, 307

On September 9, 10, and 17, 1997, we held the additional hearings on the terms of probation. At the hearings, the Company and the Department presented testimony on the proposed terms of probation and the appropriate role of the Special Master who will oversee the Company's compliance with the terms of probation.

On September 18, 1997, in response to a request from Citizens, we issued an Order declaring that, for purposes of appeal, our final order would be that order in which we established the terms of probation.

On September 26, 1997, Citizens appealed our June 16 Order, as modified by our July 21 and August 28 Orders, to the Vermont Supreme Court, but asked the Court to remand these Dockets back to the Board in order that we may issue a final order. On November 24, 1997, the Court granted Citizens' request and issued an order remanding the proceeding back to us.³

On April 2 and May 13, 1998, we issued Orders in which we concluded that a proposal for a transmission plant audit filed by the Company lacks sufficient detail to comply with Probationary Term (d) of our June 16, 1997, Order.

Today's Order establishes the terms of probation, and also determines certain ancillary issues such as the role of the Special Master. Because the terms of probation are focused on correcting the problems that we identified in findings in our June 16, 1997, Order, these terms of probation are supported by those findings; no additional findings are necessary to support the terms of probation set forth in today's Order.⁴

II. Special Master

A. Citizens' Motion to Defer Appointment of Special Master

On February 9, 1998, Citizens filed a Motion to Modify June 16, 1997 Order, in which the Company requests that we defer appointing a Special Master and instead allow an oversight committee -- consisting of representatives of the Company, the Board, and the Department --

3. The Board received that order from the Court on January 7, 1998.

4. We will issue a separate order to address one other outstanding issue: the appropriate penalty, if any, for the Company's failure to provide in a timely manner information that had been requested by DPS consultant Seymour Laskow.

to oversee Citizens' compliance with the terms of probation. The Company contends that this would allow the probation to be implemented efficiently and expeditiously, and would allow the Board to provide input early in the probationary period. The Company claims that its progress in correcting its operational and managerial problems is further support for its request.⁵

The Department opposes the Company's motion. The Department contends that the motion is untimely, that it would be inappropriate for the Company's own employees to play a role in overseeing Citizens' compliance with the terms of probation, and that the participation of Board staff would be problematic in that such staff would presumably be disqualified from participating in Board proceedings regarding the probation. Finally, the Department is concerned that the Company's proposal could impose a substantial burden on limited Board and Department staff resources.

The Villages support the Company's proposal with the conditions that the oversight committee be implemented on a trial basis and that involved Board staff would not be disqualified from participating in related Board proceedings.⁶

In our June 16, 1997, Order, we purposely provided for a Special Master in order to avoid the need for extensive involvement of the Board or its staff in overseeing the terms of probation. Given the limited resources of the Board (and the Department), we continue to believe that the Company's probation is best overseen by a Special Master. Thus, we deny the Company's motion.

B. Role of Special Master

At the September 9, 10 and 17 hearings and in written filings, the parties presented their views on the appropriate role of the Special Master. Citizens contends that the Special Master should be granted broad authority to oversee the terms of probation, with the Master's primary responsibility being the review of the Company's financial accounting records. Citizens further contends that the Special Master should serve in a largely administrative role, without the authority to conduct hearings unless expressly empowered to do so by the Board, although the

5. Citizens' Motion to Modify June 16, 1997, Order, 2/9/98.

6. Villages Letter filed 2/23/98.

Company observes that the Special Master should have the authority to specify the information that the Company must provide. Thus, under Citizens' conception of the Special Master's role, the Master would oversee the required audits, review the information that is developed by the audits and that Citizens is required to file, and report his or her conclusions to the Board, with the Board retaining the authority to conduct such hearings as it believes necessary based on the Master's reports.

The Department agrees with the Company's conception of the role of the Special Master, to the extent that the Company envisions a Master with broad authority. However, the Department specifically disagrees with the Company's suggestion that the Master not be empowered to hold hearings; according to the DPS, its experience with informal meetings with Citizens has been discouraging, and significant decisions should not "be made on the basis of unrecorded, untested, unsworn statements."⁷

We generally agree with Citizens' conception of the role of the Special Master. It is not our intent to create in the Master a surrogate of the Board with all of the Board's powers. We must, however, ensure that the Special Master has sufficient authority to obtain necessary and reliable information from the Company. We thus will empower the Special Master to request an evidentiary hearing as he or she determines to be necessary; on those occasions, absent objection by the Company, the Department, or any other appropriate party,⁸ the Clerk of the Board will schedule and provide notice of the hearing, and the Board will determine whether the Special Master, the Board itself, or a Board Hearing Officer will convene the hearing. To further ensure that the Special Master can obtain all necessary information from the Company, we will insert in the conditions of probation a requirement that the Company provide all information requested by the Special Master and by auditors or other assistants retained by the Master in the exercise of his or her duties; we will also include a provision that allows the Company to file an objection with the Board to any such information request that the Company believes to be inappropriate.

7. DPS Reply Brief 10/21/97 at 5-6.

8. In the event of an objection, the Board will rule on whether the hearing will be held.

Additionally, we will include in the Order of Reference to the Special Master provisions requiring that the Special Master inform the Board, the Company, and the Department prior to retaining experts, and requiring a bidding process for retaining any expert at a cost of \$10,000 or more.

C. Role of the Department During Probationary Period

Citizens also requests that we clarify the role of the Department during the probationary period.⁹ While acknowledging that the Department will continue to possess its existing powers and rights, the Company contends that during the probationary period, the Department should not have any additional authority to, for example, require Citizens to provide it with information, or to determine whether the Company has complied with a particular term of probation.

The DPS objects to what it perceives as an attempt by the Company to impinge on the Department's existing statutory powers.¹⁰ The DPS has broad authority to review the books, accounts and papers of Vermont regulated utilities, to obtain information from those utilities, and to enter the utilities' property.¹¹ Nothing in this Order is intended to restrict those authorities.

Compliance with the terms of probation is a matter for the Special Master to determine in the first instance, and for the Board ultimately to determine for those issues that are brought to us for resolution or that we choose to review *sua sponte*. However, under Title 30 in general, and in the course of this investigation in particular, the Department has played an invaluable role in ensuring that a Vermont regulated utility complies with its obligations. Under the terms of probation that we establish in this Order, the Department is not granted special investigatory or decision-making authority such as that given to the Special Master;¹² nonetheless, we expect the Department to play its traditional, active role in providing comments to the Special Master

9. Citizens Brief 9/26/97 at 13-16.

10. DPS Reply Brief 10/21/97 at 6-7.

11. 30 V.S.A. §§ 18, 29, 205, 206.

12. Neither, of course, do the terms of probation impose any limits on the Department's existing powers.

and to the Board regarding the Company's compliance with the terms of probation.¹³ Thus, for example, the Department will be well within its proper role to provide suggestions to the Special Master regarding the types of information that the Master should request of the Company, and to provide comments on whether a particular Company filing complies with the requirements of the terms of probation. Both the Department and the Company will have the ability to petition the Board to review any determination of the Special Master with which that party disagrees.¹⁴

D. Appointment of Special Master

We will instruct a Board Hearing Officer to convene a workshop regarding the selection of, and specific charge to, the Special Master to oversee Citizens' compliance with the terms of probation. After we have selected the Special Master, we will issue an Order of Reference to the Special Master. The workshop will address the specific instructions to be included in the Order of Reference; for the benefit of the parties, a draft Order of Reference is included as Appendix A of this Order.

III. Review of Compliance Filings Already Submitted

A. Filings Required by the Terms of Probation

As indicated above in our discussion of the role of the Special Master, it is our intent that the Special Master will in the first instance review the Company's filings that are required by the terms of probation. Consequently, in our discussion below of the specific terms of probation, we note where the Company has already submitted filings required by the probationary terms, and state that the Special Master shall review those filings. However, the

13. The terms of probation require Citizens to provide the Department with copies of the filings that it submits to the Special Master and the Board. This requirement was included in the preliminary terms of probation that we set out in our June 16 Order; that Order thus clearly revealed our intent that the Department play this active role in reviewing the Company's compliance with the probationary terms.

14. However, we caution both parties that we do not expect frivolous requests to review the Special Master's decisions. We are appointing a Special Master precisely because we expect the detailed overview of the Company's compliance with the terms of probation to be time-consuming and thus more efficiently handled by a Special Master focusing on these issues. We expect the parties to respect this role of the Special Master, and thus to bring to us for resolution only significant disputes over a ruling by the Master.

Company and other parties had previously asked us to expedite the review of the Company's proposal for the transmission plant audit; we ruled on the acceptability of that proposal in Orders dated April 2 and May 13, 1998.¹⁵

B. Write-down Accounts

Our June 16, 1997, Order fined the Company \$60,000, and required the Company to pay the fine in the form of credits to one or more deferred expenditure accounts. The Order required Citizens to file a proposal "detailing in which accounts, when, and by what procedures" the "write down" of the fines would be implemented.¹⁶ On July 16, 1997, Citizens filed a proposal to record a credit of \$60,000 to Account 186 - Deferred Debits, Demand-Side Management. The Department does not object to this proposal, if the penalties are booked in a separate sub-account so that they will be readily identifiable.¹⁷

In our July 21, 1997, Order, in ruling on the Company's proposed refund procedure, we required the Company to apply the amounts of unclaimed refunds as credits to one or more deferred expenditure accounts, and required the Company to file a proposal for implementing these write-downs.¹⁸ On August 29, 1997, the Company filed a proposal by which these write-downs would also be recorded in Account 186.

We accept the Company's proposals to record both write-downs in Account 186, but will, as the Department recommends, require the amounts to be booked in a separate sub-account.

IV. Terms of Probation

We have considered the parties' proposed revisions and additions to the terms of probation. After due consideration of the parties' positions, and careful review of the management and operational problems that are detailed in our June 16, 1997, Order, we have

15. Citizens has recently submitted a Memorandum of Understanding regarding the transmission and distribution plant audits; the MOU is addressed in our discussion of the terms of probation that require those audits.

16. June 16, 1997, Order at 308.

17. DPS letter filed July 23, 1997.

18. July 21, 1997, Order at 4-5.

concluded that the terms of probation as discussed below shall be imposed on the Company. For each term of probation, we set forth the preliminary term as included in our June 16 Order, describe the parties' positions, and state our conclusion as to the appropriate term of probation. As with the terms of probation that we set forth on a preliminary basis in our June 16 Order, we conclude that the terms of probation that we establish today are reasonably designed to address the management and operational problems set forth in that Order.

As with the preliminary terms of probation, we have limited the reach of these terms of probation to those problems that were uncovered by this investigation. We thus have rejected proposed probationary terms that were not directed to those problems;¹⁹ each of these rejected terms of probation is also discussed below.

Before turning to the specific terms of probation, we will address one general issue that recurs throughout the parties' comments on the probationary terms. The Department has recommended that several terms of probation provide that the Company shall comply with Vermont and federal law and directing the Special Master to determine the Company's compliance therewith.²⁰ The Company objects to such provisions, claiming that compliance with Vermont and federal law would be an excessively vague requirement of its probation.²¹

Quite obviously, Citizens has an obligation separate and apart from the terms of probation to comply with all requirements of Vermont and federal law. However, we conclude that, as a general requirement of probation, a specific condition requiring compliance with Vermont and federal law would be unnecessarily vague. We do not mean to suggest that Vermont legal requirements are irrelevant to the Special Master's determination of the Company's compliance with the terms of probation. Where the Vermont legislature, the Board or the Federal Energy Regulatory Commission ("FERC") has established standards with which Vermont utilities are expected to comply, and where such standards are relevant to terms of

19. For example, the Department had proposed that the terms of probation include a requirement that the Company obtain Board approval prior to commencing any new business in Vermont. Exh. DPS-WS-Prob-2 at 17. Because this investigation did not draw a conclusion that the Company's operational and management problems were caused, or exacerbated, by the Company's entry into other business ventures, we have concluded, as discussed below, that this proposed probationary term is not sufficiently directed to the problems that we have found in the Company.

20. E.g., probationary terms (a) and (g), and DPS proposed probationary term (p).

21. Citizens Brief 9/26/97 at 17; tr. 9/17/97 at 8 (Love).

probation that, in turn, are directed to specific shortcomings of the Company that have been identified in this investigation, consideration of those standards shall be within the proper scope of the Special Master's review.²²

Probationary Term (a)

Probationary Term (a) in our June 16 Order stated:

a. The Board will appoint a Special Master to oversee the Company's compliance with the terms of probation. All costs associated with the Master's activities, including regulatory costs, shall be billed back to the Company and shall not be included in VED's retail rates.

The Department proposed additional language for this term of probation that would explicitly state that the Special Master is to be appropriately qualified, require the Company to file documentation of its compliance with each condition of probation, require the Special Master to review such compliance, and empower the Special Master to select experts to assist in the Master's review.²³ In its testimony and briefs, Citizens did not object to these proposed additions, but in cross-examination did suggest modifications to the Department's language regarding the role of experts retained by the Special Master.²⁴ The Department agreed that some modifications regarding the role of retained experts would be acceptable.²⁵

We conclude that the Department's proposed additions, with modifications regarding the role of retained experts, are appropriate. Also, as noted above regarding the role of the Special Master, the Master shall have the authority to request evidentiary hearings, and he or she shall be able to request all necessary documents from the Company. Consequently, this term of probation will read as follows:

a. The Board will appoint a Special Master to oversee the Company's compliance with the terms of probation. The Special Master shall be a person qualified to supervise the activities of the Company for this purpose, either

22. For example, in reviewing the Company's ACE accounting, the Special Master will of necessity have to consider the Board's prior orders concerning ACE. See, e.g. Docket No. 5270, Order of April 16, 1990, Appendix IV-B at 66-71 (describing ACE recovery for Central Vermont Public Service Corporation; the Board has applied this general methodology in subsequent rate cases for a number of Vermont utilities.)

23. Exh. DPS-Prob-1 at 1.

24. Tr. 9/9/97 at 146-147 (Steinhurst).

25. Tr. 9/9/97 at 146-147 (Steinhurst).

directly or with the assistance of independent auditors or experts. All costs associated with the Master's activities, including regulatory costs, shall be billed back to the Company and shall not be included in VED's retail rates.

Citizens shall file documentation of compliance with each condition with the Special Master, the Department and the Board. The Special Master shall review Citizens' compliance with each condition and shall be empowered to order further investigation of any charges that do not have appropriate documentation or justification. The Special Master may request any documents from the Company that the Special Master believes to be necessary or helpful in the performance of his or her duties. The Company shall provide any information requested by the Special Master, unless the Company files an objection with the Board; if an objection is filed, the Board or its designated Hearing Officer will determine whether the Company must provide the information.

The Special Master may request that the Board convene a hearing on any issue within the scope of the Special Master's duties; upon receiving such a request, absent any objection, the Clerk of the Board will schedule and provide notice of the hearing, and the Board will determine whether the Special Master, the Board itself, or a Board Hearing Officer will convene the hearing. If any party objects to a Special Master request for a hearing, the Board will determine whether the hearing will be held.

The Special Master may select an independent auditor or other experts to assist with the Special Master's review, and to analyze or audit such filings, or both, to ensure their correctness and to assess their compliance with this condition.

Probationary Term (b)

Probationary Term (b) in our June 16 Order stated:

b. Within thirty days, Citizens must provide the Board and Department with an organizational chart clearly showing, by name of employee and position title, all lines of responsibility for management and operations at the Vermont Electric Division. This chart shall include all lines of responsibility within the VED, between the VED and all corporate offices, and among and within all corporate offices. The Company must notify the Board and Department in writing of all changes to key responsible personnel, positions, and lines of responsibility within seven days of each such change.

Both Citizens and the Department recommend changes to this term. Citizens proposes that this probationary term require that the organizational chart show "key personnel," with

those personnel defined by certain categories of Citizens' employees. Citizens also proposes that it have thirty days, rather than seven, to notify the Board and Department of changes.²⁶

The DPS disagrees with the Company's proposed definition of "key personnel," contending that the definition would exclude relevant personnel at the Sector level.²⁷ In response, the Company contends that its definition does, indeed, encompass those Sector personnel.²⁸

For its part, the Department proposes that language be added to this probationary term to "ensure at all times that responsibility for decisions that affect or have the potential to affect significant aspects of VED or its provisions [*sic*] of electric service ... is clearly defined and documented and is understood by the affected personnel."²⁹ Citizens opposes the DPS proposed language, contending that it is not sufficiently specific.³⁰

The general principle behind the Department's proposed addition to this probationary term -- that responsibilities for VED affairs be clearly defined and understood by Citizens' personnel -- is sound, especially in light of the substantial evidence in this proceeding that the Company has failed in this regard. However, we also agree in part with Citizens' criticism of the Department's language; determining which decisions "affect or have the potential to affect" VED is not sufficiently precise to include in the terms of probation. Thus, we will incorporate the general principle of the Department's recommendation, but apply it to the requirement set forth in our June 16, preliminary term of probation, which the Company has found to be acceptably specific.³¹

We will allow the Company its requested thirty-day period to notify the Board and Department of changes in responsibilities or in responsible personnel. We also adopt the Company's proposed definition of key responsible personnel (with a modification to ensure

26. Citizens Comments 9/4/97 at 3; Citizens Brief 9/26/97, Attachment at 1.

27. DPS Brief 9/26/97 at 5.

28. Citizens Reply Brief 10/9/97 at 4.

29. Exh. DPS-Prob-1 at 1.

30. Tr. 9/10/97 at 130-131 (Love).

31. Tr. 9/10/97 at 130 (Love).

that all Public Sector personnel at the level of manager or higher are included),³² which we find to be helpful in providing more specificity to this probationary term. We will also allow the Special Master to modify this definition, if necessary, due to any future changes in the Company's organizational structure.

The Department also proposes adding a second paragraph to probationary term (b), as follows:

In addition, Citizens shall identify each employee or contractual position in VED or in CUC with responsibility for oversight of or support to VED that has responsibility for managerial, supervisory, or regulatory functions, or is otherwise responsible for ensuring that the requirements of FERC and Vermont law are met. For each such position, CUC shall ensure that qualifications of training and experience, as well as knowledge, skills and abilities, are established that are consistent with good utility practice and are sufficient to ensure that the requirements of FERC and Vermont law are met. CUC shall ensure that all such positions are filled by competent and qualified persons. CUC shall identify any such position that does not meet these requirements and shall employ such a competent and qualified person promptly. In the case that an incumbent does not meet these requirements, CUC may, in the alternative, promptly prepare and implement a plan intended to upgrade the knowledge, skills and abilities of the incumbent so as to meet these requirements within a reasonable time. However, CUC shall remain responsible for meeting the provisions of this condition (and all others) during and after implementation of any such upgrade plans.³³

Citizens contends that these additional requirements are excessively vague, unduly burdensome, and intrude unnecessarily into the management of the Company.³⁴ At the present time, we do not believe the Department's proposed addition to be necessary, and thus are unwilling to impose these additional requirements on the Company. We remind Citizens that we are retaining the authority to modify the terms of probation; should the Company continue to demonstrate the poor management that we found in this investigation, we will consider imposing these, or similar, requirements.

32. Citizens has represented that these personnel are already included within the category of those who directly report to the Sector Vice-President. Citizens Reply Brief 10/9/97 at 4. We are explicitly including these personnel, in the event that a future reorganization results in such personnel no longer reporting directly to the Sector Vice-President.

33. Exh. DPS-WS-Prob-2 at 2.

34. Citizens Brief 9/26/97 at 18-22.

Thus, probationary term (b) shall read as follows:

b. By October 15, 1998, Citizens must provide the Board and Department with an organizational chart (or charts) clearly showing, by name of employee and position title, all lines of responsibility for management and operations at the Vermont Electric Division. This chart shall include all such lines of responsibility within the VED, between the VED and all corporate offices, and among and within all corporate offices. This chart shall include key personnel, defined as all Vermont management personnel, all personnel who report directly to the Company's corporate controller, all personnel in the Company's Corporate Regulatory Group at the level of manager or higher, all personnel who report directly to the Company's Public Services Sector Vice-President, and all personnel in the Company's Public Services Sector at the level of manager or higher. The Company must notify the Board and Department in writing of all changes to key responsible personnel, positions, and lines of responsibility within thirty days of each such change. In the event of changes to the Company's organizational structure during the term of probation, the Special Master shall have the authority to modify this definition of "key responsible personnel" to the extent necessary to fulfill the intent of this condition.

Probationary Term (c)

Probationary term (c) in our June 16 Order stated:

On or before December 1 of each year, the Company shall file with the Board and Department a detailed report of its proposed capital expenditures for the ensuing year. The report must include all known construction projects, including upgrades and replacements of existing facilities, and must clearly identify each project by type, location, size (such as length of a line), voltage level(s), purpose, and estimated cost. In each instance where an existing facility is being upgraded or replaced, the report must clearly identify for the existing facility the type, location, size, voltage level(s), purpose, and dates of original construction and any subsequent modification. For each proposed construction project, the report must indicate whether the Company will be applying for any local, state and federal approvals, must identify each such approval for which the Company intends to apply, and must include a statement signed by a licensed attorney indicating that the attorney has reviewed the project and is of the opinion that all required approvals are included in the list of approvals for which the Company intends to apply. The report must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and Citizens' General Counsel or President (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the report to be true, accurate and complete.

The parties have requested several changes to this proposed probationary term, and are generally in agreement in principle -- but not necessarily on the details -- regarding those changes.

First, Citizens requests that the deadline for the capital expenditure report be two weeks after its Board of Directors approves the Company's capital budget, in order to coordinate the report with the Company's own budgeting timetable. The Company notes that we could also set an outside date, such as January 5, for submission of the report.³⁵ The Department has agreed to such an extension.³⁶ We find that the Company's proposal establishes a reasonable deadline for the Company's submission of the capital expenditure budget.

Second, Citizens requests that it be given thirty days, rather than five, in which to update the capital expenditure report to reflect decisions regarding additional or different expenditures.³⁷ The DPS agrees to this modification, provided that the update is filed prior to the Company making the revised expenditure.³⁸ We find the Company's proposal, as modified by the Department, to be reasonable.

Third, the Company and the Department agree that there should be a threshold for reporting changes in the capital budget, such that an update need be filed only for changes that exceed the threshold amount. The Company suggests that the threshold be set as ten percent of the original budgeted amount or \$50,000, whichever is greater.³⁹ The DPS recommends that the updating requirement be triggered by an expenditure that exceeds the budgeted amount by the smaller of ten percent, or \$20,000.⁴⁰ We conclude that an appropriate threshold lies between those recommended by the parties: ten percent or \$25,000, whichever is larger. We have selected this threshold to give the Company reasonable operational flexibility and discretion, while at the same time requiring an update to be filed for budget revisions that are likely to be significant in light of the size of the Company's Vermont operations. This threshold

35. Citizens Comments on Terms of Probation, 9/4/97, at 3; Citizens Brief 9/26/97 at 22.

36. Tr. 9/9/97 at 128 (Steinhurst).

37. Tr. 9/10/97 at 131 (Love).

38. Tr. 9/9/97 at 156-157 (Steinhurst).

39. Tr. 9/10/97 at 132 (Love).

40. Tr. 9/9/97 at 157-158; tr. 9/10/97 at (Steinhurst).

is a cumulative one, so that if the Company modifies a budgeted expenditure more than once, or modifies more than one directly related expenditure, an update is required if the cumulative amount of the modifications exceeds the smaller of ten percent, or \$20,000.

Finally, the Department has recommended requiring that the attorney who reviews the report of planned construction be a Vermont-licensed attorney.⁴¹ The Company has not stated an objection to this requirement. We conclude that this additional requirement is reasonable, given that the attorney will be certifying that the Company has identified all required approvals for the construction projects, and that all (or virtually all) of these projects will be located in Vermont.

Thus, probationary term (c) shall read as follows:

c. Each year, within two weeks after the Company's Board of Directors approves its capital budget, but no later than January 5, the Company shall file with the Special Master, Board and Department a detailed report of its proposed capital expenditures for that year. The report must include all known construction projects, including upgrades and replacements of existing facilities, and must clearly identify each project by type, location, size (such as length of a line), voltage level(s), purpose, and estimated cost. In each instance where an existing facility is being upgraded or replaced, the report must clearly identify for the existing facility the type, location, size, voltage level(s), purpose, and dates of original construction and any subsequent modification. For each proposed construction project, the report must indicate whether the Company will be applying for any local, state and federal approvals, must identify each such approval for which the Company intends to apply, and must include a statement signed by a Vermont-licensed attorney indicating that the attorney has reviewed the project and is of the opinion that all required approvals are included in the list of approvals for which the Company intends to apply. The report must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and Citizens' General Counsel or President (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the report to be true, accurate and complete. The Company shall update the current report within 30 days of any decision to undertake, or any action in furtherance of, any capital expenditure in addition to or different from the current report; the update must be submitted prior to the Company actually incurring the revised expenditure, unless emergency or other exigent circumstances preclude advance reporting, in which case the update must be submitted as soon as reasonably practicable. An update

41. Exh. DPS-WS-Prob-1 at 2.

is required only for additional or different expenditures that are expected to exceed ten percent of the previously reported figure for that item, or \$25,000, whichever is greater.

Probationary Term (d)

Probationary Term (d) in our June 16 Order stated:

d. An independent, complete audit shall be undertaken of Citizens' transmission plant accounts. Within forty-five days, the Company must submit a detailed proposal for this audit to the Department for review and to the Board for approval. The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the audit, and the proposed audit methodology. After the proposal has received Board approval, the independent audit shall commence promptly subject to the oversight of the Board-appointed Master, with the Company paying all costs of the audit. Upon completion of the audit, its results shall be reported promptly to the Master, the Board and the Department.

On July 31, 1997, Citizens filed an Outline of Procedures for this transmission audit.

We have already ruled in this proceeding, in an Order issued on April 2, 1998, that this audit outline lacks sufficient detail. That Order also resolved several issues regarding probationary term (d). However, other issues remain.

First, the DPS recommends that, under this term of probation, the auditor of the transmission plant accounts be chosen by the Special Master, who in selecting an auditor should "give particular weight to experience and qualifications relevant to the interest of ratepayers and the public interest."⁴² The Company opposes the proposed requirement that special emphasis be given to a public interest background in the selection of an auditor. The Company also contends that if the Special Master is to select and retain the auditor, there should be a competitive bid requirement.⁴³ We agree with the Company that there is no need to require that the auditor have a public interest background. Instead, the key relevant factor is the objectivity of the auditor. Thus, the Special Master (or the Board, if the auditor is selected prior to appointment of the Special Master) must be satisfied that the auditor will be objective. We believe that this can be accomplished with our original language, which allows the Company to propose an auditor who will be subject to the approval of the Special Master. Thus, we will

42. Exh. DPS-WS-Prob-1 at 3.

43. Citizens Brief 9/26/97 at 25-26.

not modify this term of probation to require that the Special Master retain the services of the auditor.

The Department proposes that probationary term (d) provide greater specificity in the purposes of the audit by including the following language:

- (1) to produce a set of plant accounts that comply with FERC and PSB requirements;
- (2) to support establishment of proper depreciation allowances for future ratemaking;
- (3) to identify and remove from the accounts any assets not in service, not identified or not properly includable as transmission assets for ratemaking; and
- (4) to ensure that entries in the plant accounts are supported by underlying detail sufficient to establish those costs and to establish that they are, in fact, costs appropriate for inclusion in the plant accounts under the requirements of FERC and the PSB.

The audit shall segregate and remove from the plant accounts any costs not meeting these provisions.⁴⁴

Citizens contends that these proposed provisions add nothing of substance. The Company's only specific objection to the Department's proposal to include these explicit purposes is that it is inappropriate for the auditor to determine which assets are not includable for ratemaking.⁴⁵ The Department is agreeable to striking the words, "for rate making" in the third specified purpose, provided that it is clear to the auditors that their report should provide assurances that the Company's books are an adequate foundation for ratemaking purposes, rather than just for financial accounting purposes.⁴⁶

We agree with the Department that greater specificity in the purposes of the audit will be useful. We also agree with the Company that specific ratemaking determinations should be reserved to the Board, and not to the Special Master or the auditor. Thus, we will adopt the Department's proposed language setting forth the purposes of the audit, except for the

44. Exh. DPS-WS-Prob-1 at 3.

45. Citizens' Brief 9/26/97 at 24.

46. Tr. 9/17/97 at 82-83 (Steinhurst).

determination of which assets are not includable for ratemaking. So that the overall purpose of the audit is clear, this term of probation will also specify our intent that the resultant plant accounts are to provide an adequate foundation for future ratemaking.

The Department also proposes that the auditor's workpapers shall be available for review by the Special Master, the Board, and the Department.⁴⁷ The Company has not objected to this proposal, and we adopt it as a reasonable and useful requirement.

The Department proposes that this term of probation state explicitly that the costs of the transmission plant audit shall not be included in VED's retail rates.⁴⁸ Citizens has not objected to this provision. Also, this provision is consistent with our June 16 Order, in which we stated that "the terms of probation must include provisions designed to protect VED ratepayers, and Vermont ratepayers in general, from bearing any of the costs of the corrective actions that we find necessary."⁴⁹

Finally, on August 12, 1998, the Company filed a Memorandum of Understanding ("MOU") signed by Citizens, the Department, CVPS, Vermont Marble, and the Villages.⁵⁰ The MOU sets forth agreed-upon procedures for the distribution and transmission plant audits. We will leave it to the Special Master to determine whether the Company's proposal comports with the requirements of this term of probation.⁵¹

47. Exh. DPS-WS-Prob-1 at 3.

48. Exh. DPS-WS-Prob-1 at 3.

49. Order of 6/16/97 at 284 (footnote omitted).

50. In the MOU, "the Villages" include not only the Villages who are parties in this docket, but also Burlington Electric Department and the Vermont Public Power Supply Authority.

51. As we indicated in our Order of April 2, 1998, to help expedite the audits, we would agree to allow the Board or, if the Board so chooses, a Board representative to fulfill the audit oversight role of the Special Master until the Master is appointed.

Consequently, probationary term (d) shall read as follows:

d. An independent, complete audit shall be undertaken of Citizens' transmission plant accounts. The audit shall be conducted in a manner sufficient to accomplish the following purposes:

- (1) to produce a set of plant accounts that comply with FERC and PSB requirements and that provide an adequate foundation for future ratemaking;
- (2) to support establishment of proper depreciation allowances for future ratemaking;
- (3) to identify and remove from the accounts any assets not in service, not identified or not properly includable as transmission assets; and
- (4) to ensure that entries in the plant accounts are supported by underlying detail sufficient to establish those costs and to establish that they are, in fact, costs appropriate for inclusion in the plant accounts under the requirements of FERC and the PSB.

The audit shall segregate and remove from the plant accounts any costs not meeting these provisions.

By October 30, 1998, the Company must submit a detailed proposal for this audit to the Department for review and to the Special Master for approval.⁵² The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the audit, and the proposed audit methodology. After the proposal has received the Special Master's or the Board's approval, the independent audit shall commence promptly subject to the oversight of the Board-appointed Special Master, with the Company paying all costs of the audit. Upon completion of the audit, its results shall be reported promptly to the Special Master, the Board and the Department, and the workpapers of the Independent Auditor shall be available for review by the Special Master, the Board and the Department. The costs of the audit shall not be included in VED's retail rates.

Probationary Term (e)

Probationary Term (e) in our June 16 Order stated:

e. An independent, complete audit shall be undertaken of Citizens' distribution plant accounts. Within forty-five days, the Company must submit a detailed proposal for this audit to the Department for review and to the Board

52. The Company has already submitted a proposal for this audit.

for approval. The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the audit, and the proposed audit methodology.

The parties' comments on this probationary term are similar to their comments on probationary term (d), and we reach the same conclusions here.⁵³ Thus, we accept the Department's proposed listing of specific purposes for the distribution plant audit, except for the proposed requirement that the auditor determine whether assets are includable in the plant accounts for ratemaking purposes. We also adopt the Department's proposal to include language explicitly stating that the costs of the distribution plant audit shall not be recovered from VED's ratepayers and the Department's proposal that the auditors' workpapers be available for review. For the reasons discussed above, we also reject the Department's proposal that the Special Master select and retain the auditor, and that the selection of the auditor place particular emphasis on the candidates' public interest background.

On August 29, 1997, Citizens filed a proposal for this distribution plant audit. Then, as noted above, on August 12, 1998, the Company filed an MOU signed by the parties that sets forth agreed-upon procedures for the distribution and transmission plant audits. As with probationary term (d), we will again allow the Special Master to determine whether the Company's proposal satisfies this term of probation.⁵⁴

Thus, probationary term (e) shall read as follows:

e. An independent, complete audit shall be undertaken of Citizens' distribution plant accounts. The audit shall be conducted in a manner sufficient to accomplish the following purposes:

- (1) to produce a set of plant accounts that comply with FERC and PSB requirements and that provide an adequate foundation for future ratemaking;

53. See exh. DPS-WS-Prob-1 at 3-4; tr. 9/17/97 at 83; Citizens Brief 9/26/97 at 24-26; tr. 9/10/97 at 138-139 (Love). Probationary term (e) in our June 16 Order mirrored term (d) in that Order, except that the last two sentences from term (d) were mistakenly omitted from term (e). The Department's proposed additions to term (e) included the substance of those two sentences. Those two sentences are included in term (e) in today's Order.

54. As also noted earlier, to help expedite the audits, we would agree to allow the Board or a Board representative to fulfill the audit oversight role of the Special Master until the Master is appointed.

- (2) to support establishment of proper depreciation allowances for future ratemaking;
- (3) to identify and remove from the accounts any assets not in service, not identified, or not properly includable as distribution assets; and
- (4) to ensure that entries in the plant accounts are supported by underlying detail sufficient to establish those costs and to establish that they are, in fact, costs appropriate for inclusion in the plant accounts under the requirements of FERC and the PSB.

The audit shall segregate and remove from the plant accounts any costs not meeting these provisions.

By October 30, 1998, the Company must submit a detailed proposal for this audit to the Department for review and to the Special Master for approval.⁵⁵ The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the audit, and the proposed audit methodology. After the proposal has received the Special Master's or the Board's approval, the independent audit shall commence promptly subject to the oversight of the Board-appointed Special Master, with the Company paying all costs of the audit. Upon completion of the audit, its results shall be reported promptly to the Special Master, the Board and the Department, and the workpapers of the Independent Auditor shall be available for review by the Special Master, the Board and the Department. The costs of the audit shall not be included in VED's retail rates.

Probationary Term (f)

Probationary term (f) in our June 16 Order stated:

f. The Company must pay for an independent, total audit of its DSM and ACE accounts. Within forty-five days, the Company must submit a detailed proposal for this audit to the Department for review and to the Board for approval. The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the audit, and the proposed audit methodology. After the proposal has received Board approval, the independent audit shall commence promptly subject to the oversight of the Board-appointed Master, with the Company paying all costs of the audit. Upon completion of the audit, its results shall be reported promptly to the Master, the Board and the Department. The costs of the audit shall not be included in VED's retail rates.

55. The Company has already submitted a proposal for this audit.

The comments of the parties on this probationary term parallel their comments on terms (d) and (e). Here, Citizens also contends that the Special Master should be allowed to consider whether the Deloitte & Touche report, filed by Citizens on July 31, 1997, is sufficient to satisfy this term of probation.⁵⁶

As with the prior two terms of probation, and for the same reasons, we accept the Department's proposal to state explicitly that the costs of the audit not be included in VED's retail rates, and we reject the Department's proposals that the Special Master (rather than Citizens) retain the auditor and that the selection of the auditor should place special emphasis on a public interest background. We accept the Department's proposal to specify the purposes of this audit, again without the requirement that the audit determine what amounts are includable for ratemaking under Vermont law. Here, however, one caveat is in order regarding the ACE accounts. Because ACE accounts are by their very nature designed to follow prior Board rulings regarding ratemaking treatment, the auditor's review of those accounts will of necessity have an effect on future ratemaking in that those accounts are designed solely for ratemaking purposes. Nonetheless, the Board will fully and independently review the ACE accounts in any proceeding in which the Company seeks to recover ACE.

For probationary term (f), the DPS again requests that the term require the auditor's workpapers to be available to the Department, the Board and the Special Master. As before, we find this to be reasonable and appropriate.

Finally, we accept the Company's recommendation that the Special Master be allowed to determine whether the Deloitte & Touche report satisfies this term of probation.

Thus, probationary term (f) shall read as follows:

f. The Company must pay for an independent, total audit of its DSM and ACE accounts. The audit shall be conducted in a manner sufficient to accomplish the following purposes:

- (1) to produce a set of accounts that fully support and comply with Vermont law and ratemaking practices for DSM and ACE;
- (2) to support establishment of proper amortization allowances for future ratemaking; and

56. Exh. DPS-WS-Prob-1 at 4-5; Citizens Brief 9/26/97 at 26-27; tr. 9/10/97 at 139-147 (Love).

(3) to identify and remove from the accounts any amounts or assets not properly includable as DSM and ACE amounts under Vermont law; and

(4) to ensure that entries in the DSM and ACE accounts are supported by underlying detail sufficient to establish those costs and to establish that they are, in fact, costs appropriate for inclusion in the DSM and ACE accounts under Vermont law.

The audit shall segregate and remove from the DSM and ACE accounts any costs not meeting these provisions.

The Special Master shall review the Deloitte & Touche report that Citizens submitted on July 31, 1997. After providing the Department a reasonable opportunity to comment on that report, the Special Master shall determine whether the report satisfies the requirements of this term of probation. The Special Master may approve the report, require modifications to the report, or require a new audit. If the Special Master requires modifications or a new audit, the Company must submit a detailed proposal for the modifications or new audit to the Department for review and to the Special Master for approval. The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the modifications or audit, and the proposed methodology. After the proposal has received the Special Master's approval, the modifications or audit shall commence promptly subject to the oversight of the Board-appointed Special Master, with the Company paying all costs of the work. Upon completion of the audit and all modifications thereof, its results shall be reported promptly to the Special Master, the Board and the Department, and the workpapers of the Independent Auditor shall be available for review by the Special Master, the Board and the Department. The costs of the audit shall not be included in VED's retail rates.

Probationary Term (g)

In our June 16 Order, probationary term (g) stated that:

g. Within ninety days, Citizens shall make a filing certifying that it has implemented in full the following accounting requirements. These requirements shall remain in effect for a minimum of five years.

- (1) Citizens' accounting records for any costs either directly charged to VED or allocated to VED or for any costs that are ultimately paid for in full or in part by Citizens' ratepayers in Vermont, shall be kept in strict conformance with the FERC Uniform System of Accounts. These accounts include, but are not limited to, expense records, records of capital

- expenditures, transmission and distribution plant records, depreciation expense records, tax adjustments, administrative and general expense accounts, and Contributions in Aid of Construction ("CIAC") accounts.
- (2) At the end of each fiscal year, after Citizens closes its books, it shall provide an affidavit signed by the Company President certifying that all costs closed to plant-in-service for that year were closed in accordance with generally accepted accounting principles. Equipment costs shall not be capitalized until the equipment has been installed.
 - (3) All blanket orders and improvement orders that include any projects that affect the VED shall have detailed appropriate documentation attached to them at the time they are opened, including documentation of projected project costs. When a blanket or improvement order is closed to plant, documentation of the final cost of the project, broken down by project subcomponents, shall be attached. Post-completion audits shall be performed for all projects over \$10,000 that are charged to improvement and replacement orders. These audits shall be done by an independent entity under the direction of the Board-appointed Master. The use of blanket orders shall be limited to projects that commence and are completed within 180 days and for which final total costs are projected to be less than \$10,000.
 - (4) After the initial independent audits of the VED's transmission and distribution accounts are completed, a random sample of these accounts shall be made on at least an annual basis, at random times of the year with no prior notice to the Company. The Board-appointed Master shall designate an independent expert in utility accounting to perform this sampling. The independent expert shall check the random accounts against other appropriate documentation, and where necessary, will undertake a site visit to confirm the existence of plant booked to these accounts.
 - (5) Within thirty days after the closing of VED's yearly MWIP and CWIP reports, the Board-appointed Master shall designate an independent expert in utility accounting to review these reports to ensure that they are accurate and reconcile with one another and with VED's general ledger.

- (6) Each quarter, Citizens shall provide the Board-appointed Master a summary of all accounting transactions and transfers between VED and SAO, between the SAO and VED, between HAO and VED, and between VED and HAO. That summary shall be accompanied by complete documentation of any transfers or adjustments that have been made between the accounts, including the reason for and basis for the transaction or transfer. The quarterly summary must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the report to be true, accurate and complete. The Board-appointed Master shall review these transactions and shall be empowered to order further investigation of any transfers that do not have appropriate documentation or justification.
- (7) At least annually, the Company shall submit an update of its allocation model to the Board-appointed Master, who will review the allocation of costs from SAO to VED and HAO to VED. The Master will review the model and associated common costs for accuracy and consistency with other VED accounts. Citizens' initial filing shall be accompanied by a complete, accurate, and clearly understandable explanation of the assumptions, embedded formulas, exogenous factors, and all other relevant details of the model itself. All changes to any of these model details in subsequent submittals shall be accompanied by a like explanation.

Each filing of the updated allocation model must be accompanied by documentation supporting all overhead and administrative and general ("A&G") costs that are charged from SAO to VED and HAO to VED; the documentation must show that these costs were incurred as a direct result of service that will benefit Vermont ratepayers. If overhead and A&G expenses are charged based on payroll or employee time, the appropriate time sheets must be attached. If there is another basis for the allocation, it must be explained and accompanied by complete documentation. The documentation must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their

equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the documentation to be true, accurate and complete.

Under no circumstances may Citizens charge any portion of overhead or A&G costs from its unregulated entities, or its non-electric regulated entities, to VED. The filing of the updated allocation model must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes that Citizens has fully complied with this requirement.

- (8) In January and June of each year, a full review of VED's accounts and accounting procedures shall be undertaken by the Board-appointed Master. VED's complete accounts shall be available for review by the Board Master. VED's accounts shall contain a full explanation for each entry. The semi-annual review shall examine all aspects of Citizens' accounts but should focus particular attention on the accounts detailed in this Order. At all times, VED's accounts shall be available for review upon request. Any accounting irregularities or flaws in accounting procedures that surface as a result of the semi-annual review shall be brought to the attention of the Board and the Department.
- (9) Citizens shall file with the Board on an annual basis, a copy of its FERC Form 1, a copy of its annual report and annual supplemental schedules, a copy of all proxy statements for that year, a copy of Monthly Operating Report Forms 4-2 and Production Detail Reports 15-1-V.

We will separately discuss each of the numbered provisions within probationary term (g); first, however, we will address changes to the initial paragraph of this term that the parties have proposed. The Department recommends that the deadline for the filings required by this probationary term be stated as "[w]ithin ninety days or by the date prescribed hereunder," that the probationary term explicitly require that the filings be submitted to the Special Master, the Board, and the Department, and that the term explicitly provide that the costs of the filings

shall not be included in VED's retail rates.⁵⁷ The Company has not objected to these modifications, although it requests that the deadlines all be stated in terms of specific dates.⁵⁸ The Company has also requested that it be allowed to file the required certification of compliance ninety days after the Board establishes the final terms of probation.⁵⁹ The Department opposed this request, claiming that the Company should be able immediately to certify compliance with the requirements of probationary term (g).⁶⁰

In order to clarify the filing requirements for this term of probation, in each of the numbered provisions we will establish dates certain as the deadlines for the required filings. We will provide the Company its requested ninety days to file certification of compliance with this term of probation. We will also adopt the DPS recommendations that we explicitly require the Company to file its certification with the Special Master, the Board and the Department, and that we explicitly state that the costs of the required filings shall not be included in VED's retail rates.

Thus, the introductory language of probationary term (g) shall read as follows:

g. By December 15, 1998, Citizens shall make a filing with the Special Master, the Board, and the Department certifying that it has implemented in full the following accounting requirements. These requirements shall remain in effect at least through June 16, 2002. The costs of the filings required hereunder shall not be included in VED's retail rates.

Probationary Term (g) (1)

Citizens requests that this provision be modified to acknowledge that not all accounts fall within the ambit of the FERC Uniform System of Accounts. The Company does agree that it will keep its accounts in accordance with the FERC requirements, to the extent that those requirements apply, and that once allocated or charged to VED, costs will be booked on VED's ledger in accordance with the FERC Uniform System of Accounts.⁶¹ We agree with the

57. Exh. DPS-WS-Prob-1 at 6.

58. Tr. 9/10/97 at 147 (Love).

59. Citizens' Motion for Clarification of Filing Dates, 9/12/97.

60. DPS Response to Citizens' Motion for Clarification of Filing Dates, 9/22/97.

61. Tr. 9/10/97 at 147-150 (Love); Citizens Brief 9/26/97 at 27-28.

Company that the FERC accounting requirements should be followed only to the extent that they apply, and we will modify this provision accordingly.

The Department recommends that the list of specified accounts be expanded by adding "additions, reclassifications, adjustments, retirements and the like."⁶² The Company has not objected to this added language, and we adopt it.

Thus, probationary term (g)(1) shall read as follows:

(1) Citizens' accounting records for any costs either directly charged to VED or allocated to VED or for any costs that are ultimately paid for in full or in part by Citizens' ratepayers in Vermont, shall be kept in strict conformance with the FERC Uniform System of Accounts or, when the FERC Uniform System of Accounts does not apply, in strict conformance with other applicable accounting requirements. These accounts include, but are not limited to, expense records, records of capital expenditures, additions, reclassifications, adjustments, retirements and the like, transmission and distribution plant records, depreciation expense records, tax adjustments, administrative and general expense accounts, and CIAC accounts.

Probationary Term (g)(2)

Citizens requests that this provision be modified so that its President is not required to certify that accounts are closed in accordance with generally accepted accounting principles ("GAAP") until the plant audits are completed.⁶³ The DPS disagrees, contending that the Company should already be operating in accordance with GAAP.⁶⁴ In the alternative, the Company requests that a certification required prior to completion of the audits be allowed to be filed in good faith and on condition that it could later, without penalty, amend its plant accounts following completion of the audits.⁶⁵

The Company should already be following generally accepted accounting principles. Consequently, we will not delay implementation of this provision for the completion of the audits. However, we will allow Citizens to amend its plant accounts following audit completion;

62. Exh. DPS-WS-Prob-1 at 6.

63. Tr. 9/10/97 at 150-152 (Love); tr. 9/17/97 at 6 (Love); Citizens Brief 9/26/97 at 28-29.

64. Tr. 9/10/97 at 30-31 (Steinhurst).

65. Citizens Brief 9/26/97 at 29.

such amendment would not be subject to penalty if the initial certification were made in good faith.

The Department proposes that we include language requiring that the Company President's affidavit be based on reasonable inquiry by the President. We will adopt this proposal because it is consistent with the language included in our June 16 Order for other required affidavits (e.g., probationary term (g)(6)), and because the Company has not objected to this additional language.

The Department further requests that we add the phrase "or any other asset account" following the term "plant-in-service" in the first sentence, and that we add the phrase "and any other capital asset" in between the words "Equipment" and "costs" in the second sentence. The Company has not objected to these additions, and we conclude that they are appropriate and will be included in this term of probation.

Finally, the DPS recommends that we add to this provision the requirement that equipment and capital asset costs not be capitalized until the equipment is in service.⁶⁶ The DPS has agreed to the Company's suggestion that this new requirement be modified to accommodate exceptions that are recognized by the FERC Uniform System of Accounts.⁶⁷ We conclude that the Department's proposed addition, modified to allow exceptions that are provided by the FERC Uniform System of Accounts.

Therefore, probationary term (g)(2) shall read as follows:

(2) At the end of each fiscal year commencing with the present fiscal year, after Citizens closes its books, it shall provide an affidavit signed by the Company President certifying, after reasonable inquiry, that all costs closed to plant-in-service or any other asset account for that year were closed in accordance with generally accepted accounting principles. Equipment and any other capital asset costs shall not be capitalized until the equipment or asset has been installed and is providing utility service, except as explicitly provided for in the FERC Uniform System of Accounts.

66. Exh. DPS-WS-Prob-1 at 6.

67. Tr. 9/10/97 at 32 (Steinhurst); Citizens Brief 9/26/97 at 29.

Probationary Term (g) (3)

The Department has proposed several changes to probationary term (g) (3). It recommends that this provision be expanded to apply to all documents that authorize a capital expenditure, and that the specified documentation should also be required when a blanket or improvement order, or other authorization, is "otherwise acted on to initiate a change to an account." The DPS also proposes that the phrase "or otherwise established" be added following the word "opened" in the first sentence. Finally, the Department recommends that post-completion audits be performed within one year, and that the audits should ensure that the requirements of the Board's Order, FERC, and Vermont law are met.⁶⁸ The Company opposes the Department's proposals, contending that they are excessively vague, and that the Special Master should be allowed to determine the timing of the post-completion audits.⁶⁹

Although we generally agree with the Company, certain of the Department's proposed modifications are useful additions that further the intent of this provision by ensuring that it encompasses all relevant documents and actions by the Company. Also, for the reasons explained above, we will not modify this term, or other terms, of probation to require that the auditor or Special Master determine compliance with Vermont or other applicable law. Thus, we adopt the Department's proposed changes only with respect to the additional documents to which this provision applies and the added language "or otherwise established" in the first sentence.

Thus, probationary term (g) (3) shall read as follows:

(3) All blanket orders and improvement orders and any other documents authorizing a capital expenditure that include any projects that affect the VED shall have detailed appropriate documentation attached to them at the time they are opened or otherwise established, including documentation of projected project costs. When a blanket or improvement order or other document authorizing a capital expenditure is closed to plant, documentation of the final cost of the project, broken down by project subcomponents, shall be attached. Post-completion audits shall be performed for all projects over \$10,000 that are charged to improvement and replacement orders. These audits shall be done by an independent entity under the direction of the Special Master. The use of blanket orders shall be limited to projects that commence and are completed

68. Exh. DPS-WS-Prob-1 at 6.

69. Citizens Brief 9/26/97 at 17, 29-30; tr. 9/17/97 at 7-8 (Love).

within 180 days and for which final total costs are projected to be less than \$10,000.

Probationary Term (g)(4)

The Department proposes a number of modifications to this condition. Several of these changes would provide greater direction to the Special Master in overseeing and implementing these sample audits. The DPS proposes that the auditor be selected in the same manner as specified for the initial audits, that the sample audits "test and ensure that the accounting and other requirements specified for the initial audits ... continue to be met," and that the results of the sample audits and accounting irregularities be brought to the attention of the Board and Department.⁷⁰ Citizens objects to these changes, claiming that these matters should be left to the discretion of the Special Master.⁷¹ The Company believes that the Board should retain this provision as originally drafted in our June 16 Order.⁷²

We conclude that these DPS proposals are appropriate in order to ensure that the sampling accomplishes its purposes, with the exception of the proposal that an independent auditor be selected as for the initial audits. While that option should remain open to the Special Master, we will not preclude other possible reasonable procedures for the Special Master to select an appropriate independent expert.

The DPS also recommends that this probationary provision be expanded to include the Company's DSM and ACE accounts.⁷³ The Company has not objected to this change, and we find it to be appropriate.

70. Exh. DPS-WS-Prob-1 at 7.

71. Tr. 9/17/97 at 9 (Love); Citizens Brief 9/26/97 at 30.

72. Citizens Brief 9/26/97 at 30. However, at the same time the Company contends that the frequency of these sample audits should be left to the discretion of the Special Master. *Id.*; tr. 9/17/97 at 9 (Love). This condition, as set forth in our June 16 Order, required the sampling to occur on at least an annual basis. We will continue to require this minimum frequency, as we believe it to be the minimum necessary given the problems in the Company's accounts and records discovered in this proceeding.

73. Exh. DPS-WS-Prob-1 at 7.

Finally, the Department proposes certain clarifications in the language of this provision that do not alter the substantive requirements that we intended in our June 16 Order.⁷⁴ We find the clarifications to be appropriate, and adopt them.

Consequently, probationary term (g) (4) shall read as follows:

(4) After the initial independent audits required above of the VED's transmission, distribution, DSM and ACE accounts are completed, the Special Master shall designate an independent expert in utility accounting to serve as an independent auditor. The independent auditor shall select and audit a random sample of these accounts on at least an annual basis, at a randomly selected time of the year with no prior notice to the Company. These sample audits shall test and ensure that the accounting and other requirements specified for the initial audits specified above continue to be met. The independent expert shall check the randomly selected accounts against other appropriate documentation, and where necessary, will undertake a site visit to confirm the existence of plant booked to these accounts. The results of these reviews and any accounting irregularities or flaws in accounting procedures that surface as a result of the review shall be brought to the attention of the Board and the Department.

Probationary Term (g) (5)

The Company proposes that this provision be modified so that, rather than the Special Master designating an independent expert to review and reconcile the Monthly Work in Progress ("MWIP") and Construction Work in Progress ("CWIP") reports and the VED general ledger, the Company itself would perform the reconciliation and submit it to the Special Master, who could then determine whether an independent review were required.⁷⁵ The Department has not commented on this specific proposal.

We are generally willing to allow the Company to perform and submit the reconciliation to the Special Master, and leave it to the Special Master to decide whether further review by an independent expert is needed. However, we would expect that at least for the first year, the Special Master would enlist the assistance of an independent expert, unless the Special Master him or herself possesses relevant expertise. We will also require that the Company provide a copy of the reconciliation to the Department.

74. Exh. DPS-WS-Prob-1 at 7.

75. Citizens Brief 9/26/97 at 31.

The Department's recommendations for this provision are similar to certain of its proposals for probationary terms (g) (3) and (4): the independent expert should be selected in the same manner as for the initial audits, the review should "include such audits of those reports and the underlying accounts and records as the auditor deems necessary to ensure that FERC and Vermont law are complied with," and the results of the sample audits and accounting irregularities should be brought to the attention of the Board and Department.⁷⁶ As with probationary term (g) (4), we do not believe it necessary that the Special Master be constrained in the selection of an independent expert, and for the reasons explained above, we will not require the auditor or Special Master to determine compliance with Vermont or other applicable law. We will incorporate the DPS proposal that the results of the review be reported to the Board and Department.

Consequently, probationary term (g) (5) shall read as follows:

(5) Within thirty days after the closing of VED's yearly Monthly Work in Progress ("MWIP") and Construction Work in Progress ("CWIP") reports, Citizens shall submit to the Special Master and to the Department a reconciliation of these reports to each other and to the VED's general ledger. The Special Master shall make a determination, after reviewing the reports and the reconciliation, whether to designate an independent expert in utility accounting to review these reports to ensure that they are accurate and reconcile with one another and with VED's general ledger. The results of these reviews and any accounting irregularities or flaws in accounting procedures that are identified as a result of the semi-annual review shall be brought to the attention of the Board and the Department.

Probationary Term (g) (6)

The Company proposes that this provision be amended to require that it file a quarterly list of all transactions between VED and the Stamford Administrative Office ("SAO") and between VED and the Harvey Administrative Office ("HAO"), and that it file documentation of the transfers semi-annually, rather than quarterly. Citizens further recommends that the affidavit attesting to the accuracy of the transactions be filed annually, rather than quarterly,

76. Exh. DPS-WS-Prob-1 at 7.

because some transfers are tried up on an annual basis.⁷⁷ The Department recommends maintaining the quarterly documentation requirement, but has not objected to an annual filing of the affidavit.⁷⁸ We conclude that the Company's proposals are reasonable and should be incorporated into this provision; however, should semi-annual documentation prove to be insufficient, we will consider increasing the filing frequency to quarterly.

The Department recommends two additions. First, the DPS would have this condition also encompass "transactions and transfers between and among any other corporate entities, divisions or other subdivisions, existing or that may be created, and have any part in a transaction or transfer affecting VED, directly or indirectly."⁷⁹ In its brief, the Company objects to this addition as overly broad and vague, complaining that it cannot reasonably know what it refers to.⁸⁰ In its testimony responding to the Department's proposal, however, the Company stated that only the term "indirectly," and not the term "directly," was problematic.⁸¹

We agree with the Company that the DPS proposal is overly vague in its use of the term "indirectly," although we do not find the remaining portions vague. We will adopt the Department's recommendation for those transactions that directly affect VED, because those transactions present the same potential concerns as the transactions among SAO, HAO, and VED.

The Department's second recommended addition to this provision is to allow the Special Master to select an independent auditor to review the required Company filings for correctness and for compliance with Vermont law.⁸² Citizens objects to a review for compliance with Vermont law, for the reasons that it opposes such requirements elsewhere in the terms of probation.⁸³

We again reject the DPS proposal that the Special Master, or independent experts retained by the Special Master, determine compliance with Vermont law. We do agree with

77. Citizens Brief 9/26/97 at 31-32.

78. Tr. 9/9/97 at 131-132 (Steinhurst).

79. Exh. DPS-WS-Prob-1 at 7.

80. Citizens Brief 9/26/97 at 32.

81. Tr. 9/17/97 at 10, 11 (Love).

82. Exh. DPS-WS-Prob-1 at 8.

83. Citizens Brief 9/26/97 at 32; tr. 9/17/97 at 11 (Love).

the Department that the Special Master should have the discretion to retain an independent expert to assist in the review of these filings, and will revise this provision accordingly.

Consequently, probationary term (g)(6) shall read as follows:

(6) Each quarter, Citizens shall provide the Special Master a list of all accounting transactions and transfers between VED and the Stamford Administrative Office ("SAO"), between SAO and VED, between the Harvey Administrative Office ("HAO") and VED, and between VED and HAO, as well as transactions and transfers between and among any other corporate entities, divisions or other subdivisions, existing or that may be created, that directly affect VED. On a semi-annual basis, that list shall be accompanied by complete documentation of any transfers or adjustments that have been made between the accounts, including the reason for and basis for the transaction or transfer. At the end of each year, Citizens shall submit an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the report to be true, accurate and complete. The Special Master shall review these transactions and shall be empowered to order further investigation of any transfers that do not have appropriate documentation or justification. The Special Master may designate an independent expert to analyze and audit these filings submitted by Citizens.

Probationary Term (g)(7)

The Company recommends that this provision be modified to require documentary support only to the extent requested by the Special Master, rather than requiring documentation for every relevant cost. According to the Company, to require such comprehensive documentation would involve extensive research by the Company and result in an unwieldy volume of paperwork for the Special Master.⁸⁴ The Department disagrees with this proposal by the Company, arguing that in light of the problems discovered in this proceeding, the Company should be required to go on record with supporting documentation at the time the costs are charged to VED.⁸⁵ While we agree with the Department in principle, we conclude that the Company correctly highlights a practical problem -- the voluminous paperwork -- with the provision as originally drafted. Thus, we will accept the Company's

84. Citizens Brief 9/26/97 at 33.

85. Tr. 9/9/97 at 132 (Steinhurst).

recommendation, but caution Citizens, and advise the Special Master, that we will reconsider imposing a full documentation requirement if the Special Master's review indicates such a requirement to be appropriate.

Citizens also contends that the prohibition against charging VED for overhead or administrative and general costs from its unregulated or non-electric regulated entities is overly broad, as there may be circumstances in which services provided by such an entity would benefit VED ratepayers.⁸⁶ The Department agrees with the Company, but only to the extent that the services were acquired in a competitive bidding process.⁸⁷ We conclude that we should modify this provision to allow the Company to obtain services from its unregulated, and non-electric regulated, entities when it benefits VED ratepayers. We will require that the Company file annual reports that will allow the Board, Department, and Special Master to track such services. These reports must also demonstrate and document the benefit to VED ratepayers and the reasonableness of the cost to VED.

The Department recommends several modifications to probationary term (g)(7). These recommendations include the two changes that the DPS proposed for probationary term (g)(6): including within the scope of the condition all transactions and transfers among corporate entities that directly or indirectly affect VED, and authorizing the Special Master to select an independent auditor to review the required Company filings for correctness and for compliance with Vermont law.⁸⁸ Citizens opposes these DPS recommendations for the same reasons that it opposed the similar recommendations with respect to probationary term (g)(6).⁸⁹ We reach the same conclusions here as we did for probationary term (g)(6), for the same reasons, and will modify probationary term (g)(7) accordingly.

The Department's other recommendations for this provision are to clarify that the allocation model at issue is the model for extra-VED costs (i.e., costs that do not originate in the VED), and to require the Special Master to review the relevant allocations and charges, with the authority to order further investigation of charges that are not sufficiently documented

86. Citizens Brief 9/26/97 at 33-34.

87. Tr. 9/9/97 at 133 (Steinhurst).

88. Exh. DPS-WS-Prob-1 at 8.

89. Citizens Brief 9/26/97 at 34; tr. 9/17/97 at 11 (Love).

or justified.⁹⁰ The Company has not objected to the proposed clarification, which we adopt as a useful and accurate clarification of our intent. The Company does oppose the DPS proposed addition that would authorize the Special Master to investigate the allocations and charges, on the grounds that this could subject the Company to a perpetual rate case.⁹¹ We will adopt the DPS proposal, because this provision would have little effect if we did not allow the Special Master to investigate the allocations and charges that are its subject. The Company correctly points out that the Special Master will not be setting rates, and we do not intend that the Special Master's review of these allocations and charges become a per se rate case. Instead, the Special Master will report to us any problems that he or she discovers in the documentation or justification for the allocations and charges; any corresponding ratemaking adjustments would be determined by us in the context of a rate case.

Consequently, probationary term (g) (7) shall read as follows:

(7) At least annually, the Company shall submit an update of its allocation model for costs that do not originate in VED to the Special Master, Department, and Board; the Special Master will review the allocation of costs from SAO to VED and HAO to VED. The Special Master will review the model and associated common costs for accuracy and consistency with other VED accounts. Citizens' initial filing shall be accompanied by a complete, accurate, and clearly understandable explanation of the assumptions, embedded formulas, exogenous factors, and all other relevant details of the model itself. All changes to any of these model details in subsequent submittals shall be accompanied by a like explanation. The Special Master may designate an independent expert to analyze and audit these filings submitted by Citizens.

Each filing of the updated allocation model must be accompanied by documentation supporting all overhead and administrative and general ("A&G") costs that are charged from SAO to VED and HAO to VED, as well as transactions and transfers between and among any other corporate entities, divisions or other subdivisions, existing or that may be created, that directly affect VED; the documentation must show that these costs were incurred as a direct result of service that will benefit Vermont ratepayers. If overhead and A&G expenses are charged based on payroll or employee time, the appropriate time sheets must be attached. If there is another basis for the allocation, it must be explained and accompanied by complete documentation. The documentation must be accompanied by an affidavit signed by the VED General Manager, the

90. Exh. DPS-WS-Prob-1 at 8-9; tr. 9/10/97 at 41-49 (Steinhurst).

91. Citizens Brief 9/26/97 at 34; tr. 9/17/97 at 13-14 (Love).

Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the documentation to be true, accurate and complete.

Unless it can demonstrate a benefit to Vermont ratepayers, Citizens may not charge any portion of overhead or A&G costs from its unregulated entities, or its non-electric regulated entities, to VED. The annual filing of the updated allocation model must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes that Citizens has fully complied with this requirement. The annual filing must also be accompanied by a report that identifies all overhead and A&G costs from Citizens' unregulated entities, and its non-electric regulated entities, that are charged to VED; this report must also demonstrate and document both the benefit to Vermont ratepayers and the reasonableness of those charges.

The Special Master shall review all allocations and charges subject to this condition and shall be empowered to conduct further investigation of any charges that do not have appropriate documentation or justification. The Special Master may designate an independent expert to assist in such reviews and investigations.

Probationary Term (g) (8)

Citizens' only proposed modification to probationary term (g) (8) is to change the time period for its review of VED's accounts and accounting procedures. The Company requests that the reviews take place after April 30 and after October 31 of each year, to be consistent with the closing of the Company's accounts and issuance of its year-end results.⁹² The Department has not objected to this timing change. We conclude that this is an appropriate modification.

The Department requests three changes to this term. First, it proposes that in addition to VED's accounts, all other Citizens' accounts that the Special Master deems necessary should be available for the Master's review.⁹³ The Company would limit these accounts to only those

92. Citizens Brief 9/26/97 at 34.

93. Exh. DPS-WS-Prob-1 at 9.

charges and accounts for which VED is charged.⁹⁴ We will adopt the Department's proposed language, which already limits these additional accounts to those which the Special Master deems necessary to his or her review.

As with probationary terms (g)(6) and (g)(7), the DPS recommends that the Special Master be authorized to order additional investigation of charges that are insufficiently supported, and to engage an independent auditor to review the Company's filings for correctness and compliance with Vermont law; Citizens again opposes such additions to the terms of probation.⁹⁵ Consistent with our previous determinations on similar recommendations, we will modify this provision to allow the Special Master to undertake additional investigations as necessary and to engage an independent expert to assist in the review, but neither the Special Master nor an independent expert retained by the Master will be charged with determining compliance with Vermont law.

Finally, the Department proposes that the results of these reviews, and not only accounting irregularities, be brought to the attention of the Board and Department.⁹⁶ Citizens has not objected to this modification, and we conclude that it is appropriate.

Consequently, probationary term (g)(8) shall read as follows:

(8) In May and November of each year, a full review of VED's accounts and accounting procedures shall be undertaken by the Special Master. VED's complete accounts, as well as any other Citizens accounts that the Special Master deems necessary for this purpose, shall be available for review by the Special Master. VED's accounts shall contain a full explanation for each entry. The semi-annual review shall examine all aspects of Citizens' accounts but should focus particular attention on the accounts detailed in this Order. At all times, VED's accounts shall be available for review upon request. The results of these semi-annual reviews and any accounting irregularities or flaws in accounting procedures that surface as a result of the reviews shall be brought to the attention of the Board and the Department. The Special Master shall be empowered to conduct further investigation of any charges that do not have appropriate documentation or justification. The Special Master may designate an independent expert to assist in such reviews and investigations.

94. Citizens Brief 9/27/97 at 35.

95. Exh. DPS-WS-Prob-1 at 10; Citizens Brief 9/26/97 at 35; tr. 9/17/97 at 14-15 (Love).

96. Exh. DPS-WS-Prob-1 at 9-10.

Probationary Term (g) (9)

Citizens has not requested any modifications to probationary term (g) (9), other than a clarification of the document designated as "Monthly Operating Report Form 4-2."⁹⁷ In its brief, the Company has indicated that Form 4-2 has been superseded by Form CUPM1015. We will modify this provision to reflect the change in form.

The Department proposes minor revisions to this provision, such that the Company's filing of each document must occur simultaneously with its filing with the entity that requires the document, the Company must provide copies of all proxy statements, and the Company must provide copies of these filings to the Special Master, the Board and the Department.⁹⁸ Citizens does not object to these changes,⁹⁹ which we conclude to be helpful clarifications to this term of probation, and which we will therefore adopt.

Consequently, probationary term (g) (9) shall read as follows:

(9) Citizens shall file with the Special Master, the Board, and the Department, simultaneously with their filing with the entity requiring them, a copy of its FERC Form 1, a copy of its annual report and annual supplemental schedules, a copy of all proxy statements issued, a copy of its Monthly Construction Report for work orders, formerly Form 4-2M, now form CUPM1015, and Production Detail Reports 15-1-V.

Probationary Terms (g) (10) and (g) (11) (DPS Proposal)

The Department has proposed that the following two additional provisions be incorporated into probationary term (g), to be designated as (g) (10) and (g) (11):

- (10) Citizens shall physically maintain all accounting records affecting the VED, including but not limited to documentation of all charges, allocations, in a single location, which shall be at VED's primary place of business in the State of Vermont.
- (11) SAO, HAO, and any other division, subdivision or other portion of CUC shall notify VED, in advance and in writing of any costs to be charged or allocated to VED and shall not charge or allocate such costs to VED unless and until the most senior manager at VED has

97. Tr. 9/17/97 at 15 (Love); Citizens Comments 9/4/97 at 8.

98. Exh. DPS-WS-Prob-1 at 10.

99. Tr. 9/17/97 at 15 (Love).

certified in writing that the charge or allocation is proper under Vermont law and consistent with filings made under condition g(7) above. Such certification shall be maintained as part of the accounting support for any such charge or allocation.¹⁰⁰

Citizens opposes both of these provisions. It claims that the first would be unreasonably burdensome, and also unnecessary given modern technology.¹⁰¹ We conclude that Citizens has a valid concern, but only to a certain extent. In this proceeding we have seen the difficulty of confirming the accuracy of the Company's books and accounts, with the Department's forensic accounting consultant (Mr. Laskow) having to expend substantial time and expense to go to Citizens' Harvey offices to review source documentation for VED. The Company's witness acknowledged that there may be some types of documents that should be physically kept in Vermont.¹⁰² Thus, although it would appear to be burdensome to require the Company to retain copies of every source document in Vermont, at the same time the Company should be required to maintain copies of the most significant source documents in Vermont, so that they are readily accessible during the probationary period to the Board, the Department, the Special Master, and indeed the Company's Vermont personnel.

At the hearings on the terms of probation, Board staff suggested that the Company and Department attempt to reach agreement on categories of accounting records for which Citizens should keep copies at VED; the Company indicated that it was willing to attempt this.¹⁰³ We have not heard back from the parties on a possible agreement. We will modify the Department's proposed provision (g)(10) to require the Company to propose specific types of source documents to retain in Vermont, for review by the Department¹⁰⁴ and review and approval by the Special Master.

With respect to the Department's proposed term (g)(11), the Company contends that such advance certification of charges and allocations introduces an unnecessary complication into keeping its books and accounts. We are not convinced that the preapproval process of the

100. Exh. DPS-WS-Prob-2 at 13-14.

101. Tr. 9/17/97 at 15-16; Citizens Brief 9/26/97 at 35.

102. Tr. 9/17/97 at 17 (Love).

103. Tr. 9/17/97 at 17-19.

104. We continue to encourage the Company and the Department to discuss, and attempt to reach agreement on, a list of document types to be retained at the VED.

Department's proposed term (g)(11) would impose significant burdens on the Company beyond those associated with the post-approval process to which the Company has committed itself.¹⁰⁵ However, at the present time, we conclude that the other terms of probation are likely to provide adequate protection for ratepayers. Therefore, we will not at this time impose the pre-approval requirement, but stand ready to do so if the Company's post-approval process proves ineffectual in preventing inappropriate or unsubstantiated charges or allocations from being assigned to VED.

Therefore, we will add a probationary term (g)(10), as follows:

(10) By January 13, 1999, Citizens shall submit to the Special Master, Board, and Department a plan whereby it will physically maintain copies of significant, primary source accounting records affecting the VED at VED's primary place of business in the State of Vermont. The plan shall be designed so that the VED, Special Master, Board and Department can readily determine, from the records maintained at VED, the reasonableness, appropriateness and accuracy of all costs, other than *de minimis* costs, for which Citizens intends to include in the VED retail cost of service. The plan shall be subject to approval by the Special Master.

Probationary Term (h)

Our June 16 Order set out probationary term (h) as follows:

- h. If the Company is subject to any investigation for alleged violation of any statute, regulatory requirement, or order in any state or by any federal agency, it shall provide notification of such an investigation to both the Board and the Department within five days of commencement of the investigation.

The Department has not proposed any changes to this provision. The Company, on the other hand, requests that we modify the provision to allow the company more time -- thirty days -- for providing notification of investigations, and to narrow the classes of investigations that are subject to this provision so that only docketed matters need be reported.¹⁰⁶ The Department agrees that the Company should have more than five days to provide notice of investigations, but less than thirty days; the Department recommends a ten-day reporting

105. See tr. 9/17/97 at 19-24 (Love).

106. Citizens Comments 9/4/97 at 8-9; Citizens Brief 9/26/97 at 36-37.

requirement. The Department disagrees with the Company's proposal that only docketed matters should be subject to this provision.¹⁰⁷

The Company presents valid concerns. With respect to the timing for notification, we will adopt the Company's thirty-day proposal. We will also adopt Citizens' recommendation with respect to the types of investigations that must be reported under this term of probation, but will add investigations that result in stipulated settlements, in order to ensure that we learn of violations that result in settlements prior to a formal proceeding being opened.

Therefore, probationary term (h) shall read as follows:

h. If the Company is subject to any investigation for alleged violation of any statute, regulatory requirement, or order in any state or by any federal agency which results in a docket being opened, in the filing of a formal complaint in state or federal court or before a state or federal agency, or in a stipulated settlement with a state or federal agency (including a law enforcement agency), it shall provide notification of such an investigation to both the Board and the Department within thirty days of commencement of the investigation.

Probationary Term (i)

Our June 16 Order set forth probationary term (i) as follows:

i. The Company shall commit to implement all cost-effective energy efficiency programs for the benefit of its Vermont customers. We expect this to involve, at a minimum, three and one-half percent of VED's gross revenues. Operational mechanisms for ensuring the delivery of those services must be established. Specific mechanisms, which may include the appointment of an independent DSM manager to administer energy efficiency programs for the benefit of VED ratepayers, will be established after the additional hearing discussed below.

Both the Department and the Company have proposed several changes to this provision. First, The Department proposes that we add the words, "in a timely, efficient and effective manner" immediately after the word "implement" in the first sentence of this condition.¹⁰⁸ The Company contends that these additional words provide no substantive

107. Tr. 9/9/97 at 133-135 (Steinhurst).

108. Exh. DPS-WS-Prob-1 at 10.

improvement to the provision, and instead serve merely to complicate this provision.¹⁰⁹ We conclude that the words "timely" and "effective" do provide necessary additional content to this provision; delayed or ineffective implementation of cost-effective energy efficiency programs would deny VED ratepayers the program benefits to which they are entitled. We will not, however, add the word "efficient" as proposed by the DPS, because by definition "all cost-effective" programs must also be efficient ones.

The Department also recommends that the Company be required to file, within forty-five days, a thorough description of the operational mechanisms for ensuring delivery of cost-effective energy efficiency programs.¹¹⁰ While not objecting specifically to this addition, the Company apparently contends that this term of probation need not require the establishment of such operational mechanisms.¹¹¹ Citizens claims that it has already made significant progress in the delivery of DSM service, and that an independent DSM manager is not needed.¹¹² The Department agrees that an independent DSM manager is not needed.¹¹³

We continue to believe that this term of probation must require the establishment of operational mechanisms that assure the delivery of cost-effective DSM services. We will delete reference to an independent DSM manager, as we conclude that it is premature to consider that option at this time. We will reconsider the appointment of an independent DSM manager in the future if Citizens fails to achieve timely and sufficient progress in delivery of the cost-effective energy efficiency services to which VED ratepayers are entitled.

Next, the Department proposes that the following seven subsections be added to this term of probation:

- (1) Citizens shall file quarterly DSM activity, expenditure and savings reports consistent with the definitions and formats provided for the data portion of the Board's Annual DSM Reports. These quarterly reports shall display each item as to the reporting quarter and cumulatively for the reporting year to date.

109. Tr. 9/17/97 at 25 (Love).

110. Exh. DPS-WS-Prob-2 at 14.

111. See Citizens Brief 9/26/97, Attachment at 11, where the Company proposes striking this requirement.

112. Citizens Brief 9/26/97 at 37-38; Citizens' Comments on Terms of Probation, 9/4/97, at 9-10.

113. Tr. 9/9/97 at 136 (Steinhurst).

- (2) Citizens shall design and implement a remedial DSM program. This program shall remedy any shortcomings in the delivery of past DSM programs, including but not limited to those programs' eligibility determinations, lack of comprehensive auditing, recommendations, offers, installation, and commissioning. It shall identify those customers inadequately served (or improperly turned away) by past programs and deliver the services and measures that would have been part of a proper program. Remedial DSM service shall be delivered to affected customers under at least the former Residential High Use and Small Commercial High Use Programs. Citizens shall exert every effort to minimize inconvenience for participants and to remedy and prevent the development or exacerbation of any customer resistance due to past interactions and repeat interactions necessitated by this remedial program and to ensure that remedial DSM services delivered are comprehensive. Within 90 days, Citizens shall file with the Special Master, Department and Board a program design, implementation plan, schedule and budget for this remedial program that will accomplish the remedial goal by December 31, 1999.
- (3) Citizens shall ensure that its DSM expenditures are recorded and tracked as an integral part of its accounting system for VED and shall not do so by means of separate, *ad hoc* systems. Within 90 days, Citizens shall ensure that a system is in place so that its DSM activities are recorded and tracked in an accountable and integrated manner and are easily verifiable. This system shall include procedures for data entry and verification, system operation, and other necessary activities and shall not operate by means of separate, *ad hoc* systems. This system shall correct all problems identified in testimony in this proceeding.
- (4) Citizens shall fully implement and fund the so-called "Core DSM programs" as set out in the Department's filings in Docket 5980.
- (5) Commencing within 30 days, for DSM program screening and for field screening, Citizens shall use the statewide avoided costs, including external environmental costs, as filed by the Department in Docket 5980 or as the Department may from time to time update them.
- (6) Commencing within 30 days, Citizens shall use for field screening in the implementation of DSM programs that may require a field screening tool, only software, assumptions and inputs approved by the Department.
- (7) Within 30 days, Citizens shall ensure that its DSM programs, including but not limited to its Farm DSM Program, are being delivered by persons fully

qualified and competent in the specific measures and programs being provided.¹¹⁴

The Company has agreed to several of these additional provisions -- numbers (1), (3), and (4). With respect to proposed subsection (5), the Company agrees to use the statewide avoided costs that the DPS filed in Docket No. 5980, but does not agree to continue to use whatever costs the DPS may develop in the future.¹¹⁵ Of these agreed-upon subsections, we will adopt numbers (1) and (3). We will not adopt numbers (4) and (5), because we do not have any evidence in the record of this proceeding supporting those DSM programs and those statewide avoided costs. Citizens may, if it wishes, present those programs and avoided costs to the Special Master in his or her review of the Company's compliance with this term (i) of probation. We also do not preclude approving those programs and costs in another, appropriate proceeding.

Citizens opposes the three remaining DPS proposed subsections. The Company contends that Subsection (6) is flawed in requiring it to employ inputs and assumptions that have been approved by the Department rather than by the Board.¹¹⁶ We agree; as with proposed subsections (4) and (5), we reject subsection (6) because we do not have a basis in this proceeding on which to accept the DPS-approved software, assumptions and inputs. Again, we do not preclude our acceptance in a different proceeding.

Citizens contends that the Department's subsection (7) should be rejected as ambiguous and as an unnecessary intrusion into the management of the Company.¹¹⁷ We agree that subsection (7) is unnecessary, as it merely restates the Company's inherent obligation as a regulated utility. It is incumbent on the Company to employ competent and qualified personnel in all aspects of its regulated activities, not just with respect to DSM. Should it fail to do so to the detriment of ratepayers, sufficient remedies and incentives exist, including possible exclusion of costs from rates, possible reduction in the allowed return on equity, and, especially in the context of this proceeding, possible revocation of its CPG.

114. Exh. DPS-WS-Prob-2 at 14-15.

115. Tr. 9/17/97 at 36-38 (Love); Citizens Brief 9/26/97, Attachment at 12.

116. Tr. 9/17/97 at 37; Citizens Brief 9/26/97 at 40.

117. Tr. 9/17/97 at 38-39 (Love); Citizens Brief 9/26/97 at 40-41.

The Company objects to the remaining Department proposed subsection, subsection (2), which concerns remedial DSM programs, on the grounds that the DPS proposal is excessively broad and vague. The Company states that it is willing to consider a remedial program that would address "specific, identified deficiencies."¹¹⁸

In our June 16 Order, we determined that there were serious shortcomings in the design, administration, and accomplishments of Citizens' DSM programs, with the result that Citizens' Vermont ratepayers pay more in power costs than if the Company had -- as was its obligation under Vermont law and Board orders -- captured all cost-effective energy savings.¹¹⁹ We conclude that a remedial program is essential if Citizens' ratepayers are to be held harmless from the Company's DSM failures. The Company complains that, arguably, the DPS language would require it to contact again every individual customer previously served under the Company's DSM programs.¹²⁰ But the Department's proposed subsection (2) appropriately places the onus on Citizens to propose an effective remedial program, so if the Company believes that an effective remedial program need not revisit all previously served customers, then the Company should propose an effective remedial program that does not require such revisiting.¹²¹ As a clarification, we have added to the Department's proposed language a requirement that the remedial program shall be subject to the approval of the Special Master.

Finally, on June 4, 1998, the Company submitted a partial stipulation with the Department regarding remedial DSM programs. The partial stipulation calls for the Company to implement a Residential Remedial DSM Program ("Remedial Program"), entitled "Residential Incentives to Save Energy." The remedial program is described in an attachment to the partial stipulation. According to that description, the remedial program seeks

to maximize the installation of all cost-effective DSM measures for households served from 1992 to 1996 by the CUC Residential Retrofit Program (RRP) and the CUC Low-Income Retrofit Program (LIRP). The Residential Incentives for Saving Energy (RISE) program will provide extensive services and significant

118. Citizens Brief 9/26/97 at 38-39; tr. 9/17/97 at 25-34 (Love).

119. Order of 6/16/97, Part Two, Subpart II(J).

120. Citizens Brief 9/26/97 at 39.

121. We do not at this time take any position on whether an effective remedial program would require any such revisiting. We are merely noting what should be obvious--the burden lies with the Company to design a program that appropriately corrects for the Company's past failures.

financial incentives designed to overcome market barriers to maximum implementation of all cost-effective DSM measures relating to electric space heat, electric domestic hot water, refrigeration, waterbeds, and lighting, as well as custom measures that address high consumption for nonstandard high electrical uses.¹²²

In the partial stipulation, the Department agrees that the Remedial Program, if prudently implemented and managed, will satisfy the Department's proposed probationary term (i) (2).

The partial stipulation includes the following cost recovery provisions:

- a. Citizens will pay for and will not seek recovery from ratepayers for all costs associated with the identification of participants in the Remedial Program and with the solicitation and/or marketing efforts targeted at those customers.
- b. Citizens will pay for and not seek recovery from ratepayers for 50 percent of the audit costs associated with the Remedial Program; recovery of the remaining 50 percent of audit costs in retail rates will be subject to the Vermont Public Service Board's provisions for ratemaking treatment for DSM expenditures. Audit costs are defined as: All costs associated with the gathering, analysis and reporting of information to assess site-specific energy efficiency measure cost-effectiveness, including (1) gathering information (by phone, mail or on-site), (2) analysis of the information (3) reporting the results of the analysis, and (4) answering questions and assisting the customer in understanding the results so that they can make their energy improvement choices.
- c. Incentive costs (defined as the utility's share of the cost of installed measures) and other necessary costs prudently incurred in connection with the Remedial Program will be subject to the Vermont Public Service Board's provisions for ratemaking treatment for DSM expenditures, except that any cost incurred to undo or correct measures installed under prior programs shall not be recoverable. In addition, to the extent that costs incurred in connection with the Remedial Program duplicate costs currently excluded from rates by the PSB Order of June 16, 1997, the Company shall not seek to recover such currently excluded costs. The parties agree that ratepayers should pay only once for delivery of a quality DSM program. The parties further agree to negotiate in good faith regarding treatment of the currently excluded DSM costs in accordance with that principle.

122. Partial Stipulation on Remedial Demand-Side Management Programs, filed 6/4/98, Attachment at 1.

- d. The Department agrees that it will not object to Citizens' earning AFUDC on the expenditures deemed eligible for DSM ratemaking treatment pursuant to this Stipulation, subject to normal ratemaking review.¹²³

The partial stipulation further provides that the Company will provide the Department with certain specified DSM plans and reports, and that the Company will begin implementation of the Remedial Program "forthwith" and, within three years of implementation, will serve all eligible participants. Finally, in the partial stipulation the parties agree to request that the Board incorporate the terms of the stipulation in the final order establishing the terms of probation.

We have reviewed the partial stipulation and the description of the remedial program, and are satisfied that, if properly implemented, they will provide appropriate remedial DSM services. Thus, we approve the partial stipulation, and will incorporate its terms into probationary term (i) (2).

Consequently, probationary term (i) shall read as follows:

- i. The Company shall implement in a timely and effective manner all cost-effective energy efficiency programs for the benefit of its Vermont customers. We expect this to involve, at a minimum, three and one-half percent of VED's gross revenues. Operational mechanisms for ensuring the delivery of those services must be established and a thorough description of those mechanisms filed with the Special Master, Department and Board by October 30, 1998.

- (1) Citizens shall file quarterly DSM activity, expenditure and savings reports consistent with the definitions and formats provided for the data portion of the Board's Annual DSM Reports. These quarterly reports shall display each item as to the reporting quarter and cumulatively for the reporting year to date.

- (2) Citizens shall implement a Remedial DSM Program in accordance with the terms of the Partial Stipulation On Remedial Demand-Side Management Programs that Citizens filed with the Board on June 4, 1998. The terms of that Partial Stipulation are hereby incorporated into this term of probation.

- (3) Citizens shall ensure that its DSM expenditures are recorded and tracked as an integral part of its accounting system for VED and shall not do so by means of separate, *ad hoc* systems. By December 15, 1998, Citizens shall ensure that a system is in place so that its DSM activities are recorded

123. Partial Stipulation on Remedial Demand-Side Management Programs, filed 6/4/98, at 2-3.

and tracked in an accountable and integrated manner and are easily verifiable. This system shall include procedures for data entry and verification, system operation, and other necessary activities and shall not operate by means of separate, *ad hoc* systems.

Probationary Term (j)

Our June 16 Order set forth probationary term (j) as follows:

- j. Within forty-five days, the Company must submit to the Department for review and the Board for approval a proposal for implementing cost-effective least-cost analyses. The Company will not be allowed to include in rate base any capital expenditures made after the date of this Order until the Board has approved the Company's proposal for implementing least-cost analyses. Board approval of the proposal will not constitute a determination that any specific capital expenditure is consistent with least-cost principles.

No party has objected to, or recommended any modifications in, this provision. On August 29, 1997, the Company filed a proposal for implementing cost-effective least-cost analyses. We will instruct the Special Master to review and, if warranted, approve the Company's proposal.

Consequently, this provision shall remain as written, except for clarifying that the Company's proposal is to be filed with the Special Master for review and approval. Thus, probationary term (j) shall read:

- j. By October 30, 1998, the Company must submit to the Department for review and the Special Master for approval a proposal for implementing cost-effective least-cost analyses.¹²⁴ The Company will not be allowed to include in rate base any capital expenditures made after the date of this Order until the Board has approved the Company's proposal for implementing least-cost analyses. Board approval of the proposal will not constitute a determination that any specific capital expenditure is consistent with least-cost principles.

Probationary Term (k)

Our June 16 Order included the following probationary term (k):

- k. Citizens must pay the full costs of this probation, and none of the costs may be recovered in VED's retail rates. To assure that this condition is satisfied, Citizens must comply with the following requirements:

124. As noted above, the Company has already filed this proposal.

- (1) Citizens must keep complete, accurate, and reliable records of its costs in complying with this probation, including all direct, indirect, overhead, and allocated costs. Within ninety days, Citizens must file with the Department for review and the Board for approval a proposed system reasonably designed to determine, track, record, and substantiate all such costs.
- (2) Citizens must reimburse the Department, the Board, and the Board-appointed Master in full for their respective costs incurred in the oversight and administration of this probation, including but not limited to costs of monitoring the Company's compliance with the terms of probation. If the Company believes that a particular request for reimbursement from the Department, Board, or Master does not represent a necessary or reasonable cost, the Company may petition the Board to review the necessity or reasonableness of the requested reimbursement.

On September 15, 1997, Citizens filed a proposed system for tracking the costs of probation. The Company proposes that term (k)(1) be amended to require the Department to submit comments on that September 15 filing within thirty days.¹²⁵

The Department proposes modifying this provision so that the Company's filing, pursuant to (k)(1), of a proposed system must constitute a "thorough description of" that system.¹²⁶ The Company contends that this proposed language adds nothing to the meaning of this term of probation.¹²⁷

Given that the Company has already filed a cost-tracking proposal, we see no need to add the Department's proposed language. We instruct the Special Master to review the Company's September 15, 1997, proposal; the Department should submit its comments, if any, to the Special Master according to a schedule to be determined by the Special Master.

Consequently, probationary term (k) shall read as follows:

- k. Citizens must pay the full costs of this probation, and none of the costs may be recovered in VED's retail rates. To assure that this condition is satisfied, Citizens must comply with the following requirements:

- (1) Citizens must keep complete, accurate, and reliable records of its costs in complying with this probation, including all direct, indirect,

125. Citizens Brief 9/26/9, Attachment at 12.

126. Exh. DPS-WS-Prob-1 at 11.

127. Tr. 9/17/97 at 39 (Love).

overhead, and allocated costs. Citizens must file with the Department for review and the Special Master for approval a proposed system reasonably designed to determine, track, record, and substantiate all such costs.¹²⁸

(2) Citizens must reimburse the Department, the Board, and the Board-appointed Master in full for their respective costs incurred in the oversight and administration of this probation, including but not limited to costs of monitoring the Company's compliance with the terms of probation. If the Company believes that a particular request for reimbursement from the Department, Board, or Master does not represent a necessary or reasonable cost, the Company may petition the Board to review the necessity or reasonableness of the requested reimbursement.

Probationary Term (l)

In our June 16 Order, we included the following probationary term (l):

- l. If Citizens fails to comply with the terms of this probation, its Certificate of Public Good to operate the VED shall be revoked.

The Company recommends, and the Department agrees, that this provision should be modified to explicitly include the requirement that such revocation be "after notice and an opportunity for hearing." Citizens also proposes changing the term "shall" to "may."¹²⁹ This change would make clear that the Company's CPG need not be revoked for a minor violation of the terms of probation.

We agree with the Company's proposed changes. However, the scope of any hearing under probationary term (l) would be limited to determining whether the Company violated the terms of probation and, if so, whether the violation is a material one. The hearing would not revisit the issue of whether good cause exists to revoke Citizens' Vermont franchise because, as we noted in our June 16, 1997, Order,

good cause exists in the present record to revoke the Company's Certificate of Public Good. Should the terms of strict probation set out below fail to achieve their necessary ends, the record of these proceedings will be relied upon, and will

128. As previously noted, Citizens has already filed this proposal.

129. Citizens Brief 9/26/97, Attachment at 13.

support a subsequent decision to end the probation and revoke the Company's Certificate to operate in Vermont.¹³⁰

Accordingly, probationary term (l) shall read as follows:

1. After notice and opportunity for hearing, Citizens' Certificate of Public Good to operate the VED may be revoked for material non-compliance with the terms of this probation.

Probationary Term (m)

Our June 16 Order set forth probationary term (m) as follows:

- m. The probation period will extend for a minimum of five years. At the end of the five-year period, we will evaluate Citizens' performance of its obligations as a regulated public utility in Vermont, and at that time determine whether to continue, modify, or end the Company's probation. The reduction in return on equity ordered today shall remain in effect as a term of probation until the end of the probationary period, unless modified pursuant to Paragraph (n) below.

The only change to this provision proposed by the parties is the Department's suggestion that we include an opportunity for hearing.¹³¹ We agree that this is appropriate, and will modify this probationary term to provide for notice and an opportunity for hearing prior to making a determination on continuing, modifying, or ending the probation at the end of five years. Also, we wish to avoid any confusion as to when the five-year period ends; it will end five years after our June 16, 1997, Order, on June 16, 2002.

Thus, this term of probation shall read as follows:

- m. The probation period will extend for a minimum of five years, to June 16, 2002, or beyond. At the end of the five-year period, we will evaluate Citizens' performance of its obligations as a regulated public utility in Vermont, and at that time determine, after notice and opportunity for hearing, whether to continue, modify, or end the Company's probation. The reduction in return on equity ordered today shall remain in effect as a term of probation until the end of the probationary period, unless modified pursuant to Paragraph (n) below.

130. Order of June 16, 1997, at 283.

131. Exh. DPS-WS-Prob-1 at 11.

Probationary Term (n)

In our June 16 Order, probationary term (n) read as follows:

- n. The Board reserves the right to modify these terms of probation, including the imposition of additional terms, as needed.

As with the previous probationary term, the only change to this provision proposed by the parties is the Department's suggestion that we include an opportunity for hearing.¹³² Again, we agree that this is appropriate, and will modify this probationary term to provide for notice and an opportunity for hearing prior to modifying the terms of probation. Thus, this term of probation shall read as follows:

- n. The Board reserves the right, after notice and opportunity for hearing, to modify these terms of probation, including the imposition of additional terms, as needed.

Probationary Term (o) (DPS Proposal)

The Department has proposed a number of probationary terms in addition to those contained in our June 16 Order. The first of these, which the DPS has designated probationary term (o), states:

- o. All due dates and the minimum term of probation are calculated from date of issuance of the Board's Order of June 16, 1997, or from the date of this Order confirming these terms of probation, whichever established or last modified the condition.¹³³

The Company does not oppose this additional provision, but notes that it would be preferable if deadlines were established as specific dates rather than as within a certain number of days of the Board's order.¹³⁴

We conclude that the DPS proposed condition (o) is unnecessary, because we have included in the several terms of probation specific dates by which compliance actions must be taken.

132. Exh. DPS-WS-Prob-1 at 11.

133. Exh. DPS-WS-Prob-2 at 17.

134. Citizens Brief 9/26/97 at 41; tr. 9/17/97 at 39-40 (Love).

Probationary Term (p) (DPS Proposal)

The Department proposes adding the following probationary term (p):

- p. Citizens shall comply with Vermont and Federal law. A finding by this Board, a court or a Vermont or Federal regulatory body that Citizens has violated Vermont or Federal law shall be considered a violation of this condition of probation and may result in revocation of this probation.¹³⁵

Citizens opposes this proposed term of probation, claiming that it is excessively broad and exceeds the Board's jurisdiction, in that it would make a violation of any law in any jurisdiction, such as a water quality standard in another state, a possible basis for revocation of the Company's CPG.¹³⁶ Although violations of the law in other jurisdictions could certainly be relevant to a company's character and fitness to provide utility service in Vermont, and thus would not necessarily be outside the proper scope of Board inquiry, we agree with Citizens that the DPS proposed probationary term (p) is excessively broad. Consequently, we will not adopt it.

Probationary Term (q) (DPS Proposal)

The Department recommends that we add the following probationary term:

- q. All filings and reports required by any condition imposed in this Order are in addition to and not in lieu of any other required filing or report.¹³⁷

Citizens has not objected to this term. This proposed term provides a useful clarification, and we will include it in the final terms of probation.

Probationary Term (r) (DPS Proposal)

The Department proposes the addition of the following provision to the terms of probation:

135. Exh. DPS-WS-Prob-2 at 17.

136. Citizens Brief 9/26/97 at 41-42; tr. 9/17/97 at 40-41 (Love).

137. Exh. DPS-WS-Prob-2 at 17.

- r. Citizens shall not commence or seek approval to commence any new business in Vermont of any sort, whether regulated or not, without notice to the Board and Department and prior approval by the Board.¹³⁸

The Department claims that this provision is warranted because it would serve to limit the burden of overseeing the terms of probation.¹³⁹ Citizens objects to this provision on the basis that it exceeds the Board's jurisdiction and is unrelated to the Company's past behavior.¹⁴⁰

We conclude that this proposed probationary term is not appropriate, in that it is not sufficiently related to the operational and management problems that we have identified in this proceeding.

Probationary Term (s) (DPS Proposal)

The Department next proposes that we include the following condition in the final terms of probation:

- s. Citizens shall ensure that, with regard to VED and each and every part of Citizens that in any way oversees, supports or otherwise affects or influences VED, directly or indirectly, whether regulated or not, all provision of information to regulators, shareholders, employees, customers and the public, including but not limited to filings and answers to discovery or official inquiry of any kind, by each of its employees, contractors, agents and legal representatives is timely, complete, clear, and comports with the Company's espoused policy of unequivocal candor.¹⁴¹

During the hearings on the terms of probation, the Department agreed that this provision should be clarified so that it is limited to VED, its oversight, its support, and activities that otherwise affect or influence VED.¹⁴²

The Company contends that this proposed provision exceeds the Board's jurisdiction, is not sufficiently precise, concerns activities that are beyond the Company's control, and could engender "endless disputes and possibly litigation over whether the term has been violated."¹⁴³

138. Exh. DPS-WS-Prob-2 at 17.

139. Tr. 9/10/97 at 73-76 (Steinhurst).

140. Citizens Brief 9/26/97 at 42-43; tr. 9/17/97 at 41-43 (Love).

141. Exh. DPS-WS-Prob-2 at 18.

142. Tr. 9/10/97 at 80-81 (Steinhurst).

143. Citizens Brief 9/26/97 at 43-44; tr. 9/17/97 at 44-45 (Love).

We agree with the Company that this proposed provision is excessively broad, and thus we will not adopt it.

Probationary Term (t) (DPS Proposal)

The Department requests that we include the following additional term of probation:

- t. Citizens shall maintain all capital equipment, including but not limited to generating equipment and transmission and distribution equipment, at least in accordance with the manufacturer's recommended practices and schedules. If Citizens believes some other practice or schedule would enhance reliability or service life or would be more cost effective, the Company shall consult with the manufacturer (or, if the manufacturer is no longer in business, with an independent professional engineer qualified by training and experience with the particular equipment in question) and may adopt such practice or schedule if the manufacturer or independent engineer certifies that the practice or schedule will not diminish the reliability or impair the remaining economic life of the equipment.¹⁴⁴

Citizens contends that this proposal improperly removes the responsibility for determining prudent, least-cost maintenance practices from the Company -- whose personnel, according to Citizens, are best situated to make such determinations given their experience with the equipment as actually used -- and places that responsibility with third parties (manufacturers and independent engineers) over whom the Company has no control. This, Citizens further contends, could place the Company in the unenviable position of having to incur maintenance costs that it does not feel are prudent, and then possible disallowance of those costs if the Board also concluded them to be imprudent.¹⁴⁵

We agree with Citizens that the Department's proposal unnecessarily interferes with the Company's obligation to maintain its equipment. We also conclude that the proposal is not reasonably related to the management and operational problems that we have discovered in the course of this investigation. Accordingly, we decline to adopt the DPS proposal.

144. Exh. DPS-WS-Prob-2 at 18. The Department later agreed to modify this proposed provision by substituting "VED" for "Citizens," and by adding "or would be more cost effective" to the end of the provision. Tr. 9/10/97 at 83-85 (Steinhurst).

145. Citizens Brief 9/26/97 at 44-46.

Probationary Terms (u) and (v) (DPS Proposals)

The Department proposes that, as a term of probation, the Company be required to fund two studies: one regarding opportunities for energy efficiency and distributed generation technologies, and the second aimed at methods to mitigate or eliminate aesthetic and other impacts of transmission and distribution facilities in rural areas. The Department's specific proposals are as follows:

- u. Citizens shall fund an independent study to identify opportunities to employ energy efficiency and distributed generation technologies, especially small scale and renewable technologies, to promote sustainable economic and community development in the Company's service territory. The study shall be conducted by a qualified independent researcher familiar with energy efficiency programs, community development, and regulatory matters selected and overseen by an advisory committee appointed by the Board with advice from the Department. The committee shall issue a Request for Proposals within 30 days of its appointment and shall seek to complete the study within 180 days of its appointment. Within 60 days of the study's completion, Citizens shall submit a proposed plan, schedule and budget to implement any study recommendations applicable to the Company.

- v. Citizens shall fund an independent study to identify methods to most effectively mitigate or eliminate the aesthetic and other impact of electric transmission and distribution facilities in rural areas, villages and small towns and cities, such as are found in the Company's service territory. The study shall be comprehensive in terms of issues and strategies considered, shall consult with appropriate state, regional and local entities, and shall reflect the results of or otherwise coordinate with the study required in the previous condition. The study shall be conducted by a qualified independent researcher familiar with electric transmission and distribution technology and with the aesthetic, community development, and regulatory impacts of such facilities. The study shall be overseen by an advisory committee appointed by the Board with advice from the Department. The committee shall issue a Request for Proposals within 30 days of its appointment and shall seek to complete the study within 180 days of its appointment. Within 60 days of the study's completion, Citizens shall submit a proposed plan, schedule and budget to implement any study recommendations applicable to the Company.¹⁴⁶

146. Exh. DPS-WS-Prob-2 at 18-19.

The Department proposes that the Company be required to spend up to \$200,000 for the first study, and up to \$100,000 for the second.¹⁴⁷

The Company opposes both of these proposed studies, contending that there are no specific findings to support them. Citizens also argues that the studies are an inappropriate form of restitution, in that there has been no demonstration in the current proceeding that the Company's actions and inactions had any negative impact on transmission and distribution aesthetics or implementation of alternative technologies.¹⁴⁸

We agree with Citizens that these two proposed studies do not bear a sufficient relationship to the management and operational problems that we seek to correct through the terms of probation. Consequently, we will not include the studies in the final terms of probation.

Probationary Term (w) (DPS Proposal)

The Department proposes that we add a probationary term requiring an independent evaluation of the Company's internal communications, as follows:

w. Within 60 days, Citizens shall retain an independent expert to evaluate the internal communications and ability to ensure that public policy goals and regulatory standards are known, understood, and rigorously and uniformly adhered to by VED and every portion of CUC that oversees or supports VED including but not limited to Sector and Corporate management, professional, technical and support personnel. The independent expert shall prepare an organizational development plan for the purpose of developing and maintaining a corporate culture whose values are consistent with Citizens obligations as a public service company. The selection of, contracts with, and operational procedures for the contractor shall be designed to ensure freedom of action and independence of the consultant, including any necessary confidential access to and protections for CUC staff involved. Citizens shall promptly file with the Special Master, the Department and the Board the RFP, contract, and study results (including workpapers, but excluding any confidential communications from individual employees). Within 60 days of the study's completion, Citizens

147. Tr. 9/10/97 at 89 (Steinhurst).

148. Citizens Brief 9/26/97 at 46-48.

shall submit a proposed plan, schedule and budget to implement any study recommendations applicable to the Company.¹⁴⁹

Citizens opposes this provision on the grounds that it would represent an excessive intrusion into the management of the Company.¹⁵⁰ Some of the problems in Citizens' management and operation that we identified in this investigation can be traced, at least in part, to poor internal communications; for example, the Company had failed to effectively communicate permitting responsibilities to personnel who bore those responsibilities.¹⁵¹ However, we do not believe that the Department's proposed condition should be implemented, at least at this time. Our decision in this case, including the terms of probation, serve to put the Company on notice that it must correct the identified operational and management deficiencies. The other terms and conditions set out in this Order also will direct the Company towards correcting these problems. Should Citizens fail to do so, it faces revocation of its Vermont franchise (as the Company correctly notes¹⁵²), or we could at that future time reconsider imposition of this proposed DPS condition.

Probationary Term (x) (DPS Proposal)

The Department proposes the following additional term of probation:

- x. Citizens shall ensure that transmission and distribution reliability and customer service quality, including but not limited to, response time to inquiries, complaints, service orders (including line extensions) or disconnection requests, account change requests, and repair response time are maintained at or above, current levels or Board ordered levels, whichever is more stringent.¹⁵³

The Company contends that this provision is not necessary and is unsupported by any evidence in this proceeding.¹⁵⁴

The evidence in this proceeding has not demonstrated that there are currently problems with the reliability and quality of service; thus, we will not adopt this proposed provision.

149. Exh. DPS-WS-Prob-2 at 20.

150. Citizens Brief 9/26/97 at 48.

151. See Order of 6/16/97 at Part Two, Subpart II(D).

152. Citizens Brief 9/26/97 at 48.

153. Exh. DPS-WS-Prob-2 at 20.

154. Citizens Brief 9/26/97 at 48-49; tr. 9/17/97 at 47 (Love).

Probationary Term (y) (DPS Proposal)

The final term of probation that the Department proposes would provide certain protections for “whistle blowers” at Citizens. The provision would read:

- y. With regard to VED and each and every part of Citizens that in any way oversees, supports or other [sic] affects or influences VED, directly or indirectly, whether regulated or not, Citizens shall not impose or threaten to impose any penalty, disadvantage, or other harm on any employee who prevents, seeks to prevent, discloses, complains or otherwise opposes or hinders any action by Citizens that is contrary to law, public policy, professional codes of ethics, or regulatory requirements, including but not limited to the requirements of this Order. Within 30 days, Citizens shall file with the Board and Department a report explaining in detail how the Company has implemented this requirement, including how the Company will promulgate its policy in this regard to all current and future employees covered by the requirement. This report must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and Citizens' General Counsel or President (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the report to be true, accurate and complete.¹⁵⁵

The Company claims that the DPS proposal exceeds the Board’s jurisdiction, would preclude good-faith discipline of an employee who repeatedly makes unfounded accusations of malfeasance by the Company, and is unnecessary due to other whistle blower protection in state and federal law.¹⁵⁶

The Department has raised a legitimate concern. Our investigation revealing Citizens’ management and operational problems, including the Company’s failures to comply with Vermont law, resulted from a former Citizens employee, Robert Arnold, bringing those problems to light.

However, the Department’s proposed solution is excessive, and could place the Special Master and Board in the difficult, and possibly inappropriate, position of overseeing disputes

155. Exh. DPS-WS-Prob-2 at 20-21.

156. Citizens Brief 9/26/97 at 49-50; tr. 9/17/97 at 47-48 (Love).

between the Company and its employees. Citizens must retain sufficient discretion in the day-to-day management of the Company, including its employee relations.

It is true that protection for whistle blowing employees would make it more likely that any new or continued problems are brought to our attention. However, we have attempted to craft other terms of probation designed to correct, and to prevent recurrences of, the problems uncovered in this investigation. We expect that these other terms of probation and the Special Master's oversight would minimize the added value from a whistle blower provision. Of course, we retain the authority to modify the terms of probation, so if events should show that some type of whistle blower protection is needed, we can and will revisit the issue.

For these reasons, we decline to adopt the Department's proposed probationary term (y).

V. Amendment of Citizens' Certificate of Public Good

In our June 16, 1997, Order, we stated that upon establishment of the specific terms of probation, we would amend the Company's Certificate of Public Good to be contingent upon compliance with those terms. Thus, in addition to establishing the terms of probation, today's Order also amends the Company's Certificate of Public Good.

VI. ORDER

It Is Hereby Ordered, Adjudged and Decreed by the Public Service Board of the State of Vermont that:

1. Citizens Utilities Company is placed on regulatory probation for a minimum of five years, to June 16, 2002, or beyond. During the probationary period, the Company shall comply with the following terms of probation:

- a. The Board will appoint a Special Master to oversee the Company's compliance with the terms of probation. The Special Master shall be a person qualified to supervise the activities of the Company for this purpose, either directly or with the assistance of independent auditors or experts. All costs associated with the Master's activities, including regulatory costs, shall be billed back to the Company and shall not be included in VED's retail rates.

Citizens shall file documentation of compliance with each condition with the Special Master, the Department and the Board. The Special Master shall review Citizens' compliance with each condition and shall be empowered to order further investigation of any charges that do not have appropriate documentation or justification. The Special Master may request any documents from the Company that the Special Master believes to be necessary or helpful in the performance of his or her duties. The Company shall provide any information requested by the Special Master, unless the Company files an objection with the Board; if an objection is filed, the Board or its designated Hearing Officer will determine whether the Company must provide the information.

The Special Master may request that the Board convene a hearing on any issue within the scope of the Special Master's duties; upon receiving such a request, absent any objection, the Clerk of the Board will schedule and provide notice of the hearing, and the Board will determine whether the Special Master, the Board itself, or a Board Hearing Officer will convene the hearing. If any party objects to a Special Master request for a hearing, the Board will determine whether the hearing will be held.

The Special Master may select an independent auditor or other experts to assist with the Special Master's review, and to analyze or audit such filings, or both, to ensure their correctness and to assess their compliance with this condition.

b. By October 15, 1998, Citizens must provide the Board and Department with an organizational chart (or charts) clearly showing, by name of employee and position title, all lines of responsibility for management and operations at the Vermont Electric Division. This chart shall include all such lines of responsibility within the VED, between the VED and all corporate offices, and among and within all corporate offices. This chart shall include key personnel, defined as all Vermont management personnel, all personnel who report directly to the Company's corporate controller, all personnel in the Company's Corporate Regulatory Group at the level of manager or higher, all personnel who report directly to the Company's Public Services Sector Vice-President, and all personnel in the Company's Public Services Sector at the level of manager or higher. The Company must notify the Board and Department in writing of all changes to key responsible personnel, positions, and lines of responsibility within thirty days of each such change. In the event of changes to the Company's organizational structure during the term of probation, the Special Master shall have the authority to modify this definition of "key responsible personnel" to the extent necessary to fulfill the intent of this condition.

c. Each year, within two weeks after the Company's Board of Directors approves its capital budget, but no later than January 5, the Company shall file with the Special Master, Board and Department a detailed report of its

proposed capital expenditures for that year. The report must include all known construction projects, including upgrades and replacements of existing facilities, and must clearly identify each project by type, location, size (such as length of a line), voltage level(s), purpose, and estimated cost. In each instance where an existing facility is being upgraded or replaced, the report must clearly identify for the existing facility the type, location, size, voltage level(s), purpose, and dates of original construction and any subsequent modification. For each proposed construction project, the report must indicate whether the Company will be applying for any local, state and federal approvals, must identify each such approval for which the Company intends to apply, and must include a statement signed by a Vermont-licensed attorney indicating that the attorney has reviewed the project and is of the opinion that all required approvals are included in the list of approvals for which the Company intends to apply. The report must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and Citizens' General Counsel or President (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the report to be true, accurate and complete. The Company shall update the current report within 30 days of any decision to undertake, or any action in furtherance of, any capital expenditure in addition to or different from the current report; the update must be submitted prior to the Company actually incurring the revised expenditure, unless emergency or other exigent circumstances preclude advance reporting, in which case the update must be submitted as soon as reasonably practicable. An update is required only for additional or different expenditures that are expected to exceed ten percent of the previously reported figure for that item, or \$25,000, whichever is greater.

d. An independent, complete audit shall be undertaken of Citizens' transmission plant accounts. The audit shall be conducted in a manner sufficient to accomplish the following purposes:

- (1) to produce a set of plant accounts that comply with FERC and PSB requirements and that provide an adequate foundation for future ratemaking;
- (2) to support establishment of proper depreciation allowances for future ratemaking;
- (3) to identify and remove from the accounts any assets not in service, not identified or not properly includable as transmission assets; and
- (4) to ensure that entries in the plant accounts are supported by underlying detail sufficient to establish those costs and to establish

that they are, in fact, costs appropriate for inclusion in the plant accounts under the requirements of FERC and the PSB.

The audit shall segregate and remove from the plant accounts any costs not meeting these provisions.

By October 30, 1998, the Company must submit a detailed proposal for this audit to the Department for review and to the Special Master for approval. The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the audit, and the proposed audit methodology. After the proposal has received the Special Master's or the Board's approval, the independent audit shall commence promptly subject to the oversight of the Board-appointed Special Master, with the Company paying all costs of the audit. Upon completion of the audit, its results shall be reported promptly to the Special Master, the Board and the Department, and the workpapers of the Independent Auditor shall be available for review by the Special Master, the Board and the Department. The costs of the audit shall not be included in VED's retail rates.

e. An independent, complete audit shall be undertaken of Citizens' distribution plant accounts. The audit shall be conducted in a manner sufficient to accomplish the following purposes:

- (1) to produce a set of plant accounts that comply with FERC and PSB requirements and that provide an adequate foundation for future ratemaking;
- (2) to support establishment of proper depreciation allowances for future ratemaking;
- (3) to identify and remove from the accounts any assets not in service, not identified, or not properly includable as distribution assets; and
- (4) to ensure that entries in the plant accounts are supported by underlying detail sufficient to establish those costs and to establish that they are, in fact, costs appropriate for inclusion in the plant accounts under the requirements of FERC and the PSB.

The audit shall segregate and remove from the plant accounts any costs not meeting these provisions.

By October 30, 1998, the Company must submit a detailed proposal for this audit to the Department for review and to the Special Master for approval. The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the audit, and the proposed audit methodology. After the

proposal has received the Special Master's or the Board's approval, the independent audit shall commence promptly subject to the oversight of the Board-appointed Special Master, with the Company paying all costs of the audit. Upon completion of the audit, its results shall be reported promptly to the Special Master, the Board and the Department, and the workpapers of the Independent Auditor shall be available for review by the Special Master, the Board and the Department. The costs of the audit shall not be included in VED's retail rates.

f. The Company must pay for an independent, total audit of its DSM and ACE accounts. The audit shall be conducted in a manner sufficient to accomplish the following purposes:

- (1) to produce a set of accounts that fully support and comply with Vermont law and ratemaking practices for DSM and ACE;
- (2) to support establishment of proper amortization allowances for future ratemaking; and
- (3) to identify and remove from the accounts any amounts or assets not properly includable as DSM and ACE amounts under Vermont law; and
- (4) to ensure that entries in the DSM and ACE accounts are supported by underlying detail sufficient to establish those costs and to establish that they are, in fact, costs appropriate for inclusion in the DSM and ACE accounts under Vermont law.

The audit shall segregate and remove from the DSM and ACE accounts any costs not meeting these provisions.

The Special Master shall review the Deloitte & Touche report that Citizens submitted on July 31, 1997. After providing the Department a reasonable opportunity to comment on that report, the Special Master shall determine whether the report satisfies the requirements of this term of probation. The Special Master may approve the report, require modifications to the report, or require a new audit. If the Special Master requires modifications or a new audit, the Company must submit a detailed proposal for the modifications or new audit to the Department for review and to the Special Master for approval. The detailed proposal must identify the name of the proposed independent auditor, the proposed scope of the modifications or audit, and the proposed methodology. After the proposal has received the Special Master's approval, the modifications or audit shall commence promptly subject to the oversight of the Board-appointed Special Master, with the Company paying all costs of the work. Upon completion of the audit and all modifications thereof, its results shall be

reported promptly to the Special Master, the Board and the Department, and the workpapers of the Independent Auditor shall be available for review by the Special Master, the Board and the Department. The costs of the audit shall not be included in VED's retail rates.

g. By December 15, 1998, Citizens shall make a filing with the Special Master, the Board, and the Department certifying that it has implemented in full the following accounting requirements. These requirements shall remain in effect at least through June 16, 2002. The costs of the filings required hereunder shall not be included in VED's retail rates.

- (1) Citizens' accounting records for any costs either directly charged to VED or allocated to VED or for any costs that are ultimately paid for in full or in part by Citizens' ratepayers in Vermont, shall be kept in strict conformance with the FERC Uniform System of Accounts or, when the FERC Uniform System of Accounts does not apply, in strict conformance with other applicable accounting requirements. These accounts include, but are not limited to, expense records, records of capital expenditures, additions, reclassifications, adjustments, retirements and the like, transmission and distribution plant records, depreciation expense records, tax adjustments, administrative and general expense accounts, and CIAC accounts.
- (2) At the end of each fiscal year commencing with the present fiscal year, after Citizens closes its books, it shall provide an affidavit signed by the Company President certifying, after reasonable inquiry, that all costs closed to plant-in-service or any other asset account for that year were closed in accordance with generally accepted accounting principles. Equipment and any other capital asset costs shall not be capitalized until the equipment or asset has been installed and is providing utility service, except as explicitly provided for in the FERC Uniform System of Accounts.
- (3) All blanket orders and improvement orders and any other documents authorizing a capital expenditure that include any projects that affect the VED shall have detailed appropriate documentation attached to them at the time they are opened or otherwise established, including documentation of projected project costs. When a blanket or improvement order or other document authorizing a capital expenditure is closed to plant, documentation of the final cost of the project, broken down by project subcomponents, shall be attached. Post-completion audits shall be performed for all projects over \$10,000 that are charged to improvement and replacement orders. These audits shall be done by an independent entity under the direction of the Special Master. The use of blanket orders shall be limited to projects

that commence and are completed within 180 days and for which final total costs are projected to be less than \$10,000.

- (4) After the initial independent audits required above of the VED's transmission, distribution, DSM and ACE accounts are completed, the Special Master shall designate an independent expert in utility accounting to serve as an independent auditor. The independent auditor shall select and audit a random sample of these accounts on at least an annual basis, at a randomly selected time of the year with no prior notice to the Company. These sample audits shall test and ensure that the accounting and other requirements specified for the initial audits specified above continue to be met. The independent expert shall check the randomly selected accounts against other appropriate documentation, and where necessary, will undertake a site visit to confirm the existence of plant booked to these accounts. The results of these reviews and any accounting irregularities or flaws in accounting procedures that surface as a result of the review shall be brought to the attention of the Board and the Department.
- (5) Within thirty days after the closing of VED's yearly Monthly Work in Progress ("MWIP") and Construction Work in Progress ("CWIP") reports, Citizens shall submit to the Special Master and to the Department a reconciliation of these reports to each other and to the VED's general ledger. The Special Master shall make a determination, after reviewing the reports and the reconciliation, whether to designate an independent expert in utility accounting to review these reports to ensure that they are accurate and reconcile with one another and with VED's general ledger. The results of these reviews and any accounting irregularities or flaws in accounting procedures that are identified as a result of the semi-annual review shall be brought to the attention of the Board and the Department.
- (6) Each quarter, Citizens shall provide the Special Master a list of all accounting transactions and transfers between VED and the Stamford Administrative Office ("SAO"), between SAO and VED, between the Harvey Administrative Office ("HAO") and VED, and between VED and HAO, as well as transactions and transfers between and among any other corporate entities, divisions or other subdivisions, existing or that may be created, that directly affect VED. On a semi-annual basis, that list shall be accompanied by complete documentation of any transfers or adjustments that have been made between the accounts, including the reason for and basis for the transaction or transfer. At the end of each year, Citizens shall submit an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that,

based on reasonable inquiry, each affiant believes the information contained in the report to be true, accurate and complete. The Special Master shall review these transactions and shall be empowered to order further investigation of any transfers that do not have appropriate documentation or justification. The Special Master may designate an independent expert to analyze and audit these filings submitted by Citizens.

- (7) At least annually, the Company shall submit an update of its allocation model for costs that do not originate in VED to the Special Master, Department, and Board; the Special Master will review the allocation of costs from SAO to VED and HAO to VED. The Special Master will review the model and associated common costs for accuracy and consistency with other VED accounts. Citizens' initial filing shall be accompanied by a complete, accurate, and clearly understandable explanation of the assumptions, embedded formulas, exogenous factors, and all other relevant details of the model itself. All changes to any of these model details in subsequent submittals shall be accompanied by a like explanation. The Special Master may designate an independent expert to analyze and audit these filings submitted by Citizens.

Each filing of the updated allocation model must be accompanied by documentation supporting all overhead and administrative and general ("A&G") costs that are charged from SAO to VED and HAO to VED, as well as transactions and transfers between and among any other corporate entities, divisions or other subdivisions, existing or that may be created, that directly affect VED; the documentation must show that these costs were incurred as a direct result of service that will benefit Vermont ratepayers. If overhead and A&G expenses are charged based on payroll or employee time, the appropriate time sheets must be attached. If there is another basis for the allocation, it must be explained and accompanied by complete documentation. The documentation must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the affidavit must state that, based on reasonable inquiry, each affiant believes the information contained in the documentation to be true, accurate and complete.

Unless it can demonstrate a benefit to Vermont ratepayers, Citizens may not charge any portion of overhead or A&G costs from its unregulated entities, or its non-electric regulated entities, to VED. The annual filing of the updated allocation model must be accompanied by an affidavit signed by the VED General Manager, the Vice President of Citizens' Public Services Sector, and the Corporate Controller (or their equivalent, if position titles or responsibilities change in the future); the

affidavit must state that, based on reasonable inquiry, each affiant believes that Citizens has fully complied with this requirement. The annual filing must also be accompanied by a report that identifies all overhead and A&G costs from Citizens' unregulated entities, and its non-electric regulated entities, that are charged to VED; this report must also demonstrate and document both the benefit to Vermont ratepayers and the reasonableness of those charges.

The Special Master shall review all allocations and charges subject to this condition and shall be empowered to conduct further investigation of any charges that do not have appropriate documentation or justification. The Special Master may designate an independent expert to assist in such reviews and investigations.

- (8) In May and November of each year, a full review of VED's accounts and accounting procedures shall be undertaken by the Special Master. VED's complete accounts, as well as any other Citizens accounts that the Special Master deems necessary for this purpose, shall be available for review by the Special Master. VED's accounts shall contain a full explanation for each entry. The semi-annual review shall examine all aspects of Citizens' accounts but should focus particular attention on the accounts detailed in this Order. At all times, VED's accounts shall be available for review upon request. The results of these semi-annual reviews and any accounting irregularities or flaws in accounting procedures that surface as a result of the reviews shall be brought to the attention of the Board and the Department. The Special Master shall be empowered to conduct further investigation of any charges that do not have appropriate documentation or justification. The Special Master may designate an independent expert to assist in such reviews and investigations.
- (9) Citizens shall file with the Special Master, the Board, and the Department, simultaneously with their filing with the entity requiring them, a copy of its FERC Form 1, a copy of its annual report and annual supplemental schedules, a copy of all proxy statements issued, a copy of its Monthly Construction Report for work orders, formerly Form 4-2M, now form CUPM1015, and Production Detail Reports 15-1-V.
- (10) By January 13, 1999, Citizens shall submit to the Special Master, Board, and Department a plan whereby it will physically maintain copies of significant, primary source accounting records affecting the VED at VED's primary place of business in the State of Vermont. The plan shall be designed so that the VED, Special Master, Board and Department can readily determine, from the records maintained at VED, the reasonableness, appropriateness and accuracy of all costs, other than *de minimis* costs, for which Citizens intends to include in

the VED retail cost of service. The plan shall be subject to approval by the Special Master.

h. If the Company is subject to any investigation for alleged violation of any statute, regulatory requirement, or order in any state or by any federal agency which results in a docket being opened, in the filing of a formal complaint in state or federal court or before a state or federal agency, or in a stipulated settlement with a state or federal agency (including a law enforcement agency), it shall provide notification of such an investigation to both the Board and the Department within thirty days of commencement of the investigation.

i. The Company shall implement in a timely and effective manner all cost-effective energy efficiency programs for the benefit of its Vermont customers. We expect this to involve, at a minimum, three and one-half percent of VED's gross revenues. Operational mechanisms for ensuring the delivery of those services must be established and a thorough description of those mechanisms filed with the Special Master, Department and Board by October 30, 1998.

- (1) Citizens shall file quarterly DSM activity, expenditure and savings reports consistent with the definitions and formats provided for the data portion of the Board's Annual DSM Reports. These quarterly reports shall display each item as to the reporting quarter and cumulatively for the reporting year to date.
- (2) Citizens shall implement a Remedial DSM Program in accordance with the terms of the Partial Stipulation On Remedial Demand-Side Management Programs that Citizens filed with the Board on June 4, 1998. The terms of that Partial Stipulation are hereby incorporated into this term of probation.
- (3) Citizens shall ensure that its DSM expenditures are recorded and tracked as an integral part of its accounting system for VED and shall not do so by means of separate, *ad hoc* systems. By December 15, 1998, Citizens shall ensure that a system is in place so that its DSM activities are recorded and tracked in an accountable and integrated manner and are easily verifiable. This system shall include procedures for data entry and verification, system operation, and other necessary activities and shall not operate by means of separate, *ad hoc* systems.

j. By October 30, 1998, the Company must submit to the Department for review and the Special Master for approval a proposal for implementing cost-effective least-cost analyses. The Company will not be allowed to include in rate base any capital expenditures made after the date of this Order until the Board has approved the Company's proposal for implementing least-cost analyses. Board approval of the

proposal will not constitute a determination that any specific capital expenditure is consistent with least-cost principles.

k. Citizens must pay the full costs of this probation, and none of the costs may be recovered in VED's retail rates. To assure that this condition is satisfied, Citizens must comply with the following requirements:

- (1) Citizens must keep complete, accurate, and reliable records of its costs in complying with this probation, including all direct, indirect, overhead, and allocated costs. Citizens must file with the Department for review and the Special Master for approval a proposed system reasonably designed to determine, track, record, and substantiate all such costs.
- (2) Citizens must reimburse the Department, the Board, and the Board-appointed Master in full for their respective costs incurred in the oversight and administration of this probation, including but not limited to costs of monitoring the Company's compliance with the terms of probation. If the Company believes that a particular request for reimbursement from the Department, Board, or Master does not represent a necessary or reasonable cost, the Company may petition the Board to review the necessity or reasonableness of the requested reimbursement.

l. After notice and opportunity for hearing, Citizens' Certificate of Public Good to operate the VED may be revoked for material non-compliance with the terms of this probation.

m. The probation period will extend for a minimum of five years, to June 16, 2002, or beyond. At the end of the five-year period, we will evaluate Citizens' performance of its obligations as a regulated public utility in Vermont, and at that time determine, after notice and opportunity for hearing, whether to continue, modify, or end the Company's probation. The reduction in return on equity ordered today shall remain in effect as a term of probation until the end of the probationary period, unless modified pursuant to Paragraph (n) below.

n. The Board reserves the right, after notice and opportunity for hearing, to modify these terms of probation, including the imposition of additional terms, as needed.

o. All filings and reports required by any condition imposed in this Order are in addition to and not in lieu of any other required filing or report.

2. Citizens Utilities Company's franchise for its Vermont service territory shall be contingent on the Company's compliance with the terms of probation. Pursuant to 30 V.S.A. § 231(a), the Certificate of Public Good of Citizens Utilities Company shall be amended accordingly.

3. The Board will appoint a Special Master to oversee the compliance of Citizens Utilities Company with the terms of its probation. The Board will schedule a workshop among the parties and Board staff to discuss the details of appointing a Special Master.

4. Pursuant to 30 V.S.A. § 8, Kurt Janson, General Counsel, is appointed Hearing Officer in this docket for issues related to the terms of probation. The Hearing Officer shall convene a workshop regarding the selection of, and specific charge to, the Special Master to oversee Citizens' compliance with the terms of probation.

5. Citizens Utilities Company's proposal to credit unclaimed refunds and \$60,000 in fines to Account 186 - Deferred Debits, Demand-Side Management, is approved, subject to the requirement that the Company book these amounts in a separate sub-account.

Dated at Montpelier, Vermont, this 15th day of September, 1998.

<u>s/ Richard H. Cowart</u>)	
)	PUBLIC SERVICE
)	
<u>s/ Suzanne D. Rude</u>)	BOARD
)	
)	OF VERMONT
<u>s/ David C. Coen</u>)	

A True Copy:

OFFICE OF THE CLERK

FILED: September 15, 1998

ATTEST: _____
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 of any technical errors, in order that any necessary corrections may be made. 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.